

## HOUSE FLOOR AMENDMENT

Second Reading

BY REPRESENTATIVE Esgar

1 Amend the Health and Insurance Committee Report, dated March 6,  
2 2019, page 1, line 6, strike "FORMAT" and substitute "MANNER".

3 Page 1 of the report, lines 12 and 13, strike "and (14)." and substitute  
4 "(14), (15), and (16)".

5 Page 2 of the report, line 1, strike ""FACILITY OTHER" and substitute  
6 ""FACILITY, OTHER".

7 Page 3 of the report, line 15, after "AND" insert "BE".

8 Page 3 of the report, line 36, strike "CONSUMERS." and substitute  
9 "CONSUMERS.

10 (15) (a) (I) IF A PROVIDER BELIEVES THAT A PAYMENT MADE  
11 PURSUANT TO SUBSECTION (3) OR (5.5) OF THIS SECTION OR SECTION  
12 24-34-114 OR A HEALTH CARE FACILITY BELIEVES THAT A PAYMENT MADE  
13 PURSUANT TO SUBSECTION (5.5) OF THIS SECTION OR SECTION 25-3-121(3)  
14 WAS NOT SUFFICIENT GIVEN THE COMPLEXITY AND CIRCUMSTANCES OF  
15 THE SERVICES PROVIDED, THE PROVIDER OR THE HEALTH CARE FACILITY  
16 MAY INITIATE ARBITRATION BY FILING A REQUEST FOR ARBITRATION WITH  
17 THE COMMISSIONER AND THE CARRIER. THE REQUEST MUST BE FILED  
18 WITHIN NINETY DAYS AFTER THE RECEIPT OF THE PAYMENT.

19 (II) PRIOR TO ARBITRATION UNDER SUBSECTION (15)(a)(I) OF THIS  
20 SECTION, THE CARRIER AND PROVIDER OR HEALTH CARE FACILITY MAY  
21 CONDUCT AN INFORMAL SETTLEMENT TELECONFERENCE WITHIN THIRTY  
22 DAYS AFTER THE REQUEST FOR ARBITRATION. THE PARTIES SHALL NOTIFY  
23 THE COMMISSIONER OF THE RESULTS OF THE SETTLEMENT CONFERENCE.

24 (III) UPON RECEIPT OF NOTICE THAT THE SETTLEMENT  
25 TELECONFERENCE WAS UNSUCCESSFUL, THE COMMISSIONER SHALL  
26 APPOINT AN ARBITRATOR AND NOTIFY THE PARTIES OF THE ARBITRATION.

27 (b) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT  
28 AN ARBITRATION PROCESS THAT INCLUDES THE SELECTION OF AN  
29 ARBITRATOR FROM A LIST OF QUALIFIED ARBITRATORS DEVELOPED  
30 PURSUANT TO THE RULES. QUALIFIED ARBITRATORS MUST BE  
31 INDEPENDENT; NOT BE AFFILIATED WITH A CARRIER, HEALTH CARE  
32 FACILITY, OR PROVIDER, OR ANY PROFESSIONAL ASSOCIATION OF  
33 CARRIERS, HEALTH CARE FACILITIES, OR PROVIDERS; NOT HAVE A  
34 PERSONAL, PROFESSIONAL, OR FINANCIAL CONFLICT WITH ANY PARTIES TO  
35 THE ARBITRATION; AND HAVE EXPERIENCE IN HEALTH CARE BILLING AND  
36 REIMBURSEMENT RATES.

37 (c) (I) THE ARBITRATOR SHALL PERFORM THE REVIEW OF THE

1 WRITTEN SUBMISSION BY THE PROVIDER OR HEALTH CARE FACILITY. THE  
2 ARBITRATOR SHALL DETERMINE WHETHER THE DISPUTED PAYMENT WAS  
3 NOT SUFFICIENT GIVEN THE COMPLEXITY AND CIRCUMSTANCES.

4 (II) IF THE ARBITRATOR DETERMINES ADDITIONAL PAYMENT IS  
5 WARRANTED, THEN BOTH PARTIES SHALL SUBMIT, IN WRITING, EACH  
6 PARTY'S FINAL OFFER. THE ARBITRATOR SHALL PICK ONE OF THE TWO  
7 AMOUNTS SUBMITTED BY THE PARTIES AS THE ARBITRATOR'S FINAL AND  
8 BINDING DECISION. THE DECISION MUST BE IN WRITING AND MADE WITHIN  
9 FORTY-FIVE DAYS AFTER THE ARBITRATOR'S APPOINTMENT. IN MAKING  
10 THE DECISION, THE ARBITRATOR MAY CONSIDER THE CIRCUMSTANCES AND  
11 COMPLEXITY OF THE PARTICULAR CASE, INCLUDING THE TIME AND PLACE  
12 OF SERVICES, AND AVAILABILITY OF PROVIDERS IN THE SAME GEOGRAPHIC  
13 REGION.

14 (d) IF THE ARBITRATOR'S DECISION REQUIRES ADDITIONAL  
15 PAYMENT BY THE CARRIER ABOVE THE AMOUNT PAID, THE CARRIER SHALL  
16 PAY THE PROVIDER IN ACCORDANCE WITH SECTION 10-16-106.5.

17 (e) THE ARBITRATOR'S EXPENSES AND FEES SHALL BE SPLIT  
18 EQUALLY AMONG THE PARTIES.

19 (16) NOT WITHSTANDING SECTION 24-1-136 (11)(a)(I), ON OR  
20 BEFORE JULY 1, 2020, AND EACH JULY 1 THEREAFTER, THE COMMISSIONER  
21 SHALL PROVIDE A WRITTEN REPORT TO THE HEALTH AND HUMAN SERVICES  
22 COMMITTEE OF THE SENATE AND THE HEALTH AND INSURANCE COMMITTEE  
23 OF THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES,  
24 AND SHALL POST THE REPORT ON THE DIVISION'S WEBSITE SUMMARIZING:

25 (a) THE INFORMATION SUBMITTED TO THE COMMISSIONER IN  
26 SUBSECTION (14) OF THIS SECTION; AND

27 (b) THE NUMBER OF ARBITRATIONS FILED; THE NUMBER OF  
28 ARBITRATIONS SETTLED, ARBITRATED, AND DISMISSED IN THE PREVIOUS  
29 CALENDAR YEAR; AND A SUMMARY OF WHETHER THE ARBITRATIONS WERE  
30 IN FAVOR OF THE CARRIER OR THE OUT-OF-NETWORK PROVIDER OR  
31 HEALTH CARE FACILITY. THE LIST OF ARBITRATION DECISIONS MUST NOT  
32 INCLUDE ANY INFORMATION THAT SPECIFICALLY IDENTIFIES THE  
33 PROVIDER, HEALTH CARE FACILITY, CARRIER, OR COVERED PERSON  
34 INVOLVED IN EACH ARBITRATION DECISION."".

35 Page 4 of the report, after line 15 insert:

36 "Page 14 of the bill, after line 9 insert:

37 "(5) A HEALTH CARE PROVIDER MAY INITIATE ARBITRATION  
38 PURSUANT TO SECTION 10-16-704 (15) IF THE HEALTH CARE PROVIDER  
39 BELIEVES THE PAYMENT MADE PURSUANT TO SUBSECTION (4) OF THIS  
40 SECTION IS NOT SUFFICIENT."".

41 Page 5 of the report, after line 18 insert:

1 "Page 18 of the bill, after line 19 insert:

2        "(4) AN OUT-OF-NETWORK FACILITY MAY INITIATE ARBITRATION  
3 PURSUANT TO SECTION 10-16-704 (15) IF THE FACILITY BELIEVES THE  
4 PAYMENT MADE PURSUANT TO SUBSECTION (3) OF THIS SECTION IS NOT  
5 SUFFICIENT.".".

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