



SPONSOR: Rep. Hudson & Sen. Blevins
Reps. Spence, Ewing, Hocker, Stone, Wagner, Ennis, Plant

HOUSE OF REPRESENTATIVES

144th GENERAL ASSEMBLY

HOUSE BILL NO. 92
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE TO CREATE AN ARBITRATION PROCEDURE FOR DISPUTES BETWEEN INSURANCE CARRIERS AND HEALTH CARE PROVIDERS.

WHEREAS, disputes regarding payment for medical services frequently arise between health care providers and insurance carriers; and

WHEREAS, except for certain dispute resolution provisions in contracts between providers and insurers, there currently exists no forum in which such disputes can be resolved in a fair, objective manner without imposing the costs of litigation upon both the health care provider and the insurance carrier; and

WHEREAS, there is substantial precedent in Delaware for the establishment of an expedited, low-cost arbitration process to resolve disputes regarding payment by insurance carriers;

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 3 of Title 18 of the Delaware Code by adding a new § 333 to read as follows:

“§ 333. Arbitration of Disputes Between Insurance Carriers and Health Care Providers.

(a) Definitions:

The following definitions shall apply with respect to this Section:

- (1) ‘Health care provider’ means a person, corporation, facility or institution licensed by this State pursuant to Title 24 or Title 16 of the Delaware Code to provide health care or professional services or any officers, employees or agents thereof acting within the scope of their employment; provided, however, that the term ‘health care provider’ shall not mean or include the following:

- (A) any nursing service or nursing facility conducted by or for those who rely upon treatment solely by spiritual means in accordance with the creed or tenets of any generally recognized church or religious denomination;
 - (B) any nursing facility as defined at 16 Del.C. § 1102(4) or its successor; and
 - (C) any hospital as defined at 16 DEL.C. § 1001(2) or its successor.
- (2) 'Insurance carrier' means any entity that provides health insurance in this State. For the purposes of this Section, 'carrier' includes an insurance company, health services corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. 'Carrier' also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.
- (b) Every insurance carrier shall be required to submit to arbitration, in the manner set forth in this Section, any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service by that health care provider for health care services, upon a request for arbitration by the health care provider. A request for arbitration shall be made within sixty (60) days after the receipt of the decision rendered by the insurance carrier. The Commissioner shall promulgate regulations addressing the manner in which health care providers must be informed of the availability of arbitration under this Section.
 - (c) By requesting arbitration pursuant to this Chapter, a health care provider shall be deemed to have agreed that it will not bill its patient for the difference between its charge and any reimbursement awarded by the arbitrator if it is forbidden from such billing by its contract with the carrier against whom the award is entered.
 - (d) The arbitration program shall be administered by the Department of Insurance.
 - (e) The Commissioner shall establish a panel of arbitrators, from which the Commissioner or the Commissioner's designee will select one (1) person to hear each request for arbitration. No cause of action shall arise nor shall any liability be imposed against any individual appointed as arbitrator for any conduct performed in good faith while carrying out the provisions of this Section. In establishing the panel of arbitrators required by this subsection, the Commissioner shall endeavor to appoint persons qualified to hear both legal and medical disputes.

- (f) The losing party in an arbitration conducted pursuant to this Section shall have a right to trial de novo in the Superior Court so long as notice of appeal is filed with that Court in the manner set forth by Superior Court rules within 30 days of the date of the arbitration decision being rendered.
- (g) The Commissioner shall establish a schedule of fees for arbitration, which shall not exceed \$100 per arbitration. The arbitrator may award to the health care provider the cost of filing the arbitration if the health care provider should prevail.
- (h) The cost of arbitration shall be payable to the Department of Insurance, and shall be maintained in a special fund identified as the 'Arbitration Fund,' which shall remain separate and segregated from the General Fund. The compensation paid to the arbitrator shall be payable from the Arbitration Fund.
- (i) The Commissioner may promulgate regulations exempting insurance carriers from the requirements of this Section if the carriers maintain a substantially similar program to that created by this Section.
- (j) The following issues shall not be subject to arbitration under this Section:
 - (1) Disputes as to whether the patient for whom health care services were provided was a policyholder of the insurance carrier at the time services were rendered, or was otherwise entitled by contract to receive health care services or reimbursement for health care services.
 - (2) Disputes that are already pending before a court of law.
 - (3) Disputes that fall under an insurance carrier's own arbitration program, which has been granted an exemption pursuant to subsection (i) of this Section.
- (k) Arbitration under this Section of disputes that are subject to arbitration pursuant to 18 Del. C. § 332, or resolution pursuant to 16 Del. C. § 9119 et. seq., shall be stayed during the pendency of those proceedings. If a decision is entered under 18 Del. C. § 332 or 16 Del. C. § 9119 et. seq. regarding an issue identical to one for which arbitration is sought under this Section, and no appeal is pending, the decision entered under 18 Del. C. § 332 or 16 Del. C. § 9119 et. seq. shall govern the outcome of the arbitration sought under this Section.
- (l) Health care providers shall attempt to resolve disputes informally with insurance carriers before requesting arbitration pursuant to this Section. The arbitrator may dismiss an arbitration petition without prejudice if the arbitrator finds that the health care provider has not attempted to resolve the matter informally.

- (m) Nothing in this Section shall be construed to permit the alteration, amendment or modification of the substantive reimbursement terms of the insurance carrier's contracts with its members or health care providers.
- (n) This Section shall be construed in a manner consistent with federal law and regulations.
- (o) Arbitrations conducted pursuant to this Section shall be subject to the provisions of Title 29, § 10122 and § 10125, provided that arbitrations shall not be conducted in public. Except as otherwise provided in this subsection, arbitration proceedings shall not be considered case decisions under Chapter 101, Title 29 of the Delaware Code.
- (p) The Commissioner shall promulgate regulations for purposes of implementing this Section.”.

Section 2. This Act shall become effective ninety (90) days after promulgation of regulations by the Commissioner implementing it.