

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/HCS/House Bill No. 1682, Page 66, Section 376.393, Line 10,

2 of said page, by inserting immediately after said line the
3 following:

4 "376.690. 1. As used in this section, the following terms
5 shall mean:

6 (1) ["Emergency medical condition", the same meaning given
7 to such term in section 376.1350;

8 (2)] "Facility", the same meaning given to such term in
9 section 376.1350;

10 [(3)] (2) "Health care professional", the same meaning
11 given to such term in section 376.1350;

12 [(4)] (3) "Health carrier", the same meaning given to such
13 term in section 376.1350;

14 [(5)] (4) "Unanticipated out-of-network care", health care
15 services received by a patient in an in-network facility from an
16 out-of-network health care professional from the time the patient
17 presents with [an emergency medical condition] a health
18 condition, illness, or disease until the time the patient is
19 discharged.

20 2. (1) Health care professionals shall send any claim for
21 charges incurred for unanticipated out-of-network care to the
22 patient's health carrier within one hundred eighty days of the
23 delivery of the unanticipated out-of-network care on a U.S.

1 Centers of Medicare and Medicaid Services Form 1500, or its
2 successor form, or electronically using the 837 HIPAA format, or
3 its successor.

4 (2) Within forty-five processing days, as defined in
5 section 376.383, of receiving the health care professional's
6 claim, the health carrier shall offer to pay the health care
7 professional a reasonable reimbursement for unanticipated
8 out-of-network care based on the health care professional's
9 services. If the health care professional participates in one or
10 more of the carrier's commercial networks, the offer of
11 reimbursement for unanticipated out-of-network care shall be the
12 amount from the network which has the highest reimbursement.

13 (3) If the health care professional declines the health
14 carrier's initial offer of reimbursement, the health carrier and
15 health care professional shall have sixty days from the date of
16 the initial offer of reimbursement to negotiate in good faith to
17 attempt to determine the reimbursement for the unanticipated
18 out-of-network care.

19 (4) If the health carrier and health care professional do
20 not agree to a reimbursement amount by the end of the sixty-day
21 negotiation period, the dispute shall be resolved through an
22 arbitration process as specified in subsection 4 of this section.

23 (5) To initiate arbitration proceedings, either the health
24 carrier or health care professional must provide written
25 notification to the director and the other party within one
26 hundred twenty days of the end of the negotiation period,
27 indicating their intent to arbitrate the matter and notifying the
28 director of the billed amount and the date and amount of the
29 final offer by each party. A claim for unanticipated

1 out-of-network care may be resolved between the parties at any
2 point prior to the commencement of the arbitration proceedings.
3 Claims may be combined for purposes of arbitration, but only to
4 the extent the claims represent similar circumstances and
5 services provided by the same health care professional, and the
6 parties attempted to resolve the dispute in accordance with
7 subdivisions (3) to (5) of this subsection.

8 (6) No health care professional who sends a claim to a
9 health carrier under subsection 2 of this section shall send a
10 bill to the patient for any difference between the reimbursement
11 rate as determined under this subsection and the health care
12 professional's billed charge.

13 3. (1) When unanticipated out-of-network care is provided,
14 the health care professional who sends a claim to a health
15 carrier under subsection 2 of this section may bill a patient for
16 no more than the cost-sharing requirements described under this
17 section.

18 (2) Cost-sharing requirements shall be based on the
19 reimbursement amount as determined under subsection 2 of this
20 section.

21 (3) The patient's health carrier shall inform the health
22 care professional of its enrollee's cost-sharing requirements
23 within forty-five processing days of receiving a claim from the
24 health care professional for services provided.

25 (4) The in-network deductible and out-of-pocket maximum
26 cost-sharing requirements shall apply to the claim for the
27 unanticipated out-of-network care.

28 4. The director shall ensure access to an external
29 arbitration process when a health care professional and health

1 carrier cannot agree to a reimbursement under subdivision (3) of
2 subsection 2 of this section. In order to ensure access, when
3 notified of a parties' intent to arbitrate, the director shall
4 randomly select an arbitrator for each case from the department's
5 approved list of arbitrators or entities that provide binding
6 arbitration. The director shall specify the criteria for an
7 approved arbitrator or entity by rule. The costs of arbitration
8 shall be shared equally between and will be directly billed to
9 the health care professional and health carrier. These costs
10 will include, but are not limited to, reasonable time necessary
11 for the arbitrator to review materials in preparation for the
12 arbitration, travel expenses and reasonable time following the
13 arbitration for drafting of the final decision.

14 5. At the conclusion of such arbitration process, the
15 arbitrator shall issue a final decision, which shall be binding
16 on all parties. The arbitrator shall provide a copy of the final
17 decision to the director. The initial request for arbitration,
18 all correspondence and documents received by the department and
19 the final arbitration decision shall be considered a closed
20 record under section 374.071. However, the director may release
21 aggregated summary data regarding the arbitration process. The
22 decision of the arbitrator shall not be considered an agency
23 decision nor shall it be considered a contested case within the
24 meaning of section 536.010.

25 6. The arbitrator shall determine a dollar amount due under
26 subsection 2 of this section between one hundred twenty percent
27 of the Medicare-allowed amount and the seventieth percentile of
28 the usual and customary rate for the unanticipated out-of-network
29 care, as determined by benchmarks from independent nonprofit

1 organizations that are not affiliated with insurance carriers or
2 provider organizations.

3 7. When determining a reasonable reimbursement rate, the
4 arbitrator shall consider the following factors if the health
5 care professional believes the payment offered for the
6 unanticipated out-of-network care does not properly recognize:

7 (1) The health care professional's training, education, or
8 experience;

9 (2) The nature of the service provided;

10 (3) The health care professional's usual charge for
11 comparable services provided;

12 (4) The circumstances and complexity of the particular
13 case, including the time and place the services were provided;
14 and

15 (5) The average contracted rate for comparable services
16 provided in the same geographic area.

17 8. The enrollee shall not be required to participate in the
18 arbitration process. The health care professional and health
19 carrier shall execute a nondisclosure agreement prior to engaging
20 in an arbitration under this section.

21 9. The department of commerce and insurance may promulgate
22 rules and fees as necessary to implement the provisions of this
23 section, including but not limited to procedural requirements for
24 arbitration. Any rule or portion of a rule, as that term is
25 defined in section 536.010, that is created under the authority
26 delegated in this section shall become effective only if it
27 complies with and is subject to all of the provisions of chapter
28 536 and, if applicable, section 536.028. This section and
29 chapter 536 are nonseverable and if any of the powers vested with

1 the general assembly pursuant to chapter 536 to review, to delay
2 the effective date, or to disapprove and annul a rule are
3 subsequently held unconstitutional, then the grant of rulemaking
4 authority and any rule proposed or adopted after August 28, 2018,
5 shall be invalid and void."; and

6 Further amend the title and enacting clause accordingly.