

The Senate Committee on Health and Human Services offered the following substitute to SB 8:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for consumer protections regarding health insurance; to provide for definitions; to
3 provide for disclosure requirements of providers, hospitals, and insurers; to provide for
4 billing and reimbursement of out-of-network services; to provide for procedures for dispute
5 resolution for surprise bills for nonemergency services; to provide for payment of emergency
6 services; to provide for an out-of-network reimbursement rate workgroup; to provide for
7 related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 This Act shall be known and may be referred to as the "Surprise Billing and Consumer
11 Protection Act."

12 style="text-align:center">**SECTION 2.**

13 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
14 adding a new chapter to read as follows:

15 style="text-align:center">"CHAPTER 20E

16 33-20E-1.

17 As used in this chapter, the term:

18 (1) 'Covered person' means an individual who is covered under a health care plan.

19 (2) 'Emergency services' means those health care services that are provided for a
20 condition of recent onset and sufficient severity, including, but not limited to, severe pain,
21 that would lead a prudent layperson possessing an average knowledge of medicine and
22 health to believe that his or her condition, sickness, or injury is of such a nature that
23 failure to obtain immediate medical care could result in:

- 24 (A) Placing the patient's health in serious jeopardy;
 25 (B) Serious impairment to bodily functions; or
 26 (C) Serious dysfunction of any bodily organ or part.
- 27 (3) 'Enrollee' means a policyholder, subscriber, covered person, or other individual
 28 participating in a health benefit plan.
- 29 (4) 'Health care plan' means any hospital or medical insurance policy or certificate,
 30 health care plan contract or certificate, qualified higher deductible health plan, health
 31 maintenance organization subscriber contract, any health benefit plan established
 32 pursuant to Article 1 of Chapter 18 of Title 45, or any dental or vision care plan or policy;
 33 but a health care plan shall not include policies issued in accordance with Chapter 31 of
 34 this title, relating to credit life insurance and credit accident and sickness insurance,
 35 Chapter 9 of Title 34, relating to workers' compensation, Chapter 20A of this title,
 36 relating to managed health care plans, or disability income policies.
- 37 (5) 'Health care provider' or 'provider' means any physician, dentist, podiatrist,
 38 pharmacist, optometrist, psychologist, clinical social worker, advanced practice registered
 39 nurse, registered optician, licensed professional counselor, physical therapist, marriage
 40 and family therapist, chiropractor, athletic trainer qualified pursuant to Code Section
 41 43-5-8, occupational therapist, speech-language pathologist, audiologist, dietitian, or
 42 physician assistant.
- 43 (6) 'Health care services' means the examination or treatment of persons for the
 44 prevention of illness or the correction or treatment of any physical or mental condition
 45 resulting from illness, injury, or other human physical problem and includes, but is not
 46 limited to:
- 47 (A) Hospital services which include the general and usual care, services, supplies, and
 48 equipment furnished by hospitals;
- 49 (B) Medical services which include the general and usual services and care rendered
 50 and administered by doctors of medicine, doctors of dental surgery, and doctors of
 51 podiatry; and
- 52 (C) Other health care services which include appliances and supplies; nursing care by
 53 a registered nurse or a licensed practical nurse; institutional services, including the
 54 general and usual care, services, supplies, and equipment furnished by health care
 55 institutions and agencies or entities other than hospitals; physiotherapy; ambulance
 56 services; drugs and medications; therapeutic services and equipment, including oxygen
 57 and the rental of oxygen equipment; hospital beds; iron lungs; orthopedic services and
 58 appliances, including wheelchairs, trusses, braces, crutches, and prosthetic devices,
 59 including artificial limbs and eyes; and any other appliance, supply, or service related
 60 to health care.

61 (7) 'Health center' means an entity that serves a population that is medically underserved,
62 or a special medically underserved population composed of migratory and seasonal
63 agricultural workers, the homeless, and residents of public housing, by providing, either
64 through the staff and supporting resources of the center or through contracts or
65 cooperative arrangements for required primary health services and as may be appropriate
66 for particular centers, additional health services necessary for the adequate support of the
67 primary health services for all residents of the area served by the health center.

68 (8) 'Insurer' means any person engaged as indemnitor, surety, or contractor who issues
69 insurance, annuity or endowment contracts, subscriber certificates, or other contracts of
70 insurance by whatever name called. Hospital service nonprofit corporations, nonprofit
71 medical service corporations, health care plans, and health maintenance organizations are
72 insurers within the meaning of this chapter.

73 (9) 'Medically underserved population' means the population of an urban or rural area
74 designated by the United States Secretary of Health and Human Services as an area with
75 a shortage of personal health services or a population group designated by the Secretary
76 in consultation with the state as having a shortage of such services.

77 (10) 'Out-of-network' refers to health care items or services provided to an enrollee by
78 providers who do not belong to the provider network in the health care plan.

79 (11) 'Patient' means a person who seeks or receives health care services under a health
80 benefit plan.

81 (12) 'Precertification' means any written or oral determination made at any time by an
82 insurer or any agent of such insurer that an enrollee's receipt of health care services is a
83 covered benefit under the applicable plan and that any requirement of medical necessity
84 or other requirements imposed by such plan as prerequisites for payment for such
85 services have been satisfied. 'Agent' as used in this paragraph shall not include an agent
86 or agency as defined in Code Section 33-23-1.

87 (13) 'Required primary health services' means health services related to family medicine,
88 internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians
89 and when appropriate, physician assistants, nurse practitioners, and nurse midwives;
90 diagnostic laboratory and radiologic services; preventive health care services including
91 prenatal and perinatal services; appropriate cancer screening; well child services;
92 immunizations against vaccine-preventable diseases; screenings for elevated blood lead
93 levels, communicable diseases, or cholesterol; pediatric eye, ear, and dental screenings
94 to determine the need for vision and hearing correction and dental care; family planning
95 services; and preventive dental services.

96 (14) 'Surprise bill' means a bill for health care services, other than emergency services,
97 received by:

98 (A) A covered person for services rendered by a nonparticipating physician at a
 99 participating hospital or ambulatory surgical center when a participating physician is
 100 unavailable or a nonparticipating physician renders services without the covered
 101 person's knowledge or when unforeseen medical services arise at the time the health
 102 care services are rendered; provided, however, that a surprise bill shall not mean a bill
 103 received for health care services when a participating physician is available and the
 104 covered person has elected to obtain services from a nonparticipating physician;
 105 (B) A covered person for services rendered by a nonparticipating provider when the
 106 services were referred by a participating physician to a nonparticipating provider
 107 without the explicit written consent of the covered person acknowledging that the
 108 participating physician is referring the covered person to a nonparticipating provider
 109 and that the referral may result in costs not covered by the health care plan; or
 110 (C) A patient who is not a covered person for services rendered by a physician at a
 111 hospital or ambulatory surgical center when the patient has not timely received all of
 112 the disclosures required by Code Section 33-20E-2.

113 33-20E-2.

114 (a) A health care provider, group practice of health care providers, diagnostic and
 115 treatment center, or health center on behalf of health care providers rendering services at
 116 a group practice, diagnostic and treatment center, or health center shall disclose to patients
 117 or prospective patients in writing or through an Internet website the health care plans in
 118 which the health care provider, group practice, diagnostic and treatment center, or health
 119 center is a participating provider and the hospitals with which the health care provider is
 120 affiliated prior to the provision of nonemergency services and verbally at the time an
 121 appointment is scheduled.

122 (b) If a health care provider, group practice of health care providers, diagnostic and
 123 treatment center, or health center on behalf of health care providers rendering services at
 124 a group practice, diagnostic and treatment center, or health center does not participate in
 125 the network of a patient's or prospective patient's health care plan, the health care provider,
 126 group practice, diagnostic and treatment center, or health center shall:

127 (1) Prior to the provision of nonemergency services, inform a patient or prospective
 128 patient that the estimated amount the health care provider will bill the patient for health
 129 care services is available upon request; and

130 (2) Upon receipt of a request from a patient or prospective patient, disclose to the patient
 131 or prospective patient in writing the amount or estimated amount or, with respect to a
 132 health center, a schedule of fees that the health care provider, group practice, diagnostic
 133 and treatment center, or health center will bill the patient or prospective patient for health

134 care services provided or anticipated to be provided to the patient or prospective patient
135 absent unforeseen medical circumstances that may arise when the health care services are
136 provided.

137 (c) A health care provider who is a physician shall provide a patient or prospective patient
138 with the name, practice name, mailing address, and telephone number of any health care
139 provider scheduled to perform anesthesiology, laboratory, pathology, radiology, or assistant
140 surgeon services in connection with care to be provided in the physician's office for the
141 patient or coordinated or referred by the physician for the patient at the time of referral to
142 or coordination of services with such provider.

143 (d) A health care provider who is a physician shall, for a patient's scheduled hospital
144 admission or scheduled outpatient hospital services, provide a patient and the hospital with
145 the name, practice name, mailing address, and telephone number of any other physician
146 whose services will be arranged for by the physician and are scheduled at the time of the
147 preadmission testing, registration, or admission at the time nonemergency services are
148 scheduled; and information as to how to determine the health care plans in which the
149 physician participates.

150 (e) A hospital shall establish, update, and make public through posting on the hospital's
151 website, to the extent required by federal guidelines, a list of the hospital's standard charges
152 for items and services provided by the hospital, including for diagnosis related groups
153 established under Section 1886(d)(4) of the federal Social Security Act.

154 (f) A hospital shall post on the hospital's website:

155 (1) The health care plans in which the hospital is a participating provider;

156 (2) A statement that physician services provided in the hospital are not included in the
157 hospital's charges, that physicians who provide services in the hospital may or may not
158 participate with the same health care plans as the hospital, and that the prospective patient
159 should check with the physician arranging for the hospital services to determine the
160 health care plans in which the physician participates;

161 (3) As applicable, the name, mailing address, and telephone number of the physician
162 groups that the hospital has contracted with to provide services, including anesthesiology,
163 pathology, or radiology, and instructions on how to contact these groups to determine the
164 health care plan participation of the physicians in these groups; and

165 (4) As applicable, the name, mailing address, and telephone number of physicians
166 employed by the hospital and whose services may be provided at the hospital with the
167 health care plans in which they participate.

168 (g) In registration or admission materials provided in advance of nonemergency hospital
169 services, a hospital shall:

170 (1) Advise the patient or prospective patient to check with the physician arranging the
171 hospital services to determine:

172 (A) The name, practice name, mailing address, and telephone number of any other
173 physician whose services will be arranged for by the physician; and

174 (B) Whether the services of physicians who are employed or contracted by the hospital
175 to provide services including anesthesiology, pathology, and radiology, are reasonably
176 anticipated to be provided to the patient; and

177 (2) Provide patients or prospective patients with information as to how to timely
178 determine the health care plans participated in by physicians who are reasonably
179 anticipated to provide services to the patient at the hospital, as determined by the
180 physician arranging the patient's hospital services, and who are employees of the hospital
181 or contracted by the hospital to provide services, including anesthesiology, radiology, and
182 pathology.

183 33-20E-3.

184 (a) An insurer shall provide to an enrollee:

185 (1) Information that an enrollee may obtain a referral to a health care provider outside
186 of the health maintenance organization's network or panel when the health maintenance
187 organization does not have a health care provider who is geographically accessible to the
188 enrollee and who has appropriate training and experience in the network or panel to meet
189 the particular health care needs of the enrollee and the procedure by which the enrollee
190 can obtain such referral;

191 (2) Notice that the enrollee shall have direct access to primary and preventive obstetric
192 and gynecologic services, including annual examinations, care resulting from such annual
193 examinations, and treatment of acute gynecologic conditions, or for any care related to
194 a pregnancy, from a qualified provider of such services of her choice from within the
195 plan;

196 (3) All appropriate mailing addresses and telephone numbers to be utilized by enrollees
197 seeking information or authorization; and

198 (4) An annually updated listing by specialty, which may be in a separate document, of
199 the name, address, and telephone number of all participating providers, including
200 facilities, and in the case of physicians, the board certification, languages spoken, and any
201 affiliations with participating hospitals. The listing shall also be posted on the health
202 maintenance organization's website and the health maintenance organization shall update
203 the website within 15 days of the addition or termination of a provider from the health
204 maintenance organization's network or a change in a physician's hospital affiliation;

- 205 (5) Where applicable, a description of the method by which an enrollee may submit a
206 claim for health care services;
- 207 (6) With respect to out-of-network coverage:
- 208 (A) A clear description of the methodology used by the health maintenance
209 organization to determine reimbursement for out-of-network health care services;
- 210 (B) The amount that the health maintenance organization will reimburse under the
211 methodology for out-of-network health care services set forth as a percentage of the
212 usual and customary cost for out-of-network health care services; and
- 213 (C) Examples of anticipated out-of-pocket costs for frequently billed out-of-network
214 health care services;
- 215 (7) Information in writing and through an Internet website that reasonably permits an
216 enrollee or prospective enrollee to estimate the anticipated out-of-pocket cost for
217 out-of-network health care services in a geographical area or ZIP code based upon the
218 difference between what the health maintenance organization will reimburse for
219 out-of-network health care services and the usual and customary cost for out-of-network
220 health care services;
- 221 (8) The written application procedures and minimum qualification requirements for
222 health care providers to be considered by the insurer; and
- 223 (9) Other information as required by the Commissioner.
- 224 (b) An insurer shall disclose whether a health care provider scheduled to provide a health
225 care service is an in-network provider and, with respect to out-of-network coverage,
226 disclose the approximate dollar amount that the insurer will pay for a specific
227 out-of-network health care service. Insurers shall also inform an enrollee through such
228 disclosure that such approximation is not binding on the insurer and that the approximate
229 dollar amount that the insurer will pay for a specific out-of-network health care service
230 may change.

231 33-20E-4.

232 An out-of-network referral denial means a denial of a request for an authorization or
233 referral to an out-of-network provider on the basis that the health care plan has a health
234 care provider in the network benefits portion of its network with appropriate training and
235 experience to meet the particular health care needs of an enrollee and who is able to
236 provide the requested health service. The notice of an out-of-network referral denial
237 provided to an enrollee shall have information explaining what information the enrollee
238 must submit in order to appeal the out-of-network referral denial. An out-of-network
239 denial shall not constitute an adverse determination.

240 33-20E-5.

241 (a) An insurer shall provide a description of the method by which an enrollee may submit
242 a claim for health care services.

243 (b) An insurer shall provide a clear description of the methodology used by such insurer
244 to determine reimbursement for out-of-network health care services and the amount that
245 the insurer will reimburse under the methodology for out-of-network health care services
246 set forth as a percentage of the usual and customary cost for out-of-network health care
247 services.

248 (c) An insurer shall provide examples of anticipated out-of-pocket costs for frequently
249 billed out-of-network health care services and information in writing and through an
250 Internet website that reasonably permits an enrollee or prospective enrollee to estimate the
251 anticipated out-of-pocket cost for out-of-network health care services in a geographical
252 area or ZIP code based upon the difference between what the insurer will reimburse for
253 out-of-network health care services and the usual and customary cost for out-of-network
254 health care services.

255 (d) An insurer shall disclose whether a health care provider scheduled to provide a health
256 care service is an in-network provider and, with respect to out-of-network coverage,
257 disclose the approximate dollar amount that the health maintenance organization will pay
258 for a specific out-of-network health care service. The insurer shall also inform an enrollee
259 through such disclosure that such approximation is not binding on the health maintenance
260 organization and that the approximate dollar amount that the health maintenance
261 organization will pay for a specific out-of-network health care service may change.

262 33-20E-6.

263 (a) The Commissioner shall establish a dispute resolution process by which a dispute for
264 a bill for emergency services or a surprise bill may be resolved. The Commissioner shall
265 have the power to grant and revoke certifications of independent dispute resolution entities
266 to conduct the dispute resolution process.

267 (b) The Commissioner shall promulgate regulations establishing standards for the dispute
268 resolution process, including a process for certifying and selecting independent dispute
269 resolution entities. An independent dispute resolution entity shall use licensed physicians
270 in active practice in the same or similar specialty as the physician providing the service that
271 is subject to the dispute resolution process. To the extent practicable, the physician shall
272 be licensed in this state.

273 (c) This chapter shall not apply to health care services, including emergency services,
274 where physician fees are subject to schedules or other monetary limitations under any other
275 law, including workers' compensation law.

- 276 (d) The dispute resolution process established in this chapter shall not apply when:
 277 (1) The amount billed for American Medical Association current procedural terminology
 278 (CPT) codes 99281 through 99285, 99288, 99291 through 99292, 99217 through 99220,
 279 99224 through 99226, and 99234 through 99236 meets the requirements set forth in
 280 subsection (f) of this Code section, after any applicable coinsurance, copayment and
 281 deductible; and
 282 (2) The amount billed for any such CPT code does not exceed 120 percent of the usual
 283 and customary cost for such CPT code.
- 284 (e) The health care plan shall ensure that a covered person shall not incur any greater
 285 out-of-pocket costs for emergency services billed under a CPT code as set forth in this
 286 Code section than the covered person would have incurred if such emergency services were
 287 provided by a participating physician.
- 288 (f) Beginning January 1, 2018, and on each January 1 thereafter, the Commissioner shall
 289 publish on a website maintained by the department, and provide in writing to each health
 290 care plan, a dollar amount for which bills for the procedure codes identified in this Code
 291 section shall be exempt from the dispute resolution process established in this chapter.
 292 Such amount shall equal the amount from the prior year, beginning with \$600.00 in 2018,
 293 adjusted by the average of the annual average inflation rates for the medical care
 294 commodities and may consider medical care services components of the Consumer Price
 295 Index. In no event shall an amount exceeding \$1,200.00 for a specific CPT code billed be
 296 exempt from the dispute resolution process established in this chapter.

297 33-20E-7.

298 In determining the appropriate amount to pay for a health care service, an independent
 299 dispute resolution entity shall consider all relevant factors, including whether there is a
 300 gross disparity between the fee charged by the physician for services rendered as compared
 301 to:

- 302 (1) Fees paid to the involved physician for the same services rendered by the physician
 303 to other patients in health care plans in which the physician is not participating;
 304 (2) In the case of a dispute involving a health care plan, fees paid by the health care plan
 305 to reimburse similarly qualified physicians for the same services in the same region who
 306 are not participating in the health care plan;
 307 (3) The level of training, education, and experience of the physician;
 308 (4) The physician's usual charge for comparable services with regard to patients in health
 309 care plans in which the physician is not participating;
 310 (5) The circumstances and complexity of the particular case, including time and place
 311 of the service;

312 (6) Individual patient characteristics; and

313 (7) The usual and customary cost of the service pursuant to Code Section 33-20E-7.1.

314 33-20E-7.1

315 The Department of Community Health shall develop and maintain the benchmarking data
316 base to establish usual and customary cost under Code Section 33-20E-7. Such usual and
317 customary cost shall mean the eightieth percentile of all charges for the particular health
318 care service performed by a provider in the same or similar geographical area as reported
319 in such benchmarking data base. Such data base shall develop a benchmark utilizing data
320 from a nonprofit organization specified by the Commissioner of Community Health, which
321 is not affiliated with a health care plan.

322 33-20E-8.

323 (a) When a health care plan receives a bill for emergency services from a nonparticipating
324 physician, the health care plan shall pay an amount that it determines is reasonable for the
325 emergency services rendered by the nonparticipating physician in accordance with Code
326 Section 33-20E-7 except for the covered person's copayment, coinsurance, or deductible,
327 if any, and shall ensure that the covered person shall incur no greater out-of-pocket costs
328 for the emergency services than the covered person would have incurred with a
329 participating physician.

330 (b) A nonparticipating physician or a health care plan may submit a dispute regarding a
331 fee or payment for emergency services for review to an independent dispute resolution
332 entity. The independent dispute resolution entity shall make a determination within 30
333 days of receipt of the dispute for review.

334 (c) In determining a reasonable fee for the services rendered, an independent dispute
335 resolution entity shall select either the health care plan's payment or the nonparticipating
336 physician's fee. The independent dispute resolution entity shall determine which amount
337 to select based upon the conditions and factors set forth in Code Section 33-20E-7 of this
338 chapter. If an independent dispute resolution entity determines, based on the health care
339 plan's payment and the nonparticipating physician's fee, that a settlement between the
340 health care plan and nonparticipating physician is reasonably likely, or that both the health
341 care plan's payment and the nonparticipating physician's fee represent unreasonable
342 extremes, then the independent dispute resolution entity may direct both parties to attempt
343 a good faith negotiation for settlement. The health care plan and nonparticipating
344 physician may be granted up to ten business days for this negotiation, which shall run
345 concurrently with the 30 day period for dispute resolution.

346 (d) A patient who is not a covered person or the patient's physician may submit a dispute
347 regarding a fee for emergency services for review to an independent dispute resolution
348 entity upon approval of the Commissioner. An independent dispute resolution entity shall
349 determine a reasonable fee for the services based upon the same conditions and factors
350 pursuant to Code Section 33-20E-7 of this chapter.

351 (e) A patient who is not a covered person shall not be required to pay the physician's fee
352 in order to be eligible to submit the dispute for review to an independent dispute resolution
353 entity.

354 (f) The determination of an independent dispute resolution entity shall be binding on the
355 health care plan, physician, and patient and shall be admissible in any court proceeding
356 between the health care plan, physician, or patient, or in any administrative proceeding
357 between this state and the physician.

358 33-20E-9.

359 When a covered person assigns benefits for a surprise bill in writing to a nonparticipating
360 physician who knows that the covered person is insured under a health care plan, the
361 nonparticipating physician shall not bill the covered person except for any applicable
362 copayment, coinsurance, or deductible that would be owed if the covered person utilized
363 a participating physician.

364 33-20E-10.

365 (a) If a covered person assigns benefits to a nonparticipating physician, the health care
366 plan shall pay the nonparticipating physician in accordance with subsections (c) and (d) of
367 this Code section.

368 (b) The nonparticipating physician may bill the health care plan for the health care services
369 rendered, and the health care plan shall pay the nonparticipating physician the billed
370 amount or attempt to negotiate reimbursement with the nonparticipating physician.

371 (c) If the health care plan's attempts to negotiate reimbursement for health care services
372 provided by a nonparticipating physician does not result in a resolution of the payment
373 dispute between the nonparticipating physician and the health care plan, the health care
374 plan shall pay the nonparticipating physician an amount the health care plan determines is
375 reasonable for the health care services rendered, except for the covered person's
376 copayment, coinsurance, or deductible.

377 (d) Either the health care plan or the nonparticipating physician may submit the dispute
378 regarding the surprise bill for review to an independent dispute resolution entity; provided,
379 however, that the health care plan may not submit the dispute unless it has complied with
380 the requirements of subsections (a), (b), and (c) of this Code section.

381 (e) The independent dispute resolution entity shall make a determination within 30 days
382 of receipt of the dispute for review.

383 (f) When determining a reasonable fee for the services rendered, the independent dispute
384 resolution entity shall select either the health care plan's payment or the nonparticipating
385 physician's fee. An independent dispute resolution entity shall determine which amount
386 to select based upon the conditions and factors set forth in Code Section 33-20E-7. If an
387 independent dispute resolution entity determines, based on the health care plan's payment
388 and the nonparticipating physician's fee, that a settlement between the health care plan and
389 nonparticipating physician is reasonably likely, or that both the health care plan's payment
390 and the nonparticipating physician's fee represent unreasonable extremes, then the
391 independent dispute resolution entity may direct both parties to attempt a good faith
392 negotiation for settlement. The health care plan and nonparticipating physician may be
393 granted up to ten business days for this negotiation, which shall run concurrently with the
394 30 day period for dispute resolution.

395 (g) A covered person who does not assign benefits under subsection (a) of this Code
396 section or a patient who is not a covered person and who receives a surprise bill may
397 submit a dispute regarding the surprise bill for review to an independent dispute resolution
398 entity.

399 (h) The independent dispute resolution entity shall determine a reasonable fee for the
400 services rendered based upon the conditions and factors set forth in Code Section
401 33-20E-7.

402 (i) A patient or covered person who does not assign benefits in accordance with subsection
403 (a) of this Code section shall not be required to pay the physician's fee to be eligible to
404 submit the dispute for review to the independent dispute entity.

405 (j) The determination of an independent dispute resolution entity shall be binding on the
406 patient, physician, and health care plan, and shall be admissible in any court proceeding
407 between the patient or covered person, physician or health care plan, or in any
408 administrative proceeding between this state and the physician.

409 (k) In disputes involving a covered person, when the independent dispute resolution entity
410 determines the health care plan's payment is reasonable, payment for the dispute resolution
411 process shall be the responsibility of the nonparticipating physician. When the independent
412 dispute resolution entity determines the nonparticipating physician's fee is reasonable,
413 payment for the dispute resolution process shall be the responsibility of the health care
414 plan. When a good faith negotiation directed by the independent dispute resolution entity
415 pursuant to Code Sections 33-20E-8 and 33-20E-9 of this chapter results in a settlement
416 between the health care plan and nonparticipating physician, the health care plan and the

417 nonparticipating physician shall evenly divide and share the prorated cost for dispute
418 resolution.

419 (l) When there is a dispute involving a patient who is not a covered person and the
420 independent dispute resolution entity determines the physician's fee is reasonable, payment
421 for the dispute resolution process shall be the responsibility of the patient unless payment
422 for the dispute resolution process would pose a hardship to the patient. The Commissioner
423 shall promulgate a regulation to determine payment for the dispute resolution process in
424 cases of hardship. When the independent dispute resolution entity determines the
425 physician's fee is unreasonable, payment for the dispute resolution process shall be the
426 responsibility of the physician.

427 33-20E-10.1.

428 In the event a covered person incurs an out-of-pocket expense for a covered procedure for
429 less than the procedure cost to the insurer by an in network provider, the insurer shall
430 provide a credit to the covered person's deductible for the amount of the out-of-pocket
431 expense. The credit or credits are cumulative for the policy period incurred and shall not
432 be transferable to the next policy period.

433

434 33-20E-11.

435 (a) An out-of-network reimbursement rate workgroup shall be established consisting of
436 the Commissioner, four members appointed by the Governor, two members appointed by
437 the Speaker of the House of Representatives, and two members appointed by the President
438 of the Senate. The workgroup shall consist of: two physicians, one of each appointed by
439 the Speaker of the House of Representatives and by the President of the Senate; two
440 representatives of health plans, one of each appointed by the Speaker of the House of
441 Representatives and by the President of the Senate; and two consumers, and shall be
442 chaired by the Commissioner. Such representatives of the workgroup shall represent
443 different regions of the state. The members shall receive no compensation for their
444 services, but shall be allowed their actual and necessary expenses incurred in the
445 performance of their duties.

446 (b) The workgroup shall review the current out-of-network reimbursement rates used by
447 health insurers licensed under this title and make recommendations regarding an alternative
448 rate methodology, taking into consideration the following factors:

449 (1) Current physician charges for out-of-network services;

450 (2) Trends in medical care and the actual costs of medical care;

451 (3) Regional differences regarding medical costs and trends;

452 (4) The current methodologies and levels of reimbursement for out-of-network services
 453 currently paid by health plans, including insurers, health maintenance organizations,
 454 medicare, and Medicaid;

455 (5) The current in-network rates paid by health plans, including insurers, health
 456 maintenance organizations, medicare, and Medicaid for the same service and by the same
 457 provider;

458 (6) The impact different rate methodologies would have on out-of-pocket costs for
 459 consumers who access out-of-network services;

460 (7) The impact different rate methodologies would have on premium costs in different
 461 regions of the state;

462 (8) Reimbursement data from all health plans, both public and private, as well as charge
 463 data from medical professionals and hospitals available through an all-payor data base
 464 to be developed and maintained by the Department of Community Health; and

465 (9) Other issues deemed appropriate by the Commissioner.

466 (c) The workgroup shall review out-of-network coverage in the individual and small group
 467 markets and make recommendations regarding the availability and adequacy of the
 468 coverage, taking into consideration the following factors:

469 (1) The extent to which out-of-network coverage is available in each rating region in this
 470 state;

471 (2) The extent to which a significant level of out-of-network benefits is available in
 472 every rating region in this state, including the prevalence of coverage based on the usual
 473 and customary cost as well as coverage based on other set reimbursement methodologies,
 474 such as medicare; and

475 (3) Other issues deemed appropriate by either the commissioner of revenue or the
 476 commissioner of public health.

477 (d) The workgroup shall report its findings and make recommendations for legislation and
 478 regulations to the Governor, the Speaker of the House of Representative, the President of
 479 the Senate, and the chairpersons of the House Committee on Insurance and the Senate
 480 Insurance and Labor Committee no later than January 1, 2018."

481 **SECTION 3.**

482 All laws and parts of laws in conflict with this Act are repealed.