**DISCLAIMER**

 T

he New Jersey Hospital Association’s (NJHA) Out-of-Network Implementation Toolkit (hereinafter “materials”) are intended to be tools that hospitals may use to implement and comply with the “Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act.” The information provided in these materials should not be relied upon or regarded as legal advice. No specific representation is made, nor should be implied, nor shall NJHA or any other party involved in creating, producing or delivering this material be liable in any manner whatsoever for any direct, incidental, consequential, indirect or punitive damages arising out of your use of these materials. NJHA makes no warranties or representations, express or implied, as to the accuracy or completeness of the information contained or referenced herein. This publication is provided “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. All images and information contained in these materials are copyrighted and otherwise proprietary. No use of this information is permitted without the prior written consent of NJHA. If you have other questions or concerns, please contact NJHA’s Legal Affairs at 609.275.4089.

**Out-of-network Arbitration Resource**

I

n New Jersey, out-of-network claims payment disputes must be resolved through a binding arbitration process established by the *Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act* effective Aug. 29, 2018.

This arbitration process is specifically for instances when a patient has a fully insured, New Jersey-issued plan, a State Health Benefits Plan, a School Employees’ Health Benefits Plan or is a member of a self-funded plan that has opted in and elected to subject itself to the law. If a provider is out-of-network with one of these plans and does not agree with the amount that the carrier pays, the provider may enter into binding arbitration by notifying the Department of Banking and Insurance (“DOBI”). The arbitration will be performed by an independent arbitration organization that DOBI retains.

**Arbitration Process**

* A carrier has **twenty (20) days** to pay the amount billed by the provider or notify the provider that it considers the amount excessive.
* Upon notification that the amount is considered excessive, a **thirty (30) day** negotiation period begins.
* After **thirty (30) days,** the carrier must make the payment it considers reasonable. This will be the carrier’s **final offer,** which the carrier must be able to defend during arbitration.
* In order to initiate arbitration, the difference between the amount you billed and the amount the carrier paid must be greater than **one thousand dollars ($1,000).**
* Providers have **thirty (30) days** from the payment of the final offer to initiate the arbitration process by contacting DOBI.
* Once the request for arbitration has been filed, notify the carrier that the arbitration process has been initiated and make your **final** billing offer. This may be accomplished by copying the carrier on the initial arbitration request to DOBI.
* The arbitration organization has **thirty (30) days** from the date the arbitration request was filed with DOBI to issue final written findings and a payment determination. The payment determination will be one of the **final** offers proposed by either side.
* The carrier has **twenty (20) days** to make any payment necessary, in excess of its first payment, prior to interest being required.
* The arbitrator's expenses and fees will be equally divided between the parties to the arbitration.

**Out-of-network Arbitration Resource**

**Self-funded Plan Member with AN Opt-Out Plan**

I

n New Jersey, out-of-network claims payment disputes must be resolved through a binding arbitration process established by the *“Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act” (“OON”)* effective Aug. 29, 2018.

The arbitration process outlined below is specifically for situations when a patient has a self-funded plan and that plan did not opt-in and elect to subject itself to the law as permitted by the Act. If an out-of-network provider provides healthcare services to such a patient, the plan member has the right to access the arbitration process established by the law.

A provider that bills a patient for any balance beyond the in-network cost-sharing responsibilities must give the patient **a thirty (30)-day** timeframe to negotiate the amount.

After the **thirty (30)-day** period has passed, if the patient and the provider cannot agree, the provider must initiate an arbitration proceeding before engaging in any collection efforts or attempts to collect from the patient.

The arbitration is initiated by the provider notifying the Department of Banking and Insurance (“DOBI”) and is binding on both the provider and the patient. DOBI will notify the patient that arbitration has been initiated. The arbitration will be performed by an independent arbitration organization retained by DOBI.

The arbitrator has **thirty (30) days** from the date the application was filed with DOBI to issue final written findings and a payment determination. The arbitrator will also issue a non-binding recommendation to the self-funded plan regarding the amount believed to be reasonable for the self-funded plan to contribute.

The arbitrator's expenses and fees shall be equally divided between the parties to the arbitration unless the fees present a hardship for the patient in which case they will be waived by the arbitrator.

**Sample Letter to Department of Banking and Insurance**

**(Notice of Request for Initiation of Arbitration)**

[Date]

[Name of DOBI Commissioner/contact person]

Department of Banking and Insurance

20 West State Street

P.O. Box 325

Trenton, New Jersey 08625

**RE: Request to Initiate Arbitration with [name of carrier] for [claim number/reference]**

Dear [name of DOBI Commissioner/contact person]:

We are in receipt of a final payment for an out-of-network claim from [insert carrier name]. We believe the payment amount is incorrect given the level of care provided to the patient. We believe the appropriate payment is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_).

We wish to enter into binding arbitration pursuant to the “Out-of-network Consumer Protection, Transparency, Cost Containment and Accountability Act,” P.L. 2018, c. 32.

Please notify us of any additional information you may need. I may be reached at [insert contact information].

Sincerely,

[contact name]

[title]

Enc.: [list attachments)

cc: [insert carrier name]