

Legislative Update - December 2018

New Bill Introduced to Amend Out-Of-Network Law—On November 26, 2018, Bill S3201/A4761 was introduced in the New Jersey Legislature with the intention of correcting some unintended consequences of the recently enacted Out-Of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act (the Act). The Act established an arbitration system for out-of-network health care services provided in certain emergency and inadvertent situations that result in payment disputes between health insurance carriers and health care providers. The new Bill removes the requirement that the difference between the carrier's final offer and the provider's final offer must be at least \$1,000 for the dispute to proceed to arbitration. The Bill also requires a carrier to pay the provider the billed amount, or pay at least the amount set by the 85th percentile of the FAIR Health database for the particular health care service performed by a provider in the same or similar specialty and provided in the same geographic area, which will be deemed the carrier's final offer for purposes of the Act. FAIR Health is an independent, nonprofit organization that manages a nationwide database of privately billed health insurance claims. The Bill also revises the definition of "inadvertent out-of-network services" to exclude services where the provider fulfilled its out-of-network disclosure requirements as set forth in the Act.

Assembly Passes Bill to Enhance Enforcement and Oversight of Behavioral Health Parity Laws—On October 29, 2018, the New Jersey Assembly passed Bill A2031 which enhances enforcement and oversight of behavioral health parity laws. The Bill was referred to the Senate Commerce Committee on December 3, 2018. The Bill requires hospital, medical, and health service corporations, commercial insurers, health maintenance organizations, and health benefits plans issued pursuant to the New Jersey Individual Health Coverage and Small Employer Health Benefits Programs, the State Health Benefits Program, and the School Employees' Health Benefits Program, to provide coverage for behavioral health care services and to meet the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. That act prevents certain health insurers that provide mental health or substance use disorder benefits from imposing less favorable benefit limitations on those benefits than on medical or surgical benefits, commonly referred to as mental health parity.

Senate Passes Bill to Clarify Definitions of Health Care Service Firms and Homemaker-Home Health Aides—On October 29, 2018, the New Jersey Senate passed Bill S2773 which clarifies the definition of health care service firms and homemaker-home health aides. The Bill now awaits approval by the New Jersey Assembly. The Bill revises the current law to clarify that any firm that employs, places, arranges the placement of, or in any way refers, an individual to provide companion services, health care services, or personal care services in the personal residence of a person with a disability or who is age 60 or older must register as a health care service firm. The Bill further stipulates that the Division of Consumer Affairs is authorized to take enforcement measures upon any person who operates a firm that is subject to this health care service firm registration requirement, whether the operations include the direct employment of individuals, the use of an internet website or application, or any other process or business model. In addition, the Bill clarifies that certified homemaker-home health aides must work under the supervision of a duly licensed registered professional nurse, which is provided by the home care services agency that directly employs the homemaker-home health aide when following a delegated nursing regimen.