

September 15, 2023

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TO ALL HEALTH INSURANCE ORGANIZATIONS OR INSURERS THAT WRITE COMMERCIAL HEALTH INSURANCE IN PUERTO RICO

SELECTION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE OF AN INDEPENDENT REVIEW ORGANIZATION FOR EXTERNAL REVIEW PROCESSES AND ARBITRATION PROCEEDINGS FOR DISPUTE RESOLUTION REGARDING SURPRISE BILLING, PURSUANT TO CHAPTER 28 AND CHAPTER 48 OF THE HEALTH INSURANCE CODE OF PUERTO RICO.

To Whom It May Concern:

The Office of the Commissioner of Insurance (OCI) acknowledges the right of covered persons or insureds to submit an appeal to an independent external review body in the event of a final adverse determination made by health insurance organizations or insurers that write commercial health insurance in Puerto Rico, to ensure that the final determination as to what medical attention is covered will not be made by health insurance organizations or insurers.

For this purpose, under Chapter 28 of the Health Insurance Code of Puerto Rico, the OCI has adopted the external review process established in Section 2719(b)(1) of the Public Health Services Act, which complies with all of the consumer protection standards for health insurance, (“strict standards”), according to the Uniform Health Carrier External Review Model Act promulgated by the National Association of Insurance Commissioners (NAIC). Section 28.170 of Chapter 28 of the Health Insurance Code of Puerto Rico provides the following:

“Section 28.170 – Payment for the Cost of the External Review. (26 L.P.R.A. § 9516)
Any health insurance organization or insurer against which a request for an ordinary or expedited external review is made will have the obligation to pay the independent review organization for the external review.
The Office of the Commissioner of Insurance will notify the insurers and health services organizations of the costs of the process or any modification to such at least 120 days in advance.
(...).”

In compliance with the provisions of Section 28.170 of the Health Insurance Code of Puerto Rico, *supra*, we are notifying all health insurance organizations or insurers that write commercial health insurance in Puerto Rico that beginning on October 2, 2023, the external review processes at the Office of the Commissioner of Insurance of Puerto Rico, with regard to final adverse

determinations¹ will be performed by the independent external review body, the “Federal Hearings & Appeal Services, Inc.” (FHAS). Pursuant to Section 28.170, it will be the health insurance organization or insurer against which the request for external review was made that will have the obligation to pay for the cost of the requests for external review at a rate of \$625.00 for each request for an ordinary review, or in the case of a request for an expedited review, the applicable rate will be \$700.00 for each request for expedited review. The request for external review made to the independent review organization will be **free of cost** for insured patients or health services provider acting in representation of the insured patient.

Likewise, the OCI acknowledges the duty to ensure the protection of covered persons or insureds in the event of “surprise billing” for medical services by out-of-network providers, in cases of emergency or urgent care services. The Protection of Patients against Surprise Billing, Act, Act No. 134, approved on September 1, 2020, establishes that when a covered person receives medically necessary services at any medical or healthcare facility of an emergency or urgent nature, the person will not incur out-of-pocket costs that are higher than what would have been incurred with an in-network medical care provider for the covered services. If the insurer or health insurance organization and the out-of-network provider cannot agree on a final offer as a reimbursement for the services that were rendered, the out-of-network provider, the insurer, or the health insurance organization, as may be the case, may initiate an independent arbitration procedure for the resolution of disputes.

Specifically, Sections 48.090 and 48.100 of Chapter 48 of the Health Insurance Code of Puerto Rico provide the following:

Section 48.090. —Arbitration; Member of a Non-Self-Funded Plan (26 L.P.R.A. § 9909)

A. If the attempts to negotiate a reimbursement for the services rendered by an out-of-network provider, according to the provisions of subparagraph (c) of Section 48.080 of this Chapter, does not produce a resolution of the dispute and the difference between the final offers of the insurer and the provider is more than one thousand dollars (\$1,000.00), the insurer and/or the out-of-network provider may initiate arbitration proceedings to determine the payment for the services.

Section 48.100. — Arbitration; Member of a Self-Funded Plan (26 L.P.R.A. § 9910)

A. If the attempts to negotiate a reimbursement for the services rendered by an out-of-network medical care provider and a member of a self-funded plan that chooses not to be subject to the provisions of Section 48.080 of this Chapter do not produce a resolution of the dispute within thirty (30) days after the date the bill was sent to the member of the plan, the member or the out-of-network medical care provider may

¹ As defined in Section 28.030(D) of the Health Insurance Code, (26 L.P.R.A. § 9503(D)), the term “final adverse determination” means an adverse determination that has been confirmed by the health insurance organization or insurer, or the designated review organization, when the internal complaint procedures have been completed as provided in Chapter 22 of that Code.

initiate arbitration proceedings to determine the payment for the services. Except in the cases in which the negotiations for reimbursement produce an agreement between the provider and the member of the plan within (30) days, no provider will charge for nor attempt to collect the reimbursement and nor will initiate any collection procedure until having submitted an arbitration request to the Office of the Commissioner of Insurance as provided herein.

In view of this, we are notifying you that beginning on October 2, 2023, FHAS will be the entity in charge of processing arbitration requests for the resolution of disputes between insurers or health insurance organizations and out-of-network providers for healthcare services of submitted to the Office of the Commissioner of Insurance of Puerto Rico, pursuant to Chapter 48 of the Health Insurance Code of Puerto Rico.

We request that you take note of the contents hereof and comply with the aforementioned legal provisions.

Very truly yours,

SIGNED

Alexander S. Adams-Vega, Esq.
Commissioner of Insurance