



February 4, 2020

Ms. Carrie Embree, LSW  
Governor's Consumer Health Advocate  
Nevada Department of Health and Human Services  
Aging and Disability Services Division  
3416 Goni Road, Building D, #132  
Carson City, NV 89706

RE: *LCB File No. R101-19*

Dear Ms. Embree:

On behalf of the hundreds of Physicians for Fair Coverage (PFC) members in Nevada, we want to thank you for the opportunity to once again provide input on LCB File No. R101-19.

PFC is a non-profit, non-partisan, multi-specialty alliance of physicians dedicated to improving patient protections, promoting transparency, and ensuring access to care for patients in Nevada and nationwide. Our national membership of tens of thousands of physicians care for millions of patients each year in thousands of facilities throughout the country. In Nevada, we have worked closely with our partners -- the Nevada State Medical Association, the Nevada Hospital Association, and many specialty groups -- to pass legislation to end surprise medical billing and provide strong protections for our patients. Now we are pleased to offer comments on the proposed regulations.

**Identification of Participants Opting into AB469** – One of the most significant issues for us as providers is how to determine which insurance plans are participating in the provisions of AB469. Our simple solution – which has not been accepted to date – is to include an identifier on an insured's insurance card. We are open and amenable to options, but in an emergency situation, knowing if a patient's plan has opted in or not is critical to the success of the program. We strongly urge reconsideration of this proposal.

**General Arbitration Question** - As a general concern, unless an online portal has been established, the filing process can be complicated and burdensome. Will there be an electronic online portal of any type for submission of claims? We have found that in states that have done so, the administrative burden for the arbitration process has been significantly reduced, as has the cost. PFC would be happy to connect you with other regulators in states such as New York and Texas who have created simple low-cost portal systems. Texas, for example, which has just implemented its' law passed in 2019 has been able to do so quickly at minimal cost. You may preview it at:

<https://appscenter.tdi.texas.gov/medarb/p/login>

**At Section 2**, the use of business and calendar days are used interchangeably. In Section 2, we respectfully request that all days be listed as business days.

**At Section 2, Subsection 2(e)(3)**, you require the out-of-network provider to provide a representative sample of at least three payments. This is not a provision that is used anywhere else in the country, and we believe could be used by payers to manipulate payments.

An additional resource, as we outlined in our December letter, for the purpose of reviewing customizable, geographic, multi-payer claims data is FAIR Health. FAIR Health is an independent, non-profit that collects data for and manages the nation's largest database of more than 28 billion privately billed health insurance claims and is entrusted with similar data from the Medicare and Medicaid programs. FAIR Health also has a consumer portal aimed at helping Americans better understand healthcare costs. You may access it at [fairhealthconsumer.org](http://fairhealthconsumer.org).

**At Section 2, Subsection 5**, the draft language provides that the Department will "determine that the request is complete and clear." We strongly urge the Department to clarify or provide additional guidance on what satisfies their interpretation of "complete and clear" to ensure decisions are not arbitrary. For example, would the Department determine a request containing all items outlined in Section 2, Subsection 2(a-e) to be a "complete and clear" request?

**Pertaining to Guidelines for Arbitrators**, it is exceptionally important to have these in place to ensure clarity and fairness for all parties involved in a claims dispute. In order to avoid inconsistencies and the likelihood of lawsuits, we request that you consider adding parameters for the arbitrators. Below are examples of fair guidelines used in Texas for those involved in out-of-network claims disputes:

- A party may request arbitration after 20 days from the date an out-of-network provider receives the initial payment for a health benefit claim, during which time the out-of-network provider may attempt to resolve a claim payment dispute through the health benefit plan issuer's or administrator's internal appeal process.
- Written submission of information to an arbitrator is required with the arbitrator providing the date for submission of all considered information. The arbitrator must provide each party an opportunity to review the written information submitted by the other party, submit additional written information, and respond in writing to the arbitrator on the arbitrator's specified timeline.
- Parties are required to check the list of qualified arbitrators and notify the department of any conflicts. The parties are in the best position to know if there is a conflict of interest, and each has 10 days within the request for arbitration to notify the department of a conflict of interest with the arbitrator.
- There are consequences in the arbitration decision for parties that do not participate in good faith. Without enough information, the arbitrator will be limited to basing their decision on the information received. An arbitrator can make a decision even if a party fails to participate.

- Provision is made for the submission of multiple claims between the same provider and same health benefit plan issuer or administrator. The regulations allow for the submission of multiple claims to arbitration in one proceeding, with certain limitations.
- More information can be found at:

<https://www.tdi.texas.gov/rules/2019/documents/20196172.pdf>

Thank you again for the opportunity to comment. We are pleased to work with you on this important matter and look forward to continuing our dialogue. Our President and CEO, Michele Kimball (651-955-8878; [mkimball@pfc-assn.org](mailto:mkimball@pfc-assn.org)), and in-state counsel, Chris Ferrari of Ferrari Public Affairs (702-574-8781; [chris@ferraripa.com](mailto:chris@ferraripa.com)), stand ready to be of assistance.

Sincerely,



Anthony Gabriel, MD  
Chair, Board of Directors

cc: Speaker Jason Frierson, Nevada State Assembly  
Allison Combs, Policy Director, Office of the Governor