

**RULES AND REGULATIONS OF
THE INSURANCE COMMISSIONER**

**CHAPTER 120-2
RULES OF COMMISSIONER OF INSURANCE**

**SUBJECT 120-2-106
SURPRISE BILLING**

TABLE OF CONTENTS

120-2-106-.10 Arbitration

Rule 120-2-106-.10. Arbitration

(1) If an out-of-network provider concludes that payment received from an insurer pursuant to ~~Rule~~regulation 120-2-106-.05 or 120-2-106-.06 is not sufficient given the complexity and circumstances of the services provided. Or, if an out-of-network facility concludes that payment received from an insurer pursuant to ~~Rule~~regulation 120-2-106-.05 concludes the same, a request for arbitration with the Commissioner may be initiated. A request for arbitration must be submitted within ~~6030~~ days of receipt of payment for the claim and concurrently provide the insurer with a copy of such request.

(2) All arbitration requests must be submitted to the Administrative Procedure Division of the Office of Insurance and Safety Fire Commissioner.

(3) Within ~~6030~~ days of the insurer's receipt of a provider's or facility's request for arbitration, the insurer must submit to the Administrative Procedure Division all data necessary to determine whether the insurer's payment to such provider or facility complied with ~~Rules~~regulations 120-2-106-.05 or 120-2-106-.06.

(4) The Commissioner will dismiss specific arbitration requests if the disputed claim meets certain criteria laid out in O.C.G.A. § 33-20E-10 or in Rule 120-2-106-.08. Should an insurer believe one of these criteria is present, they should submit the appropriate data they believe supports this contention. Should the Commissioner dismiss a claim for meeting one of the criteria in O.C.G.A. § 33-20E-10, the provider or facility may request a hearing under the rules contained in ~~Subject~~Regulation 120-2-2.

(5) Before proceeding with arbitration, the parties will be permitted ~~6030~~ days from the date the request was received to negotiate a settlement. The parties must notify the Administrative Procedure Division of the result of such negotiation. If the Administrative Procedure Division has not been notified within 30 days of the settlement negotiation's result, the claim will be sent to arbitration. The parties may still reach a negotiated settlement after the claim is referred but before arbitration begins. However, they will be responsible for splitting any costs incurred by the resolution organization due to the referral.

(6) Disputes are to be reviewed by independent resolution organizations with whom the Department will contract. The disputes will be decided pursuant to the rules as laid out in O.C.G.A. § 33-20E-1 et. seq.

(7) A list of the selected organizations and their approved fee schedules will be kept by the Administrative Procedure Division and available for review upon request. In contracting with each dispute resolution organization, the Department will ensure that appropriate safeguards are put in place so that information subject to trade secret protection laws is duly protected.

(8) Upon the Commissioner's referral of a dispute to a resolution organization, the parties will have five days to select an arbitrator by mutual agreement. If the parties have not notified the resolution organization of their mutual selection before the fifth day, the resolution organization shall select an arbitrator from among its members. Should the parties not agree to the resolution organization's choice of arbitrator, the Commissioner will select one for the parties; this decision will be final.

(9) Arbitrators should possess training and experience in health care billing, reimbursement, and usual and customary charges in consultation with a licensed doctor in active practice in the same or similar specialty as the doctor providing the service that is the subject of the dispute.

(10) In addition to the factors found in O.C.G.A. § 33-20E-15, in deciding a claim, arbitrators should also consider the following factors:

(a) Whether there is a gross disparity between the fee charged by the provider and (1) fees paid to the provider for the same services provided to other patients in health care plans in which the provider is non-participating, and (2) the fees paid by the health plan to reimburse similarly qualified out-of-network providers for the same services in the same region;

(b) The provider's training, education, experience, and the usual charge for comparable services when the provider does not participate with the patient's health plan;

(c) In the case of a hospital, the teaching status, scope of services, and case-mix;

(d) The circumstances and complexity of the case;

(e) Patient characteristics; and

(f) For physician services, the usual and customary cost of the service.

(11) Following the resolution of arbitration, the Commissioner is permitted to refer the decision of the arbitrator to the appropriate state agency or the governing entity with governing authority over such provider or facility if the Commissioner concludes that a provider or facility has either displayed a pattern of acting in violation of this chapter or has failed to comply with a lawful order of the Commissioner or the arbitrator. However, if the provider or facility's violations or actions fall under the Commissioner's jurisdiction, the Commissioner may investigate and proceed under the provisions of Title 33.

(12) Each resolution organization contracted with by the Department should submit its quarterly reports to the Administrative Procedure. In addition to the information required by O.C.G.A. § 33-20E-19, each resolution organization will also submit in its quarterly report: the name of each arbitrator who settled a dispute and the number of disputes they settled in favor of either the insurer or the provider or facility.

(13) The Surprise Billing Consumer Protection Act becomes effective on January 1, 2020. The Department has until July 1, 2021, to contract with one or more arbitration organizations. Any arbitration requests received after January 1, 2020, and before the Department has contracted with an arbitration organization will be held until such contract is executed.

Authority: O.C.G.A. §§ 33-2-9; 33-20E-12; 50-13-21.