Department of Planning and Budget
2020 Fiscal Impact Statement

1. **Bill Number:** HB1251-S1

House of Origin	☐	Introduced	☐	Substitute	☐	Engrossed
Second House	☐	In Committee	☒	Substitute	☐	Enrolled

2. **Patron:** Torian

3. **Committee:** Finance and Appropriations

4. **Title:** Health insurance; payment to out-of-network providers.

5. **Summary:** Provides that when a covered person receives covered emergency services from an out-of-network health care provider or receives out-of-network services at an in-network facility, the covered person is not required to pay the out-of-network provider any amount other than the applicable cost-sharing requirement. The measure also provides that the health carrier's required payment to the out-of-network provider of the services is the usual and customary commercial payment. If such provider determines that the amount to be paid by the health carrier is not appropriate, the measure requires the provider and the health carrier to make a good faith effort to reach a resolution on the appropriate amount of the reimbursement and, if a resolution is not reached, authorizes either party to request to enter arbitration. The measure requires the State Corporation Commission to establish rules for an expedited arbitration process to settle disputes between providers and health carriers arising out of such disputes. Such rules shall require that any claim submitted to arbitration be resolved by the arbitrator within 60 days of submission of the claim. Under the measure, the Commission is required to establish a portal on its website for the submission of arbitration claims, (ii) contract with independent arbitrators to settle such disputes, (iii) ensure the arbitrators do not have a conflict of interest with the parties and have experience in health care billing, and (iv) maintain a list of such arbitrators on its website. The measure provides certain factors that an arbitrator is required to consider when settling such a disputed claim. The measure provides that provisions of the bill do not apply to an entity that provides or administers self-insured or self-funded plans; however, such entities may elect to be subject such provisions. The measure requires health carriers to make reports to the Bureau of Insurance and directs the Bureau to provide reports to certain committees of the General Assembly.

6. **Budget Amendment Necessary**: Indeterminate – see Item 8.

7. **Fiscal Impact Estimates:** Indeterminate – see Item 8.

8. **Fiscal Implications:** The fiscal impact the proposed legislation may have to the state health insurance plan is indeterminate. According to the Department of Human Resource Management's actuary, Aon, the number of emergency services provided by out-of-network providers varies each year; however, the number of emergency services provided by out-of-

network providers is expected to remain low compared to the total number of state health insurance claims.

The potential impact to the state health insurance plan is indeterminate and would depend on numerous factors. Under this bill, out-of-network providers would be paid the "usual and customary commercial payment" for such services in the applicable health planning region as of January 1, 2019 as the initial payment for emergency services and services as in-network facilities; however, "usual and customary commercial payment" is not defined in the bill. Additionally, an arbitration process may be used to settle disputes if the out-of-network provider determines that the amount determined by the health carrier as the usual and customary payment for services is not reasonable and a resolution cannot be reached. In such cases, the health carrier and the health provider shall split the cost of arbitration and the arbitrator shall consider all relevant factors in determining the reasonable amount that a health carrier is required to pay for a service, including the factors listed in § 38.2-3445.02 of the bill. The portion of claims that may enter the arbitration process and the outcome of such processes on claims costs cannot be determined. Any potential impact that any differences resulting between the ultimate payments received by out-of-network providers compared to in-network providers may have on the providers' decisions regarding network participation or negotiations also cannot be determined.

The bill requires the State Corporation Commission (SCC) to establish a portal on its website for the submission of arbitration claims. The SCC expects to incur costs as a result of establishing a portal on its website to obtain information for the arbitration process; however, the fiscal impact cannot be determined at this time.

The proposed legislation is not expected to have a fiscal impact for the Department of Medical Assistance Services or Medicaid.

The proposed legislation may have a minimal fiscal impact for the Virginia Department of Health (VDH); however, the agency expects to absorb any costs needed to implement the proposed legislation within its current operating budget. Any costs for VDH would be associated with the administrative expenses incurred by the nonprofit organization responsible for maintaining the All-Payer Claims Database.

9. **Specific Agency or Political Subdivisions Affected:** State Corporation Commission, Department of Human Resource Management, Department of Medical Assistance Services, and Virginia Department of Health.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** This bill is identical to SB 172-ES1 (Favola).