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State Legislative Update

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STATE LEGISLATIVE UPDATE*

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I. STATE LEGISLATIVE FOCUS

A. *States Include Emergency Medical Services in Licensure Compacts*

Bill Numbers: Alabama House Bill 250; Colorado House Bill 15-1015;
Delaware Senate Bill 35; Georgia Senate Bill 109

Alabama Senate Bill 125; Arizona House Bill 2502; Arkansas Senate Bill 78; Colorado House Bill 1047; Georgia House Bill 637

Arkansas House Bill 1482; Colorado Senate Bill 06-020; Delaware Senate Bill 59; Georgia Senate Bill 109

Summary: Providing expedited licensure processes for various healthcare providers

Status: Enacted

1. Introduction

In the most recent legislative session, many states considered measures to streamline health care licensing. Many state legislatures have introduced, if not already passed, legislation that enacts various interstate compacts, and commissions to implement and enforce the compacts, involving particular medical and healthcare

* The State Legislative Update is an annual article compiled and written by Journal of Dispute Resolution members. It is designed to provide readers with a listing of pertinent legislation affecting Alternative Dispute Resolution (“ADR”). The Update also provides a more detailed look at certain bills because of their importance and/or novelty within the ADR field. If you have comments or suggestions about this feature, please feel free to e-mail the Journal of Dispute Resolution Editorial Board at JDR@missouri.edu.

fields. The bills include the Emergency Medical Services (EMS) Personnel Interstate Licensure Compact¹ (EMS Licensure Compact), the Interstate Medical Licensure Compact² (MLC), and the Interstate Nurse Licensure Compact³ (NLC). This article will focus primarily on EMS Licensure Compact bills of only a handful of states:⁴ Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, and Georgia.

2. Broad Scope of Bills

The bills, while pertaining to distinct fields of health care, all inure to the same general purpose of increasing the health and safety of the general public through uniformity of health care licensure. By ensuring uniform laws throughout the member states, the compacts provide a streamlined process for which EMS personnel, medical doctors, and nurses can become licensed to practice in multiple states⁵ and further provides for the prevailing standard for licensure of these health care professionals. By allowing interstate licensing, the compacts ensure that the emergency medical services and other health care services are provided to patients at the location of the patient-healthcare personnel interaction.⁶ However, because these healthcare professionals are able to interact with patients in multiple states,⁷ the state medical board in which the health care services were rendered retains jurisdiction over the health care professional who performed such services.⁸ Furthermore, each bill contains a dispute resolution clause calling for the interstate commission⁹

1. The EMS Licensure Compact is enacted or introduced in the following states: Alabama (ALA. CODE § 22-18-50 (2017)), Colorado (COLO. REV. STAT. § 24-60-3502 (2016)), Delaware (2017 DEL. LAWS 35), and Georgia (GA. CODE ANN. § 38-3-71 (2017)). The EMS Licensure Compact was introduced and failed to pass in Arkansas during the 2017 legislative session under H.B. 2015, 91st Gen. Assemb., Reg. Sess. (Ark. 2017).

2. The Medical Licensure Compact is enacted or introduced in the following states: Alabama (ALA. CODE §§ 34-24-520 through 34-24-543 (2015)), Arizona (ARIZ. REV. STAT. § 32-3241 (2016)), Arkansas (2017 Ark. S.B. 78 (enacted March 8, 2017)), Colorado (COLO. REV. STAT. § 24-60-3602 (2016)), and Georgia as H.B. 637, 2017 Leg., Reg. Sess. (Ga. 2017). The Medical Licensure Compact was introduced and failed to pass during the 2016 legislative session in Alaska under H.B. 237, 29th Legislature (Alaska 2016).

3. The Nurse Licensure Compact is enacted or introduced in the following states: Arkansas (ARK. CODE ANN. § 17-87-601 (2017)), Colorado (COLO. REV. STAT. § 24-60-3202 (2016)), Delaware (DEL. CODE ANN. tit. 24, §§ 1901A- 1912A) (not effective until December 12, 2018 or upon fulfillment of the contingency in 81 Del. Laws, c. 50, § 2), and Georgia as S.B. 109, 2017 Leg., Reg. Sess. (Ga. 2017) to amend GA. CODE ANN. §§ 43-26-60- 43-26-65.

4. Because most of, if not all, the bills are identical in language and scope from state to state in regard to the specific health care area, I have consolidated the scope of this article to focus only upon the states which I was assigned.

5. ALA. CODE § 34-24-520 (2015); ARK. CODE ANN. § 17-87-601 (2017); COLO. REV. STAT. § 24-60-3502 (2016).

6. ALA. CODE § 34-24-520 (2015); ARK. CODE ANN. § 17-87-601 (2017); COLO. REV. STAT. § 24-60-3502 (2016).

7. As long as the state in which the professional performs the health care services is a member-state to the respective Compact.

8. ALA. CODE § 34-24-520 (2015); ARK. CODE ANN. § 17-87-601 (2017); COLO. REV. STAT. § 24-60-3502 (2016).

9. The compacts allow for the formulation of the Interstate Commission tasked the administration of the compacts and enforcement of the provisions and rules conveyed in the compacts, “which is a discretionary state function.” ALA. CODE § 34-24-530 (2015).

to promulgate rules for submitting disputes to an arbitration panel¹⁰ or for mediation or a binding dispute resolution.¹¹

3. EMS Personnel Licensure Interstate Compact

The Emergency Medical Services (EMS) Personnel Licensure Interstate Compact has been enacted into law in Alabama,¹² Colorado,¹³ and Georgia¹⁴ and has been introduced during the 2017 legislative session in Delaware.¹⁵ In Arkansas, however, the EMS Licensure Compact failed to be passed into law.¹⁶

In order to protect the public through verification of competency and assurance of accountability for patient care related activities, the state (and all member states of the EMS Licensure Compact) licenses EMS personnel, such as emergency medical technicians (EMTs), advanced EMTs, and paramedics.¹⁷ The Compact, which recognizes that member states have a vested interest in protecting the public's health and safety through their licensing and regulation of EMS personnel, is intended to facilitate the day-to-day movement of EMS personnel across state boundaries in the performance of their EMS duties.¹⁸

The EMS Licensure Compact provides the standards for which an individual may become licensed in a "home state."¹⁹ However, in order to be permitted to practice in a remote state or other member state, an individual's license must comply with the standards defined in section three of the EMS Licensure Compact.²⁰

10. ARK. CODE ANN. § 17-87-601 (2017); 24 DEL. CODE ANN. tit. 24 § 1910A(c) (2017); 2017 GA H.B. 402; COLO. REV. STAT. § 24-60-3202 (2016).

11. ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); 2017 DE S.B. 35; GA. CODE ANN. § 38-3-71 (2017); ALA. CODE § 34-24-538; S.B. 78, 91st Gen. Assemb., Reg. Sess. (Ark. 2017); ARIZ. REV. STAT. § 32-3241 (2017); H.B. 637, 2017 Leg., Reg. Sess. (Ga. 2017).

12. ALA. CODE § 22-18-50 (2017).

13. COLO. REV. STAT. § 24-60-3502 (2016).

14. GA. CODE ANN. § 38-3-71 (2017).

15. S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017).

16. H.B. 2015, 91st Gen. Assemb., Reg. Sess. (Ark. 2017).

17. Ala. Code § 22-18-50; Colo. Rev. Stat. § 24-60-3502; 2017 DE S.B. 35; GA. CODE ANN. § 38-3-71 (2017).

18. The Compact is designed to achieve the following purposes and objectives:

(1)[i]ncrease public access to EMS personnel; (2) [e]nhance the states' ability to protect the health and safety, especially patient safety; (3) [e]ncourage the cooperation of member states in the area of EMS personnel licensure and regulation; (4) [s]upport licensing of military members who are separating from an active duty tour and their spouses; (5) [f]acilitate the exchange of information between member states regarding EMS personnel licensure, adverse action, and significant investigatory information; (6) [p]romote compliance with the laws governing EMS personnel practice in each member state; and (7) [i]nvest all member states with the authority to hold EMS personnel accountable through the mutual recognition member state licenses.

ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

19. A home state is one in which the individual holds a current license to practice emergency medical services. Section 3. Home State Licensure. ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

20. Section 3. Home State Licensure:

(C) A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

1. Currently requires the use of the National Registry of Emergency Medical Technicians (NREMT) examination as a condition of issuing initial licenses at the EMT and paramedic levels;
2. Has a mechanism in place for receiving and investigating complaints about individuals;

Furthermore, the EMS Licensure Compact provides only select conditions and circumstances in which an EMS individual may practice in a remote state.²¹

According to Section 10 of the EMS Licensure Compact, the member states “hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice,” (Commission)²² which has, *inter alia*, the power and authority to “promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact.”²³ Further, the Commission has the power to bring and prosecute legal proceedings in the name of the Commission.²⁴ Section 13(C) provides for dispute resolution for disputes related to the Compact between member states and between member and non-member states.²⁵ The Compact further states “the Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes”²⁶

In accordance with the broad purpose of the EMS Licensure Compact, the drafters of the Compact, recognizing the benefits of alternative dispute resolution, included a clause that allows disputes arising under the Compact to be settled or adjudicated efficiently and effectively. Because the focus of the Compact is on the

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

4. No later than five years after activation of the Compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with US CFR Section 731.202 and submit documentation of such as promulgated in the rules of the Commission; and

5. Complies with the rules of the Commission.

ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

21. Section 5. Conditions of Practice in a Remote State:

An individual may practice in a remote state . . . only in the performance of the individual’s EMS duties . . . and under the following circumstances:

1. The individual originates a patient transport in a home state and transports the patient to a remote state;

2. The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

3. The individual enters a remote state to provide patient care and/or transport within that remote state;

4. The individual enters a remote state to pick up a patient and provide care and transport to a third member state;

5. Other conditions as determined by rules promulgated by the commission.

ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

22. ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

23. Section 10(D)(1) states further that the rules promulgated by the Commission “shall have the force and effect of law and shall be binding in all member states.” ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

24. The clause fully states the Commission shall have the power “[t]o bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected.” ALA. CODE § 22-18-50, sec. 10(D)(2) (2017).

25. ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

26. ALA. CODE § 22-18-50 (2017); COLO. REV. STAT. § 24-60-3502 (2016); S.B. 35, 149th Gen. Assemb., Reg. Sess. (Del. 2017); GA. CODE ANN. § 38-3-71 (2017).

increased access to emergency medical services and other healthcare services, entangling individual licensed EMS personnel or member states of the Compact in long, costly litigation could be detrimental to the purpose of the Compact.

4. Interstate Medical Licensure Compact

Similar to the EMS Licensure Compact, several states have introduced and enacted bills to expedite and standardize the licensure process for physicians and authority of state medical boards: the Interstate Medical Licensure Compact (MLC).²⁷ The states of interest to this article include Alabama,²⁸ Arizona,²⁹ Arkansas,³⁰ Colorado,³¹ and Georgia.³² In order to improve access to health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards, provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and promoting the safety of patients.³³ Likewise, the MLC adopts the prevailing standard for medical licensure and “affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter”³⁴

Also similar to the EMS Licensure Compact, the MLCs each contain a dispute resolution clause. The clause, nearly identical to that of the EMS Licensure Compact, states, “(a) The interstate commission, upon the request of a member state, shall attempt to resolve disputes which are subject to the Compact and which may arise among member states or member boards; (b) [t]he interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.”³⁵ However, one noticeable difference in the MLC’s dispute resolution provision is the clause providing for resolution of disputes “among member states or member boards.” The MLC does not provide for alternative dispute resolution for claims arising under the Compact brought by or against non-member states or boards. Whether this exclusion of non-member states has any practical effect on the scope of disputes mandated to alternative dispute resolution under the Compact remains to be seen.

The Interstate Medical Licensure Compact, in an effort to expedite licensure of physicians so as to increase public access to healthcare services, creates a uniform,

27. ALA. CODE §§ 34-24-520 through 34-24-543 (2017); ARIZ. REV. STAT. § 32-3241 (conditionally repealed on Dec. 1, 2017); S.B. 78, 91st Gen. Assemb., Reg. Sess. (Ark. 2017); COLO. REV. STAT. § 24-60-3602 (2016); H.B. 637, 2017 Leg., Reg. Sess. (Ga. 2017).

28. ALA. CODE §§ 34-24-520 through 34-24-543 (2017).

29. ARIZ. REV. STAT. § 32-3241 (conditionally repealed on Dec. 1, 2017).

30. S.B. 78, 91st Gen. Assemb., Reg. Sess. (Ark. 2017);

31. COLO. REV. STAT. § 24-60-3602 (2016).

32. H.B. 637, 2017 Leg., Reg. Sess. (Ga. 2017).

33. ALA. CODE §§ 34-24-520 (2017); ARIZ. REV. STAT. § 32-3241 (conditionally repealed on Dec. 1, 2017); S.B. 78, 91st Gen. Assemb., Reg. Sess. (Ark. 2017); COLO. REV. STAT. § 24-60-3602 (2016); H.B. 637, 2017 Leg., Reg. Sess. (Ga. 2017).

34. ALA. CODE §§ 34-24-520 (2017); ARIZ. REV. STAT. § 32-3241 (conditionally repealed on Dec. 1, 2017); S.B. 78, 91st Gen. Assemb., Reg. Sess. (Ark. 2017); COLO. REV. STAT. § 24-60-3602 (2016); H.B. 637, 2017 Leg., Reg. Sess. (Ga. 2017).

35. ALA. CODE §§ 34-24-520 (2017); *see also* ARIZ. REV. STAT. § 32-3241(19); S.B. 78, 91st Gen. Assemb., Reg. Sess. (Ark. 2017); COLO. REV. STAT. § 24-60-3602 (2016); H.B. 637, 2017 Leg., Reg. Sess. (Ga. 2017).

streamlined process in which physicians may become licensed to practice in multiple states. Like the streamlined licensing process itself, providing for alternative dispute resolution for disputes arising under the Compact can make adjudicating such disputes much more efficient and cost-effective for members and member states of the Interstate Medical Licensure Compact.

5. *Interstate Nurse Licensure Compact*

The Interstate Nurse Licensure Compact (NLC) has been enacted in Arkansas,³⁶ Delaware,³⁷ and Colorado,³⁸ and has been introduced in Georgia.³⁹ The member states found that “the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.”⁴⁰ Therefore, the NLC was enacted to implement uniform licensure process and standards as well as “coordinated licensure information system” throughout member states.⁴¹ The Compact aims to facilitate the states’ responsibility to protect public health and safety, ensure compliance and cooperation with party states, and, *inter alia*, give all member states the authority “to hold a nurse accountable” for complying with all state practice laws in the state in which the nurse-patient encounter took place.⁴²

Like both the EMS Licensure Compact and the MLC, the NLC provides for dispute resolution of claims arising under the Compact’s terms. However, depending on whether the member state have enacted the original version of the Compact, the dispute resolution clause of the NLC provides that the party states may submit the issues to an arbitration panel for a final, binding decision.⁴³ Although the arbitration-only provision of the original Nurse Licensure Compact is still contained in the enhanced version, the enhanced version also provides that mediation or other alternative dispute resolution proceedings may be used.⁴⁴ The increased popularity and efficacy of alternative dispute resolution likely played a part in the reshaping of the NLC’s dispute resolution clause to include clauses for both mediation and arbitration.

36. ARK. CODE ANN. § 17-87-601 (2017).

37. DEL. CODE ANN. tit. 24 §§ 1901A through 1912A (effective Dec. 12, 2018, or upon fulfillment of the contingency of 81 Del. Laws, c. 50, § 2).

38. COLO. REV. STAT. § 24-60-3202 (2016).

39. H.B. 402, 2017 Leg., Reg. Sess. (Ga. 2017).

40. ARK. CODE ANN. § 17-87-601, art. I, sec. (a)(5).

41. ARK. CODE ANN. § 17-87-601 (2017); Del. Code Ann. tit. 24 § 1907A (effective Dec. 12, 2018, or upon fulfillment of the contingency of 81 Del. Laws, c. 50, § 2); COLO. REV. STAT. § 24-60-3202 (2016); H.B. 402, 2017 Leg., Reg. Sess. (Ga. 2017).

42. ARK. CODE ANN. § 17-87-601 (2017); Del. Code Ann. tit. 24 § 1902A (effective Dec. 12, 2018, or upon fulfillment of the contingency of 81 Del. Laws, c. 50, § 2); COLO. REV. STAT. § 24-60-3202; H.B. 402, 2017 Leg., Reg. Sess. (Ga. 2017).

43. The dispute resolution clause of the original Compact states:

(b) In the event party states find a need for settling disputes arising under this Compact:

(1) The party states may submit the issues in dispute to an arbitration panel that will be comprised of an individual appointed by the Compact administrator in the home state; an individual appointed by the Compact administrator in the remote state or states involved; and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

(2) The decision of a majority of the arbitrators shall be final and binding.

ARK. CODE ANN. § 17-87-601, art. XI; COLO. REV. STAT. § 24-60-3202, art. XI.

44. DEL. CODE ANN. tit. 24 § 1910A(c)(2); H.B. 402, 2017 Leg., Reg. Sess. (Ga. 2017).

6. Conclusion/Analysis

Each of the interstate licensure Compacts was, and is, enacted for the general purpose of introducing an expedited pathway to licensure for health care personnel in order to allow for increase access to health care services for patients or those in need of such services. Following the theme of expedition, including a clause for the use of alternative dispute resolution for disputes arising out of the terms of the Compacts can and should be beneficial to all parties involved.

Alternative dispute resolution, including mediation and arbitration, is typically regarded as simpler, cheaper, and faster than litigation. Also, like most medical files, arbitration and mediation proceedings are often confidential, or at the very least, private. In many ways, mediation and arbitration are streamlined dispute resolution proceedings, similar to the streamlined licensing procedures provided through the EMS Licensure Compact and also the Interstate Medical Licensure Compact and the Interstate Nurse Licensure Compact.

In order to better serve the public through wider and more efficient access to health care services and professionals, the EMS Licensure Compact⁴⁵ creates a way for EMS personnel, and other health care professionals with respect to the MLC and NLC, to become licensed in a more efficient process so as to provide services to a wider scope of patients. Alternative dispute resolution for disputes arising under the Compacts can allow for a more efficient resolution to otherwise costly and time consuming proceedings and ordeals. States that have enacted the EMS Licensure Compact do so in order to provide health care to more patients, more efficiently. Allowing for more efficient and cost-effective dispute resolution procedures permits states to better allocate time, money, and individual professionals and services towards the intended purposes of the Compacts.

But, providing for alternative dispute resolution of disputes arising out of the Compact only goes so far. It is the responsibility of the Commission to promulgate a rule, or rules, for dispute resolution through mediation or arbitration. And, it is the Commission's responsibility to enforce the rules promulgated in the Compact.

One of the biggest issues with the enactment of the Compacts involves the uncertainty regarding the dispute resolution process. For instance, the dispute resolution clause contained in the EMS Licensure Compact calls for rules promulgating mediation or arbitration for disputes arising between member states and member states and non-member states.⁴⁶ Analyzing the language of the clause leaves open for interpretation which disputes can and will be adjudicated in alternative dispute resolution. One can interpret from the text that any dispute arising out of the terms of EMS Licensure Compact brought by a state, whether a member state or non-member state, against a member state would be mediated or arbitrated.⁴⁷ But, does this clause encompass all disputes brought against or under the Compact? Would a claim against an individual EMS personnel member licensed under the EMS Licensure Compact brought by an individual patient who received care or services from such EMS personnel be thrust into mediation or arbitration or could such a

45. This also includes the Medical Licensure Compact and the Nurse Licensure Compact.

46. "Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states." ALA. CODE § 22-18-50, sec. 13(C)(1) (1975).

47. This assumes that the Commission has in fact promulgated rules requiring alternative dispute resolution of such claims and disputes.

claim be brought in litigation? Likewise, if such a claim brought by a patient is brought in litigation, the issue of who decides—the court or arbitrator—whether the Compact’s clause is enforced comes to the forefront.

Although there may be issues regarding the scope of the dispute resolution clause contained in the EMS Personnel Licensure Interstate Compact, along with the Interstate Medical Licensure Compact and Interstate Nurse Licensure Compact, the inherent aspects of alternative dispute resolution, like confidentiality, lower costs, and greater efficiency, should be beneficial for the overall effectiveness of EMS Licensure Compact.

B. Republicans Push for Limited Arbitrator Discretion in Public Labor Disputes

Bill Numbers:	Iowa House File 291; Illinois Senate Bill 1305
Summary:	Mandating factors that arbitrators must consider in the context of impasses in public sector collective bargaining
Status:	2017 Iowa H.F. 291 enacted; 2017 Ill. S.B. in committee

1. Introduction

Public sector labor law is generally set by state and local laws, which vary significantly across the country.⁴⁸ While most states grant collective bargaining rights to public employees, few permit public employees to strike.⁴⁹ Instead, many state laws provide for resolving bargaining impasses first through mediation, and then in some form of binding “interest arbitration.”⁵⁰ Interest arbitration is a process whereby a union and public employer, after reaching impasse in the bargaining process, submit their dispute to a third-party neutral for final and binding resolution. State law governing interest arbitration almost always includes specific criteria which the arbitrator must consider in making the arbitration award such as, for example, cost of living increases, state financial resources, and stipulations of the parties, among other factors.⁵¹

In an effort to manage budget deficits as well as scale back the collective bargaining rights of public workers, Republicans in some state legislatures have pushed for limiting arbitrators’ discretion in interest arbitration disputes to factors that tend to promote fiscal conservatism. Two such bills were introduced in Iowa and Illinois during the 2017 legislative session, with the Iowa bill passed by the Republican-controlled legislature and signed by the Republican Governor within weeks of its filing.

48. R.D. Hursh, *Constitutionality of Arbitration Statutes*, 55 A.L.R.2d 432, *9.

49. *Id.*

50. *Id.* at *2.

51. Martin H. Malin, *Two Models of Interest Arbitration*, 28 OHIO ST. J. DISP. RESOL. 145, 159 (2013).

2. Background: Tensions over Public Sector Collective Bargaining

In recent years, there has been an aggressive attempt by some Republican state legislators to scale back collective bargaining rights in the public sector. This includes the rights of teachers, firefighters, police officers, and other public employees to bargain over wages, benefits and other terms and conditions of employment. Proponents of limiting public employees' collective bargaining rights claim these workers are overcompensated and contribute to state budget deficits. Opponents argue that organized labor is targeted by conservatives and corporate interests because of unions' support of Democratic candidates and causes.

In the aftermath of the Republican success in the 2010 elections, some state legislatures and governors moved to limit public sector collective bargaining. The most publicized example occurred in Wisconsin in 2011, when collective bargaining rights of public employees other than police and firefighters were severely limited.⁵² The efficacy of interest arbitration as a dispute resolution procedure has also been called into question, particularly by those who view it as a contributing cause of increasing costs for public employment. As a result, some legislative approaches to public sector labor reform have included adding, removing, or modifying the statutory factors arbitrators must consider when rendering an award in the context of a collective bargaining impasse.

3. Illinois

Under the Illinois Public Labor Relations Act, disputes involving security employees, police officers, fire fighters, and some other classifications first require mediation.⁵³ If mediation is unsuccessful, an arbitration panel will hold a hearing.⁵⁴ According to the statute, the arbitration panel must base its findings, opinions and order upon the following factors: (1) the lawful authority of the employer; (2) stipulations of the parties; (3) the interests and welfare of the public and the financial ability of the unit of government to meet those costs; (4) comparison of the wages, hours and conditions of employment involved with those of other employees performing similar services; (5) the average consumer prices for goods and services, commonly known as the cost of living; (6) overall compensation presently received by the employees; and (7) "such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment..."⁵⁵

In February 2017, Republican State Senator Michael Connelly introduced Illinois Senate Bill 1305.⁵⁶ The bill was assigned to the Labor Committee on February 15, 2017 and assigned to the Subcommittee on special Issues on March 1, 2017.⁵⁷ It was subsequently re-referred to the Assignments Committee on May 5, 2017.⁵⁸

52. Paul M. Secunda, *The Wisconsin Public-Sector Labor Dispute of 2011*, 27 ABA J. OF LAB. & EMP. L. 293, 159 (2012).

53. 5 ILL. COMP. STAT. § 315/14 (2017).

54. *Id.*

55. *Id.*

56. S.B. 1305, 100th Gen. Assemb., Reg. Sess. (Ill. 2017) (status provided by LEXIS bill tracking).

57. *Id.*

58. *Id.*

The bill would amend Section 14 of the Illinois Public Labor Relations Act.⁵⁹ In particular, it would specify what must be considered when evaluating “the interests and welfare of the public and the financial ability of the unit of government to meet those costs.”⁶⁰ The bill would require arbitrators to “fully consider and base its findings, opinions and order upon” (1) current budget shortfalls, (2) pension funding obligations, (3) increased benefit costs, and (4) proportionality of last wage increases to proposed budgetary considerations.⁶¹ Further, the arbitrator may not consider the ability of the unit of government to increase tax levels.⁶²

While it appears unlikely that this bill will move forward, its aim is clear: introduce changes to public sector labor law to make it more difficult for public employees to earn wage increases, particularly in the midst of budget constraints, and to do so forcing arbitrators to consider factors that tend to emphasize fiscal conservatism while ignoring factors suggesting availability of funds.

4. Iowa

In 1974, Iowa’s Public Employment Relations Act (now Chapter 20 of the Iowa Code) was passed with bipartisan support and signed into law by a Republican governor, Robert D. Ray.⁶³ The act reflected “careful compromise by Iowa’s public employers and employees to adopt a fair and binding process to settle bargaining disputes.”⁶⁴ Under Chapter 20, the arbitrator resolves the dispute between the parties by conducting a hearing and then issuing a decision on the issues in dispute.⁶⁵ The arbitration process under Chapter 20 involves something called “final offer” arbitration. Each party makes a final offer on each of the issues in dispute, and the arbitrator chooses between those final offers on each disputed issue. The arbitrator is required to choose the final offer which is the most “reasonable,” based on the evidence offered by the parties and after considering the factors specified in Chapter 20.⁶⁶

Previously, an arbitrator considering a wage impasse would consider the final offers of the union and management and choose one of the two.⁶⁷ There was no financial cap on the award, and an arbitrator could consider past collective bargaining agreements, interests and welfare of the public, and the power of the public employer to levy taxes and appropriate funds.⁶⁸ The arbitrator could also compare wages, hours and conditions of employment with other public employees doing comparable work.

Iowa House File 291 was introduced on February 9, 2017 by the Committee on Labor in the Iowa House of Representatives as a companion to Senate File 213,

59. *Id.*

60. *Id.*

61. *Id.*

62. S.B. 1305, 100th Gen. Assemb., Reg. Sess. (Ill. 2017) (status provided by LEXIS bill tracking).

63. “*To Promote Harmonious and Cooperative Relationships’: A Brief History of Public Sector Collective Bargaining in Iowa, 1966 to 2016*, University of Iowa Labor Center (2016), https://www.io-waaffcio.org/system/files/history_of_ia_public_sector_bargaining.pdf.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

which was introduced by Republican Senator Jason Schultz.⁶⁹ House File 291 was fast-tracked through both legislative chambers, with the vast majority of nearly 80 proposed amendments failing.⁷⁰ Governor Terry Branstad signed it into law on February 17, 2017.⁷¹ The law makes sweeping changes to Iowa Code Chapter 20.⁷² In particular, the law changes procedures for arbitration of impasses in collective bargaining disputes involving units that do not have at least thirty percent of members who are public safety employees, including the factors an arbitrator is required to consider in making a final determination on an impasse item.⁷³

Under the new law, an arbitrator's award is restricted to the final offers, but the award cannot exceed whichever is lower: a three percent increase, or a percent increase equal to the cost of living increase outlined in the consumer price index.⁷⁴ Further, arbitrators can no longer consider past collective bargaining agreements or the power of the public employer to increase or impose new taxes, fees or charges.⁷⁵ Under the new law, arbitrators must consider the financial ability of the employer to meet the cost of an offer in light of economic conditions.⁷⁶

5. Conclusion

Fears of public employees striking and disrupting the flow of public services gave rise to interest arbitration as a method for resolving impasses in collective bargaining. As a part of the parties' bargaining process, interest arbitration provides a substitute for the right to strike "because the parties mutually desire to avoid such economic warfare, in part because strikes are inherently unpredictable."⁷⁷ For the threat to go to interest arbitration to function comparably to the threat of strike, arbitrators must have wide discretion so the outcome is at least somewhat unpredictable. The more an arbitration process is developed as an adjudication process, however, the more likely it will allow "negotiators to avoid responsibility and accountability to their constituents" as well as "divert rather than resolve conflict."⁷⁸

State law may require specifying factors for the arbitrator to consider in order to avoid courts construing the statute as an unconstitutional delegation of sovereign authority.⁷⁹ Where statutes specify factors for the arbitrator to consider, the factors should be worded broadly to give the arbitrator as much discretion as possible. Prioritizing some factors over others "should be avoided and the list should contain express authorization for the arbitrator to consider factors in addition to those expressly listed."⁸⁰ Further, arbitrators should not be required to address expressly every factor in rendering their award.

Interest arbitration is an extension of the collective bargaining process; it should be treated as such. Parties are more likely to reach agreement "and, in so

69. H.F. 291, 2017 Iowa Legis., 87th Sess. (Iowa 2017) (status provided by LEXIS bill tracking).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. H.F. 291, 2017 Iowa Legis., 87th Sess. (Iowa 2017) (status provided by LEXIS bill tracking).

76. *Id.*

77. *Secunda, supra* note 52, at 169.

78. *Id.* at 168.

79. *Id.* at 169.

80. *Id.*

doing, have a better chance of innovating rather than replicating the status quo,” when interest arbitration is understood as an alternative to striking and where the results are at least somewhat unpredictable.⁸¹ State legislators should be careful to avoid narrowing arbitrators’ discretion to the point where interest arbitration will no longer serve the purpose for which it was intended: minimizing economic warfare. Public sector employees engaged in collective bargaining should have a fair shot at achieving gains in the process; otherwise, arbitration as a dispute resolution mechanism will no longer “promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively.”⁸²

C. Interstate Medical and Nurse Licensure Compacts

Bill Numbers:	Michigan House Bill 4066, ⁸³ Mississippi House Bill 488, ⁸⁴ Nebraska Legislative Bill 88, ⁸⁵ Nevada Assembly Bill 18. ⁸⁶
Summary:	Implementing medical and nurse licensure Compacts to provide opportunities for medical professionals to practice medicine in multiple states who meet uniform licensure requirements
Status:	Michigan House Bill 4066 has been introduced to the House; Mississippi House Bill 488 enacted March 3, 2017; Nebraska Legislative Bill 88 enacted April 25, 2017; Nevada Assembly Bill 18 has been introduced to the Assembly

1. Introduction

The United States is on the verge of having a major shortage of nurses and physicians.⁸⁷ With the introduction of the Affordable Care Act, there has been an influx of millions of new patients into the health industry.⁸⁸ It is estimated that by 2025, there will be a shortage of 90,000 physicians and 500,000 nurses.⁸⁹ In the nursing industry, especially, a growing number of nursing school applications are denied because the nursing schools do not have the ability to train enough nurses to

81. *Id.*

82. IOWA CODE §20.1.

83. H.R. 4066, 99th Leg., Reg. Sess. (Mich. 2017).

84. H.R. 488, 132nd Leg., Reg. Sess. (Miss. 2017).

85. Leg. B. 88, 105th Leg., Reg. Sess. (Neb. 2017).

86. Assemb. B. 18, 79th Leg., Reg. Sess. (Nev. 2017).

87. David Alemian, *The Nurse and Physician Shortage*, MD MAGAZINE (Aug. 19, 2016), <http://www.mdmag.com/physicians-money-digest/contributor/david-alemian-2016/08/the-nurse-and-physician-shortage>.

88. *Issue Brief: Interstate Medical Licensure Compact*, AMERICAN MED. ASS’N (2017), <https://www.ama-assn.org/sites/default/files/media-browser/SPecialty%20group/arc/fsmb-interstate-medical-licensure-compact-issue-brief.pdf>.

89. Alemian, *supra* note 87.

fill the need, adding to the nurse shortage.⁹⁰ Many nurses and physicians leave the profession because they are overworked, causing damage that is felt most in rural areas.⁹¹

a. The Interstate Medical Licensure Compact

In 2013, a group of state medical board executives, administrators, and attorneys wrote the Interstate Medical Licensure Compact (IMLC) with the participation of the national Federation of State Medical Boards.⁹² The IMLC creates opportunities for physicians who are already licensed in one state, to practice medicine in participating states.⁹³ The IMLC also encourages state medical boards to share investigative and disciplinary information that they were previously unable to share.⁹⁴ In recent years, telemedicine has become an important method of serving individuals in rural areas.⁹⁵ Telemedicine is electronic communication between a provider of healthcare information, usually a physician or a nurse, and a patient.⁹⁶ However, many states require physicians who use telemedicine to be licensed in the state where that specific patient lives.⁹⁷ The Interstate Medical Licensure Compact allows physicians to better utilize telemedicine and treat patients in underserved rural communities.⁹⁸

Currently, 22 states and 29 Medical and Osteopathic Boards in the United States have adopted the IMLC.⁹⁹ To adopt the IMLC, states must pass legislation and the language of the Compact must be identical in every state.¹⁰⁰ Physicians must meet IMLC criteria to practice medicine in participating states; approximately 80% of physicians meet these requirements.¹⁰¹ The IMLC is not a federal government program, but an agreement among participating states.¹⁰² The Compact gives the Interstate Medical Licensure Compact Commission (Commission) the authority of self-governance to create bylaws and policies.¹⁰³ States must make an affirmative and informed decision to accept the terms of the Interstate Medical License Compact.¹⁰⁴

90. *Id.*

91. *Id.*; Thomas Sullivan, *Interstate Medical Licensure Compact—Expands to 17 States*, POLICY AND MED. (June 24, 2016), <http://www.policymed.com/2016/06/interstate-medical-licensure-compact-expands-to-17-states.html>.

92. *FAQs*, INTERSTATE MED. LICENSURE COMPACT (2017).

93. AMERICAN MED. ASS'N, *supra* note 88.

94. *Id.*

95. *Id.*

96. Nancy Lugn, *Medical Licensure and Telemedicine: Necessity or Barrier?*, 25 SUFFOLK TRANSNAT'L L. REV. 165, 167 (2001).

97. AMERICAN MED. ASS'N, *supra* note 88.

98. *Id.*

99. *The IMLC*, INTERSTATE MED. LICENSURE COMPACT (2017).

100. *FAQs*, *supra* note 92.

101. *The IMLC*, *supra* note 99.

102. *Facts about the IMLCC*, INTERSTATE MEDICAL LICENSURE COMPACT (2017), <http://www.imlcc.org/facts-about-the-implcc/>.

103. *Id.*

104. *Id.*

b. The Nurse Licensure Compact

The Nurse Licensure Compact (NLC) allows nurses to obtain a multistate licensure to practice in any participating state.¹⁰⁵ In 2015, the NLC was revised and is now the “Enhanced NLC” or “eNLC.”¹⁰⁶ Many states are in the process of joining the eNLC.¹⁰⁷ Nurses who previously had an original NLC multistate license will be grandfathered into the eNLC. Applicant nurses must meet the 11 uniform licensure requirements to be granted an eNLC license; however, those who do not meet the eNLC requirements may still be eligible for a single state license.¹⁰⁸ The eNLC allows registered nurses and licensed practical/vocational nurses to have a multistate license.¹⁰⁹ Currently, 25 states are members in the original NLC and many are in the process of adopting the eNLC.¹¹⁰

2. Dispute Resolution and Licensure Compacts

a. The Interstate Medical Licensure Compact

Under the current IMLC, the Commission has the authority to promulgate rules for dispute resolution practices.¹¹¹ Specifically, the Commission can create rules for both mediation and binding dispute resolution.¹¹² It is the Commission’s goal to attempt to resolve disputes relating to the Compact between members states or member boards.¹¹³ The Compact does not contain details on its dispute resolution procedures or rules in its “Model Legislation.”¹¹⁴

b. The Nurse Licensure Compact

The eNLC gives the Nurse Licensure Commission (“Interstate Commission”) the authority to use dispute resolution to ensure compliance by NLC member states.¹¹⁵ With its revised procedures, the NLC outlines steps to be taken if a participating state fails to comply with the NLC: “(1) a period of technical assistance in curing the default; (2) improved dispute resolution processes; and (3) termination from the NLC in the event no other means of compliance has been successful.”¹¹⁶ The eNLC now allows the NLC to adopt rules directly by the Interstate Commission

105. *Original Nurse Licensure Compact*, NATIONAL COUNCIL OF STATE BOARDS OF NURSING (2017), <https://www.ncsbn.org/nurse-licensure-compact.htm>.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Facts about the NLC*, NATIONAL COUNCIL OF STATE BOARDS OF NURSING (2017), https://nursecompact.com/privateFiles/NLC_Facts.pdf.

110. *Id.*

111. The Commission provides “Model Legislation” for state legislative bills. The Model Legislation is provided on the IMLC website: <https://imlcc.org/wp-content/uploads/2016/01/Interstate-Medical-Licensure-Compact-FINAL.pdf>.

112. INTERSTATE MEDICAL LICENSURE COMPACT, § 19 (2017), <https://imlcc.org/wp-content/uploads/2016/01/Interstate-Medical-Licensure-Compact-FINAL.pdf>.

113. *Id.*

114. *Id.*

115. *Key Provisions of the Enhanced NLC*, NURSE LICENSURE COMPACT (2017), https://nursecompact.com/privateFiles/NLC_Key_Provisions.pdf.

116. *Id.*

without a requirement that the participating states ratify or adopt the rules as well.¹¹⁷ The eNLC references other interstate Compacts where this procedure is permitted.¹¹⁸

The eNLC's dispute resolution procedures allow party states to require the Interstate Commission to resolve disputes involving party states or non-party states.¹¹⁹ The Interstate Commission has the authority to provide rules for mediation and binding dispute resolution.¹²⁰ If the Interstate Commission is unable to facilitate a resolution, the parties may submit the dispute to an arbitration panel appointed by the Interstate Commission.¹²¹

3. State Legislature 2017

As of August 3, 2017, 22 states have adopted the IMLC.¹²² Seventeen states, including Nebraska and Mississippi, are IMLC states and are issuing interstate licenses.¹²³ Five states have passed IMLC legislation, but implementation has been delayed.¹²⁴ Four states, including Michigan, have recently introduced IMLC legislation.¹²⁵ The IMLC requires prospective physicians to undergo a criminal background check before earning a multistate license.¹²⁶ The Federal Bureau of Investigation (FBI) requires state statutes to have specific language for the FBI to process their background check requests.¹²⁷ Many states had to alter their legislation to accommodate for the criminal background check requirements.¹²⁸

Currently, twenty-six states have enacted legislation adopting the eNLC.¹²⁹ Twenty-one states were previously NLC states and have adopted the eNLC.¹³⁰ Massachusetts, Rhode Island, and New Jersey were not original participants in the NLC, but have pending legislation to adopt the eNLC.¹³¹ Five other states have adopted the eNLC when they were not previously NLC states.¹³² New Mexico, Colorado, and Wisconsin are current NLC states, but have not adopted the eNLC.¹³³

a. Michigan House Bill 4066

Representatives James Tedder and Steven Marino introduced House Bill 4066 on January 24, 2017.¹³⁴ The bill was read then transferred to the Committee on

117. *Id.*

118. *Id.*

119. INTERSTATE MEDICAL LICENSURE COMPACT, *supra* note 112.

120. *Id.*

121. *Id.*

122. *The IMLC*, *supra* note 99.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *The IMLC*, *supra* note 99.

129. *Enhanced Nurse Licensure Compact (eNLC) Implementation*, NATIONAL COUNCIL OF STATE BOARDS OF NURSING (2017), <https://www.ncs.B.n.org/enhanced-nlc-implementation.htm>.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. H.R. 4066, 99th Leg., Reg. Sess. (Mich. 2017).

Health Policy.¹³⁵ The purpose of this bill is to enact the Interstate Medical Licensure Compact to increase access to healthcare by creating a more efficient process allowing physicians to be licensed in multiple states.¹³⁶ The physician is under the state medical board jurisdiction of where the patient is located, i.e., if a patient is located in Michigan and the physician is located in Illinois, the Michigan State Medical Board has jurisdiction of any disputes.¹³⁷ In addition, the Michigan State Medical Board can retain jurisdiction for discipline of any physician, but must follow the procedures of the Interstate Medical Licensure Compact.¹³⁸ The Compact prohibits any physician who has been convicted of a crime or who has previously faced licensure discipline from obtaining an interstate medical license.¹³⁹ This bill gives the Interstate Medical Licensure Compact Commission the authority to mediate disputes and promulgate rules regarding dispute resolution.¹⁴⁰ Michigan can ask the Commission to resolve disputes between member states or member boards.¹⁴¹

This bill is especially important for telemedicine patients and physicians in Michigan.¹⁴² Michigan law provides that if a non-Michigan-licensed physician performs a telemedicine service, private payers and Michigan Medicaid do not need to reimburse the cost of the service.¹⁴³ In addition, many medical malpractice insurers will only cover physicians if they are practicing telemedicine in the state where they hold a policy.¹⁴⁴ If Michigan adopts the Interstate Medical Licensure Compact, it would be easier for physicians to obtain a malpractice insurance policy which covers multiple states.

b. Mississippi House Bill 488

Representatives Becky Currie, William Arnold, Deborah Butler Dixon, and Debra Gibbs introduced House Bill 488 on January 13, 2017 with bipartisan support.¹⁴⁵ The bill became law on March 20, 2017 and was signed by Governor Phil Bryant.¹⁴⁶ The purpose of the bill is to enact the Nurse Licensure Compact in Mississippi, which would improve compliance and enforcement of state licensure laws by creating a more simplified nurse licensure system.¹⁴⁷ The goal is to protect the public's health and safety and to reduce redundancies in the issuance of nurse licenses.¹⁴⁸ The bill establishes an Interstate Commission of Nurse Licensure Compact Administrators.¹⁴⁹ If the Commission decides to engage in alternative dispute resolution proceedings, it may waive venue and jurisdictional defenses.¹⁵⁰ Participating states can request disputes between party and non-party states be resolved by

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Mich. H.R. 4066.

141. *Id.*

142. Dr. Kimberly Lovett Rockwell, *The Promise of Telemedicine*, 96 Mich. B.J. 38, 41 (2017).

143. *Id.*

144. *Id.*

145. Nurse Licensure Compact; create, H.R. 488, 132nd Leg., Reg. Sess. (Miss. 2017).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

alternative dispute resolution.¹⁵¹ The Commission has the authority to create rules for mediation and binding dispute resolution for these conflicts.¹⁵² If the parties cannot come to a resolution, the dispute will be sent to binding arbitration appointed by Compact Commission administrators.¹⁵³

Mississippi approved the Enhanced Nurse Licensure Compact.¹⁵⁴ It was the thirteenth state to adopt this new Compact.¹⁵⁵ Blake Ward, RN, CRNA, the President of the Mississippi Board of Nursing believes that “the eNLC will raise the standards for the nursing profession across state lines for those participating members.”¹⁵⁶ These raised standards aim to improve patient safety and also require federal and state criminal background checks.¹⁵⁷ The eNLC will increase access of telemedicine nursing to Mississippi rural areas, and will make it easier for out-of-state nurses to assist in times of disasters.¹⁵⁸

c. Nebraska Legislative Bill 88

Senator Carol Blood introduced Legislative Bill 88 on January 5, 2017.¹⁵⁹ The bill became law on April 25, 2017 and was signed by Governor Pete Ricketts.¹⁶⁰ The purpose of this bill is to adopt both the Interstate Medical Licensure Compact and the Nurse Licensure Compact to alter and eliminate existing regulation of health professionals.¹⁶¹ The language of both bills mirrors the language of the Michigan and Mississippi bills for the Interstate Medical Licensure Compact and the Nurse Licensure Compact, respectively.¹⁶² Specifically, the language for dispute resolution is the same, as it gives all authority for creating rules regarding alternative dispute resolution to the respective Compact commissions.¹⁶³

There is a shortage of healthcare in rural Nebraska so legislators are hoping that this bill and another bill which requires private insurers to reimburse for telemedicine services, will help increase access to healthcare in rural Nebraska.¹⁶⁴ If a small town has a clinic, but lacks physicians, a patient could go to the clinic to access the equipment for tests, but have an out-of-area doctor diagnose the patient’s

151. Miss. H.R. 488.

152. *Id.*

153. *Id.*

154. Dawn M. Kappel, *Mississippi Enacts Enhance Nurse Licensure Compact (eNLC)*, NATIONAL COUNCIL OF STATE BOARDS OF NURSING (2017).

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. Leg. B. 88, 105th Leg., Reg. Sess. (Neb. 2017).

160. *Id.*

161. *Id.*

162. *Id.*; See H.R. 4066, 99th Leg., Reg. Sess. (Mich. 2017); See also H.R. 488, 132nd Leg., Reg. Sess. (Miss. 2017).

163. Leg. B. 88, 105th Leg., Reg. Sess. (Neb. 2017); H.R. 4066, 99th Leg., Reg. Sess. (Mich. 2017); H.R. 488, 132nd Leg., Reg. Sess. (Miss. 2017).

164. Grant Schulte, *Proposals could help expand telehealth services in Nebraska*, LINCOLN J. STAR (Jan. 8, 2017), http://journalstar.com/legislature/proposals-could-help-expand-telehealth-services-in-nebraska/article_9404d539-8f62-54a9-b438-a308b6f77397.html.

problem.¹⁶⁵ The legislators also believe that telehealth consultations are more inexpensive than in-person doctor visits, which would save private insurers and Medicaid more money and would still increase rural access to healthcare.¹⁶⁶

d. Nevada Assembly Bill 18

The Nevada House of Delegates Commerce and Labor Committee introduced Assembly Bill 18 on February 6, 2017.¹⁶⁷ As of April 15, 2017, no further action is allowed pursuant to Nevada Joint Standing Rule No. 14.3.1.¹⁶⁸ The purpose of the bill was for Nevada to adopt the Nurse Licensure Compact to increase opportunities for nurses and protect public health and safety by raising standards in nursing.¹⁶⁹ The language of the bill is identical to that of the Mississippi bill.¹⁷⁰ The bill will need to be reintroduced to be heard in the Nevada Assembly.¹⁷¹ The Nurse Licensure Compact would increase access to nurses in Nevada and would create a more efficient system of licensure, hopefully enticing prospective nurses to become nurses, filling the nursing shortage.

4. Conclusion

Ultimately, the Interstate Medical Licensure Compact and Nurse Licensure Compact will improve access to healthcare and ideally reduce the shortage of qualified physicians and nurses. With a more streamlined system, it will be easier for medical professionals to assist in areas of disasters or rural areas with little access to quality healthcare. The telemedicine industry has critics who believe that medical consultations must be in-person to be effective. However, telemedicine aims to help underserved communities, and having interstate licensure Compacts promotes telemedicine because many states require physicians to be licensed where the patient resides.

The overall idea of the Interstate Medical Licensure Compact and Nurse Licensure Compact is very beneficial for medical practitioners and their patients, but the dispute resolution aspects of these Compacts could be improved. The Compacts require that the legislation be identical to their model legislation; this gives the Compacts full control of resolving disputes involving the Compacts between party states and non-party states. Party states should work together to convince the Commissions of both the IMLC and eNLC to add provisions protecting the states and their medical professionals by letting the states have a voice in promulgating rules for dispute resolution procedures.

165. *Id.*

166. *Id.*

167. Assemb. B. 18, 79th Leg., Reg. Sess. (Nev. 2017).

168. *Id.* Nevada Joint Standing Rule No. 14.3.1 states: The final standing committee to which a bill or joint resolution is referred in its House of origin may only take action on the bill or joint resolution on or before the 68th calendar day of the legislative session. A bill may be re-referred after that date only to the Senate Committee on Finance or the Assembly Committee on Ways and Means and only if the bill is exempt pursuant to subsection 1 of Joint Standing Rule No. 14.6.

169. Nev. Assemb. B. 18.

170. *Id.*; H.R. 488, 132nd Leg., Reg. Sess. (Miss. 2017).

171. Nev. Assemb. B. 18.

D. The Rise and Benefits of ADR in Disputes Within Condominiums, Cooperatives, and Planned Communities

Bill Number: North Carolina House Bill 814; Pennsylvania House Bill 595; Rhode Island House Bill 5097

Summary: Providing for ADR in disputes arising in common interest communities such as condominiums, cooperatives, and planned communities

Status: North Carolina House Bill 814 referred to House Committee on Judiciary; Pennsylvania House Bill 595 tabled in Senate; Rhode Island House Bill 5097 referred to Senate Committee on Judiciary

1. Introduction

Disputes between neighbors can arise out of any living situation. Neighbors commonly feud over situations involving noise, odors, pets, cleanliness, use of a common area, and personal issues.¹⁷² Such disputes are often referred to as “quality of life disputes.”¹⁷³ Where neighbors live in extremely close quarters, such as in condominiums, cooperatives, or planned communities, often referred to as common interest communities, these problems may be more frequent or may worsen by virtue of the fact that neighbors in these types of communities may share walls, lawns, and common areas.¹⁷⁴ Disputes among neighbors often evoke “emotions of extreme hostility, bitterness and frustration.”¹⁷⁵ Living so close to one another also means that disputing neighbors will likely face each other more frequently in their daily lives, which can lead to even more discord.¹⁷⁶

In addition to the increased likelihood of disputes arising between neighbors due to their close proximity, those who live in common interest communities may also face disputes with the governing body of the community, sometimes called a board of directors or an association, which serve as a “surrogate for the landlord” in communities such as condominiums or cooperatives.¹⁷⁷ Disputes between individuals who live in common interest communities and their governing bodies often arise out of financial disputes over maintenance fees or special assessments. They can also arise when a board, which often has the power to deny the sale of a unit to a potential buyer, blocks the sale of the unit by the unit’s owner, or when the board seeks to compel a unit owner to take, or not take, some specific action.¹⁷⁸

Regardless of the circumstances that create conflicts in common interest communities, or who the parties to the conflict are, resolving disputes among these neighbors is critical to ensuring an acceptable quality of life for residents and, in some cases, to maintain the property value.¹⁷⁹ To that end, in disputes between unit owners, or a unit owner and governing body, alternative dispute resolution offers a

172. Christopher J. Baum, *The Benefits of Alternative Dispute Resolution in Common Interest Development Disputes*, 84 ST. JOHN’S L. REV. 907, 907 (Summer 2010).

173. *Id.* at 913.

174. *Id.* at 907.

175. Scott E. Mollen, *Alternative Dispute Resolution of Condominium and Cooperative Conflicts*, 73 ST. JOHN’S L. REV. 75, 75 (Winter 1999).

176. Baum, *supra* note 172, at 907.

177. *Id.* at 908.

178. *Id.* at 915.

179. *Id.* at 921.

cheaper, more efficient, and often more favorable resolution, when compared to traditional litigation.¹⁸⁰ Some condominium, cooperative, and planned community boards have opted to create alternative dispute resolution procedures on their own.¹⁸¹ However, many boards decline to do so either because they do not want to give up the advantage they usually have over unit owners in traditional litigation, or because they are unaware of the benefits of alternative dispute resolution.¹⁸² Because many boards or associations, for a variety of reasons, do not adopt beneficial ADR procedures to help resolve disputes within common interest communities, it is often up to state legislatures to permit or even require the use of ADR.

2. Background: The Rising Number of Disputes Arising in Common Interest Communities and the Use of ADR to Resolve Them

More individuals are living in condominiums, cooperatives, and planned communities than ever before.¹⁸³ From 1970 to 2006, the number of common interest communities in the United States expanded from 10,000 communities with 701,000 housing units to 286,000 communities with 23.1 million housing units.¹⁸⁴ By 2015, the number of common interest communities reached 338,000, and 68 million Americans (around 21.1% of the U.S. population) lived in common interest communities.¹⁸⁵ Many things are considered to have contributed to this dramatic increase. One factor is an aging population, including people who wish to move to a community requiring less property maintenance, people who do not want to pay mortgages on large houses once their children have moved out, and people who wish or need to move into common interest communities, such as nursing homes or assisted living facilities.¹⁸⁶ Another factor is that common interest communities often provide many amenities and services, such as laundry services, housekeeping services, heightened security, pools, gyms, and many others, that would be costly to purchase or maintain at a single-family home.¹⁸⁷ Additionally, common interest communities are often located at a convenient distance from urban areas, where many people work, and buying property to build a home would be very expensive.¹⁸⁸

180. *See generally id.*

181. *Id.* at 948

182. Baum, *supra* note 172, at 922, 944, 948 (Discussing how boards sometimes take advantage of the fact that they may fund the litigation through special assessment on the unit owners while a unit owner who litigates against the board has to fund the litigation at his or her own expense. Such a system frustrates unit owners attempting to resolve disputes with the board and may lead to the rest of the unit owners who are forced to pay for the litigation through special assessments levied against them by the board to feel disdain toward the unit owner challenging the board.).

183. *Id.* at 908.

184. *Id.* at 908-09 (citing G. Stephen Elisha & Tracey S. Wiltgen, ADR Spotlight: Resolving Condominium Disputes: Mediation Works, 10 HAW. B.J. 12, 12 (2006)).

185. Ausra Gaigalaite, Priority of Condominium Associations' Assessment Liens Vis-à-vis Mortgages: Navigating in the Super-Priority Lien Jurisdictions, 40 SEATTLE U.L. REV. 841, 845 (Winter 2017).

186. Baum, *supra* note 172, at 909.

187. *Id.* at 909-10; Mollen, *supra* note 175, at 78-79.

188. Mollen, *supra* note 175, at 78.

As the number of individuals who live in condominiums, cooperatives, and planned communities continues to rise, so does the number of disputes.¹⁸⁹ Accompanying this rise in disputes is an inevitable rise in litigation. Litigation of disputes arising from common interest communities is as expensive as any other lawsuit, and can have greater non-monetary costs, such as a hostile living environment.¹⁹⁰ This is because litigants in disputes arising from common interest communities often live next door to each other, while most other lawsuits do not involve the parties regularly seeing each other outside of the courtroom.¹⁹¹

While used frequently in disputes arising from common interest communities between unit owners, or unit owners and a board or association, litigation is often not the best way to resolve the disputes.

First, litigation is costly. One infamous case involved a dispute between a unit owner and the board over who bore the responsibility to install window guards.¹⁹² The cost of installing the window guards was \$909, but the parties spent a combined \$100,000 in legal fees to litigate the dispute.¹⁹³ Clearly, litigation such as this is not efficient for anyone involved.

Second, litigation is slow. If a dispute arises between neighbors over noise or an odor, the use of litigation would likely lead to the complaining neighbor having to put up with what they were challenging for quite some time. Other drawbacks of litigating this type of dispute are the potential embarrassment, due to the public nature of litigation, the decreased ability to craft solutions both parties are happy with, the inability to choose who will settle the dispute, and potential for long-lasting animosity between neighbors.¹⁹⁴

Alternative dispute resolution, on the other hand, offers a less adversarial way to resolve disputes, can be much quicker and less costly, is private, allows parties to choose who makes the decision, and usually leads to less animosity between parties since it is not necessarily a zero-sum game.¹⁹⁵ Despite these potential advantages, actual use of ADR in these types of disputes has been limited.¹⁹⁶ Only a few states have enacted legislation requiring the use of ADR for common interest community disputes, in order to help ensure parties, and the state as a whole, receive the potential benefits of ADR.¹⁹⁷ As of 2010, the states that had passed statutes requiring mandatory ADR for these types of disputes were Florida, Nevada, and Hawaii.¹⁹⁸ Numerous states, including California, Colorado, Illinois, Michigan,

189. Lawrence M. Grosberg, Reflecting on the Legal Issues of Our Times New York Law School Faculty Presentation Day: III. Dispute Resolution: Using Mediation to Resolve Residential Co-op Disputes: The Role of New York Law School, 19 N.Y.L. SCH. J. HUM. RTS. 129, 133-34 (2003) (“Indeed, for at least a couple of reasons, the rate of increase in conflicts is probably much greater than the growth rate in the numbers of co-op residents.”).

190. *Id.* at 135-36.

191. *Id.* at 136.

192. Baum, *supra* note 172, at 917.

193. *Id.*; *see also* Grosberg, *supra* note 189, at 136.

194. Baum, *supra* note 172, at 917-22.

195. *See Id.* at 923-41; Grosberg, *supra* note 189, at 137.

196. Mollen, *supra* note 175, at 91.

197. Baum, *supra* note 172, at 944-45.

198. *Id.* at 944-47.

Utah, Virginia, and Washington have passed legislation that permits or encourages ADR for common interest community disputes.¹⁹⁹

While there is a general trend of states of all sizes and population densities requiring or encouraging ADR in common interest community disputes, some states have not yet passed this type of legislation. Some believe that not passing a statute that requires or encourages ADR provides for more party autonomy and can lead to ADR clauses being incorporated into an association's governing documents.²⁰⁰ This method could theoretically give parties more flexibility to develop an ADR system that works best for their particular community instead of being subject to a one-size-fits-all system formed by the state legislature. However, when legislatures stay silent on the matter, the use of ADR to resolve these disputes may be less frequent because the association or board might not include an ADR clause in its governing documents. This may occur because an association does not want to give up the advantage it holds over individual members of the community in litigation or because the association does not want to go through the burden or cost of adding an ADR clause to its governing documents. Therefore, states whose legislature passes bills that require or permit ADR are more likely to realize the benefits of ADR for common interest community disputes.

In 2017, multiple states proposed bills providing for ADR in disputes arising in common interest communities such as condominiums, cooperatives, and planned communities.²⁰¹ None of the proposed bills in North Carolina, Pennsylvania, and Rhode Island would mandate ADR in these disputes, but all would authorize the use of ADR under certain conditions.²⁰² These bills would provide unit owners the ability to use more cost-effective and less adversarial procedures to settle their disputes with one another or with the board or association, which is a positive step towards addressing the emerging issue of a continually increasing number of disputes arising in common interest communities.

3. North Carolina House Bill 814

Representative Jonathan C. Jordan introduced this bill on April 13, 2017.²⁰³ The bill was referred to the House Committee on Judiciary III, where it currently resides.²⁰⁴ The bill, if passed, would amend the Planned Community Act and the Condominium Act in North Carolina, and would add new sections allowing for ADR in disputes arising under the Planned Community Act or Condominium Act.²⁰⁵ To use ADR, parties to the dispute would need to agree to resolve the dispute by "any form of binding or nonbinding alternative dispute resolution[.]"²⁰⁶ The

199. See generally Thomas H. Oehmke & Joan M. Brovins, Arbitrating Deadlocks with Shareholders of Members—ADR for Corporations, Condos, Co-ops & Organizations, 117 AM. JUR. TRIALS 391, Sec. 38 (2010); Cal. Civ. Code § 5910 (West 2016).

200. Amy Beasley, *The Road Not Often Taken: Alternative Dispute Resolution for Common Interest Communities in North Carolina*, 30 CAMPBELL L. REV. 315, 327 (January 2008).

201. H.R. 814, 2017 Leg., Reg. Sess. (N.C. 2017); H.R. 595, 201st Gen. Assemb., Reg. Sess. (Penn. 2017); H.R. 5097, 2017 Leg., Reg. Sess. (R.I. 2017).

202. See generally H.B. 814, 2017 Leg., Reg. Sess. (N.C. 2017); H.B. 595, 201st Gen. Assemb., Reg. Sess. (Penn. 2017); H.R. 5097, 2017 Leg., Reg. Sess. (R.I. 2017).

203. H.R. 814, 2017 Leg., Reg. Sess. (N.C. 2017) (status provided by LEXIS bill tracking tool).

204. *Id.*

205. *Id.*

206. H.B. 814, 2017 Leg., Reg. Sess. (N.C. 2017).

bill would require parties who elect to use ADR for disputes under the Planned Community Act or Condominium Act to use mediators certified by the Dispute Resolution Commission.²⁰⁷ Lastly, the bill provides, “[a]n agreement between the parties to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.”²⁰⁸

4. Pennsylvania House Bill 595

Representative Rosemary Brown introduced Pennsylvania House Bill 595 on February 23, 2017.²⁰⁹ The House passed the bill on April 19, 2017.²¹⁰ The bill was then referred to the Senate Committee on Urban Affairs and Housing on April 20, 2017.²¹¹ The bill was sent from the Senate Committee on Urban Affairs and Housing to the Senate, where it was read for the first time on May 24, 2017.²¹² The bill was tabled in the Senate on June 27, 2017.²¹³

This bill, if passed, would establish ADR procedures for certain disputes arising in condominiums, cooperatives, and planned communities in Pennsylvania.²¹⁴ Condominiums, cooperatives, and planned communities established after the effective date of the new bill would be required to adopt bylaws providing for ADR in disputes between two or more unit owners or a unit owner and the association.²¹⁵ Disputes covered by the bill include disputes related to association meetings, quorums, voting and proxies, and association records.²¹⁶ The bill provides that the use of ADR for disputes under the bill would be limited to disputes where all parties agree to ADR.²¹⁷ Costs and fees resulting from ADR, excluding attorney fees, would be assessed equally against all of the parties to the dispute.²¹⁸ The bill would require unit owners to file their complaints through the available ADR procedure prior to filing a complaint with the Bureau of Consumer Protection, unless the association refuses ADR or there is not an available ADR procedure under the association’s declaration.²¹⁹ Additionally, the bill provides that unit owners may file a complaint with the Bureau of Consumer Protection if the ADR procedure is exhausted without reaching a resolution, or 100 days have passed since the commencement of ADR without reaching a resolution.²²⁰

207. *Id.*

208. *Id.*

209. H.R. 595, 201st Gen. Assemb., Reg. Sess. (Penn. 2017) (status provided by LEXIS bill tracking tool).

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. Penn. H.R. 595.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

5. Rhode Island House Bill 5097

Representative Arthur J. Corvese originally introduced Rhode Island House Bill 5097 on January 12, 2017.²²¹ The bill was referred to the House Committee on Judiciary and the Committee recommended passage on April 11, 2017.²²² The bill was amended on the House floor and subsequently passed on April 26, 2017.²²³ On June 8, 2017, the bill was referred to the Senate Committee on Judiciary, where it currently resides.²²⁴

This bill seeks to establish an arbitration process to resolve certain condominium disputes, and require that certain information regarding arbitration be included within the condominium declarations of condominiums in Rhode Island.²²⁵ The disputes covered by the bill would include disagreements between two or more parties that involve the authority of the board of directors to require any owner to take any action, or not take any action, involving that owner's unit, or to alter or add to a common area or element.²²⁶ Other disputes covered by the bill involve the failure of a governing body of a condominium to properly conduct elections or meetings, give adequate notice of meetings or other actions, or allow inspection of records.²²⁷ The bill Specifically provides that disputes over the levy or collection of an assessment, the title of a unit, or eviction of a tenant from a unit, and others, are not covered by the bill.²²⁸ The bill would require all Rhode Island condominium declarations to contain provisions stating any party asserting a dispute may submit the matter to arbitration.²²⁹ The bill also provides for the method of selection of an arbitrator, and some procedural requirements for the arbitration hearing.²³⁰ Under the bill, declarations of condominiums would be required to state that the decision of arbitrators "shall be binding upon the parties," unless either party reserves their right to a trial.²³¹ The bill provides that if the case proceeds to trial subsequent to arbitration, then the decision of the arbitrator is not admissible as evidence.²³²

6. Conclusion

As more Americans opt to live in condominiums, cooperatives, or planned communities, more and more disputes will inevitably occur due to the close quarters involved of these common interest communities. Because litigation is an inefficient method of dispute resolution for disputes arising in common interest communities, and because of the many benefits that ADR can provide, ADR is appropriate for many of these disputes. Due to the reluctance of boards and associations to establish ADR procedures within their bylaws, some states have participated in a trend of establishing ADR procedures for disputes arising in common interest communities.

221. H.R. 5097, 2017 Leg., Reg. Sess. (R.I. 2017) (status provided by LEXIS bill tracking tool).

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. R.I. H.R. 5097.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

The trend of legislation favoring ADR for these types of disputes is apparent in both states with large populations or dense urban areas, such as California and Illinois, and in states with small populations or that do not have densely populated areas, such as Hawaii, Rhode Island, and Utah. As shown by enacted legislation in various states and proposed legislation in North Carolina, Pennsylvania, and Rhode Island, there are many ways a state can choose to establish ADR procedures for disputes in common interest communities within its borders. With the rapidly increasing population of common interest communities, it is likely that more states will follow this trend, and enact legislation that either requires or allows for ADR in various disputes within common interest communities.

E. Mediation and Arbitration for Resolving Out-of-Network Healthcare Billing Disputes

Bill Numbers:	2017 Washington House Bill 2114, 2017 Texas Senate Bill 507
Summary:	These bills implement arbitration and mediation procedures to help protect consumers from out-of-network bills who receive emergency healthcare.
Status:	The Washington House Bill passed House and is currently awaiting the approval of the Senate; The Governor signed the Texas Senate Bill on May 23, 2017 and it is currently enacted.

1. Introduction

Rising healthcare costs have taken the spotlight for many Americans in recent years, from the passage of the Affordable Care Act (ACA) to attempt to alleviate the costs of insurance, to the pledge by President Donald Trump to replace the ACA. Despite more Americans having access to medical insurance, out-of-network billing continues to be a problem for one in five patients who hold current insurance.²³³ The average cost for an out-of-network bill is \$622, but some patients face bills as high as \$19,600.²³⁴ This becomes especially costly for middle class families, because half of all Americans are unable to pay for \$400 in unexpected expenses without borrowing money or selling an asset.²³⁵

These unexpected bills to patients come as a result of emergency services provided by a hospital, because sometimes the doctors operating in the hospital are not in-network for a patient's insurance plan.²³⁶ This can occur even if the hospital the patient chooses for their emergency condition is an in-network provider for their

233. Dan Mangan, *Many Get Hit with Surprise 'Out-of-Network' Bill After Emergency Rooms: Study*, CNBC (Nov. 16, 2016, 5:01 PM), <http://www.cnbc.com/2016/11/16/many-get-hit-with-surprise-out-of-network-bill-after-emergency-rooms-study.html>.

234. *Id.*

235. *Id.*

236. *Id.*

insurance coverage.²³⁷ In a study that looked at 2.2 million in-network emergency room visits, in all 50 states, 22% of those emergency room visits resulted in treatment by an out-of-network doctor.²³⁸ Thus, those who are able to seek emergency treatment at an in-network hospital are often surprised to see their insurance company does not cover all of the services of their visit.²³⁹

In response, states have begun implementing dispute resolution processes to help protect consumers who do experience out-of-network bills for emergency services.²⁴⁰ The legislatures vary from allowing consumers to participate in a mediation or arbitration process, to completely protecting consumers from the bills and requiring the providers and insurance carriers resolve the amount to be paid between themselves using mediation or arbitration.²⁴¹ The explanation below will first briefly discuss dispute resolution legislation being passed to protect consumers around the United States, then focus on the legislation introduced in Texas and Washington.

2. Reactions by Other States and the Federal Government to Protect Consumers from Out-of-Network Charges

Some states, and the Department of Health and Human Services, have begun to address the problem of out-of-network billing.²⁴² The responses range from proposed goals to pass legislation, to the passing of legislation completely insulating the patient from responsibility for charges.²⁴³

a. States Pass Legislation to Protect Patients From Out-of-Network Billing

In light of these challenges, states have begun focusing on protecting consumers against out-of-network charges by medical professionals that are not covered by their insurance.²⁴⁴ Connecticut, Florida, and New York have recently passed legislation to address the issue of patients receiving surprise bills for emergency healthcare from out-of-network providers.²⁴⁵ New York has implemented a law forbidding out-of-network charges to patients who receive services at an in-network hospital.²⁴⁶ However, this still does not prevent out-of-network charges for patients who are seen at an out-of-network hospital for their emergency healthcare needs.²⁴⁷

237. *Id.*

238. *Id.*

239. Mangan, *supra* note 233.

240. See Bills Rogaliner, Seth Rogaliner, & Wendi Rogaliner, *Lawmakers Weigh in as Battle Over Surprise Billing Continues*, ABA Health eSource, Vol 12, No. 9 (May 2016), http://www.americanbar.org/publications/aba_health_esource/2015-2016/may/lawmakers-weigh-in-as-battle-over-surprise-billing-continues-.html.

241. *See id.*

242. *Id.*

243. *See id.*

244. *Id.*

245. *See id.*

246. Mangan, *supra* note 233.

247. *Id.*

The Connecticut legislature passed a bill in 2016 that kept insurance companies from billing patients for out-of-network charges that were higher than their in-network rate.²⁴⁸ This bill was enacted on July 1, 2016.²⁴⁹ This law creates penalties for healthcare providers who attempt to charge a patient more than the network rate for services provided at an in-network hospital.²⁵⁰ It further allows for patients to seek injunctive relief and punitive damages under the Connecticut Unfair Trade Practices Act.²⁵¹ Thus, patients who receive emergency care in Connecticut no longer need to worry if an out-of-network doctor will see them while they receive care at an in-network hospital.

In Florida, the legislature also passed legislation that protects consumers against out-of-network billing by insurance carriers.²⁵² This bill, signed by Governor Rick Scott on April 14, 2016, requires insurers to be liable for the payment of out-of-network providers at in-network hospitals for emergency services.²⁵³ This prevents the patient from ever being liable for the charges, but the law also does not give providers a blank check to bill out-of-network insurance carriers.²⁵⁴ It requires the bill to be determined by one of three factors, allowing the out-of-network provider to choose the highest of those three.²⁵⁵ The provider may bill the Medicare rate for the service provided, the usual and customary rate for the same service in the community, or an amount that is negotiated through the mediation process between the provider and the insurer.²⁵⁶ Failure of a provider to follow this may result in the revocation of the provider's license to practice medicine in Florida.²⁵⁷

b. The Department of Health and Human Services Aims to Protect Patients From Out-of-Network Billing at a Federal Level

The Federal Government has also begun to address the problem of out-of-network bills patients are receiving.²⁵⁸ The budget suggests a legislative proposal to require hospitals to take reasonable steps to insure patients receive in-network providers, and in the event that is not possible, require the providers to accept in-network rates as payment for their services.²⁵⁹ If proposed and enacted by the federal legislature, this would prevent patients from incurring out-of-network bills by having hospitals pair patients with in-network providers, and if that is not possible, by ensuring the patient is not charged more than the in-network rate negotiated by their insurance carrier.²⁶⁰

248. Conn. Pub. Act No. 15-146, Sec. 9.

249. *Id.*

250. *Id.*

251. *Id.*

252. See H.B. 221, 2016 Reg. Sess. (Fla. 2017).

253. *Id.*

254. *Id.*

255. Bills Rogaliner, Seth Rogaliner, & Wendi Rogaliner, *Lawmakers Weigh in as Battle Over Surprise Billing Continues*, ABA Health eSource, Vol 12, No. 9 (May 2016), http://www.americanbar.org/publications/aba_health_esource/2015-2016/may/lawmakers-weigh-in-as-battle-over-surprise-billing-continues-.html.

256. Fla. H.B. 221.

257. *Id.*

258. See U.S. Dep't of Health & Human Servs., Fiscal Year 2017 Budget in Brief 116 (Feb. 8, 2016), <http://www.hhs.gov/sites/default/files/fy2017-budget-in-brief.pdf>.

259. *Id.*

260. *Id.*

c. Out-of-Network Providers Fear They Lose Too Much Leverage to Negotiate With Insurance Companies By The Passage Of This Type of Legislation

The main opposition to these types of bills comes from the providers of health services, doctors.²⁶¹ The providers feel that forcing them to charge in-network rates gives the insurance companies too much power.²⁶² This is because many of the providers may choose not to be part of a particular insurance network because the providers believe the insurance does not allow for a large enough charge for the services they perform.²⁶³ Thus, the bills that require in-network rates be charged to insurance companies and patients for out-of-network emergency care are met with some hostility from providers.

3. Texas and Washington Introduce Bills to Help Patients Deal with Negotiating Out-of-Network Charges with Insurance Companies

In response to these recent studies showing high out-of-network patient charges, Washington and Texas have joined other states by introducing legislation to help consumers mediate the cost of these out-of-network charges with the out-of-network providers.²⁶⁴ The bills are substantially similar, and both aim to give patients tools to negotiate the cost of their out-of-network charges with their insurance company.²⁶⁵

a. Texas Senate Bill 507

Before Texas enacted Senate Bill 507, it passed legislation aimed to help consumers with out-of-network costs in 2009.²⁶⁶ The previous program worked through the Texas Department of Insurance and allowed patients to stay the payment of an out-of-network bill until the hospital and health insurance company could negotiate a payment.²⁶⁷ If an agreement could not be reached, the parties were forced to resort to the litigation process to reach a resolution for the disputed fees.²⁶⁸ As a result, since 2009, the Texas Department of Insurance received just over 1,300 requests from patients for help.²⁶⁹

Further, the bill narrowed the scope of patients who could seek relief by only allowing those who were treated by an enumerated list of doctors (i.e., radiologists,

261. Susan K. Livio, 'Greed' Helped Stall N.J. Bill to Curb Surprise Out-of-Network Medical Costs: Lawmaker, NJ.COM (Dec. 12, 2015), <http://www.northjersey.com/news/bill-to-rein-in-surprise-out-of-network-medical-costs-stalls-in-n-j-senate-1.1472575>.

262. *Id.*

263. *Id.*

264. H.B. 2114, 65th Legis. Sess. (Wash. 2017); S.B. 507, 85th Legis. Sess. (Tex. 2017).

265. *Cf.* H.B. 2114, 65th Legis. Sess. (Wash. 2017); S.B. 507, 85th Legis. Sess. (Tex. 2017).

266. Sabriya Rice, *For Texans with Shocking Medical Charges, Bill That Governor Signed Can't Come Soon Enough*, THE DALLAS MORNING NEWS (May 24, 2017), <https://www.dallasnews.com/business/health-care/2017/05/12/texas-expands-law-help-people-fight-unexpected-medical-bills>.

267. *Id.*

268. *Id.*

269. *Id.*

pathologists, ER doctors, neonatologists, anesthesiologists, and assistant surgeons).²⁷⁰ The previous bill also required that the patient seeking relief be insured through a major medical preferred provider organization plan and the hospital itself had to be in-network for that plan.²⁷¹ It also required the bill in question to be in excess of \$1,000.²⁷² In 2015, Texas passed an amendment that lowered the minimum bill amount requirement to \$500.²⁷³

b. Washington House Bill 2114

In an attempt to give the public more access to relief for out-of-network billing, Senator Kelly Hancock introduced Senate Bill 507 on January, 17 2017.²⁷⁴ The bill passed the Senate on March 28, 2017.²⁷⁵ After passing the Senate, the bill passed the House, with some amendments, on May 4, 2017, and returned to the Senate for concurrence.²⁷⁶ The Senate approved the House amendments on May 11, 2017 and sent it to the governor for his signature.²⁷⁷ Texas Governor Greg Abbott signed the bill on May 23, 2017.²⁷⁸ The bill will take effect September 1, 2017.²⁷⁹

The bill changes the arbitration requirement from arbitration to mediation to help lower the costs for the patient's dispute.²⁸⁰ It also expands the reach of the program to include those individuals who are enrolled in the Teacher Retirement System health plan and the self-funded TRS-ActiveCare program.²⁸¹ Further, the bill allows patients who receive emergency care at an out-of-network hospital to also take advantage of governmental help by sending information of their bill to the Insurance Commission of Texas and having the Commission assist them in settling the bill dispute.²⁸² The biggest drawback of the bill is that it only applies to plans regulated by the Texas Department of Insurance.²⁸³ This leaves patients on federal insurance plans, such as Medicare or Medicaid, unable to make use of the protections available in Senate Bill 507.²⁸⁴

b. Washington House Bill 2114

In an attempt to help citizens of Washington avoid the surprise of out-of-network bills, House Democrat Eileen Cody introduced House Bill 2114 to the Washington House of Representatives on February 15, 2017.²⁸⁵ The House approved the

270. *Id.*

271. *Id.*

272. Rice, *supra* note 266.

273. *Id.*

274. S.B. 507, 85th Legis. Sess. (Tex. 2017).

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. Tex. S.B. 507.

281. Rice, *supra* note 266.

282. *Id.*

283. *Id.*

284. *Id.*

285. H.B. 2114, 65th Legis. Sess. (Wash. 2017).

bill 81 to 17 on March 6, 2017.²⁸⁶ Currently, the bill is awaiting approval from the Senate, but the legislative outlook states it has a high chance of passing.²⁸⁷

The Washington State Medical Association opposes the bill, because they believe the Insurance Commissioner could solve the situation by enforcing existing laws.²⁸⁸ The President of that association, Dr. John Matheson, believes providers should not give up the right to bill for services provided.²⁸⁹ The main fear among healthcare providers is that they will not be able to seek proper compensation for their services from the out-of-network insurance company.²⁹⁰ However, the current laws still leave consumers without direct protections from balance billing.²⁹¹ The insurance commissioner of the state has the ability to negotiate with insurance companies on behalf of the consumer, but this approach is not always effective at reaching a solution for the consumer and insurance carrier.²⁹² The approach can be seen to be failing as Washington has reported an increase number of consumer complaints to the insurance commission about out-of-network billing.²⁹³ Thus, the insurance commission and the legislature seeks to provide greater protections to consumers.²⁹⁴

The bill takes protection for consumers a step further than existing laws and completely removes them from the billing equation.²⁹⁵ Instead, the provider and the insurance carrier must come to a solution about the out-of-network bill, rather than just charging the consumer the remaining balance.²⁹⁶ If the provider and insurance carrier are unable to reach a settlement, then the bill mandates arbitration for the parties.²⁹⁷ The arbitrator must determine (1) whether there is a gross disparity between the cost requested by the provider and the amount normally paid for the same service by the insurance carrier; (2) any unique circumstances with the emergency care provided; and (3) unique patient characteristics to be considered for that particular patient's emergency care.²⁹⁸ Either party filing a request with the Washington Insurance Commissioner can commence the arbitration.²⁹⁹

4. Conclusion

Despite hiding in the shadows behind the Affordable Care Act's objective of giving all Americans an opportunity to have health insurance, out-of-network billing is surprising patients who receive emergency treatment from an out-of-network

286. *Id.*

287. *Id.*

288. JoNel Aleccia, *Insurance Commissioner Targets ER's 'Surprise' Medical Bills*, THE SEATTLE TIMES (Jan. 19, 2016), <http://www.seattletimes.com/seattle-news/health/insurance-commissioner-targets-ers-surprise-medical-bills/>.

289. *Id.*

290. *Id.*

291. Kevin Lucia, Jack Hoadley, & Ashley Williams, *Assessing Consumer Protection Across States*, THE COMMONWEALTH FUND (June 2017), <http://www.commonwealth.Fund.org/publications/issue-briefs/2017/jun/balance-billing-consumer-protections-states###17>.

292. *Id.*

293. *Id.*

294. *Id.*

295. Aleccia, *supra* note 288.

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

doctor. Several states are beginning to protect consumers from thousands of dollars in unexpected emergency bills, by enacting legislation that gives consumers power to negotiate, or completely shields them from liability. These new laws seek to protect patients at a time they are vulnerable from medical issues requiring emergency treatment, and possibly facing financial ruin from out-of-network billing at the same time. Further, these new laws will help supplement the national healthcare programs by ensuring patients do not become bankrupt from one emergency medical situation.

II. HIGHLIGHTS

A. Alabama House Bill 250

On February 2, 2017, Representative Chris Sells (R) of District 90 of Alabama introduced House Bill 250 in the 2017 legislative session.³⁰⁰ The bill, which introduced the Emergency Medical Services Personnel Licensure Interstate Compact in the state of Alabama, passed the House with amendment, and then passed the Senate.³⁰¹ The bill was subsequently signed by the Governor and enacted on May 24, 2017.³⁰² The Compact provides reciprocity among its member states on matters relating to discipline and conditions of practice of emergency medical personnel (EMS), and makes Alabama a member of the Interstate Commission for EMS Personnel Practice.³⁰³

In order to protect the public through verification of competency and assurance of accountability for activities related to patient care, the state (and all member states of the Compact) licenses EMS personnel, such as emergency medical technicians (EMTs), advanced EMTs, and paramedics.³⁰⁴ The Compact recognizes that member states have a vested interest in protecting the public's health and safety through their licensing and regulation of EMS personnel. It is intended to facilitate the day-to-day movement of EMS personnel across state boundaries in the performance of their EMS duties.³⁰⁵ Further, with the enactment of the Compact, Alabama allows EMS personnel from fellow Compact-states to practice in Alabama in limited circumstances without a state license.³⁰⁶ In accordance with the Compact, the Interstate Commission for EMS Personnel Practice is required to promulgate a rule providing for mediation, or other binding dispute resolution, for disputes among member states and between member and nonmember states.³⁰⁷

300. H.B. 250, 2017 Leg. Sess. (Ala. 2017).

301. *Id.* (review of LEXIS bill tracking).

302. *Id.* Upon enactment, H.B. 250 was enacted as ALA. CODE § 22-18-50 (2017).

303. Ala. H.B. 250.

304. *Id.*

305. *Id.* The Compact is designed to achieve the following purposes and objectives:

(1) [i]ncrease public access to EMS personnel; (2) [e]nhance the states' ability to protect the health and safety, especially patient safety; (3) [e]ncourage the cooperation of member states in the area of EMS personnel licensure and regulation; (4) [s]upport licensing of military members who are separating from an active duty tour and their SPouses; (5) [f]acilitate the exchange of information between member states regarding EMS personnel licensure, adverse action, and significant investigatory information; (6) [p]romote compliance with the laws governing EMS personnel practice in each member state; and (7) [i]nvest all member states with the authority to hold EMS personnel accountable through the mutual recognition member state licenses.

306. *Id.*

307. Ala. H.B. 250, sec. 13(C)(2).

B. Arizona Senate Bill 1441

Senator Debbie Lesko (R) introduced Arizona Senate Bill 1441 on January 30, 2017.³⁰⁸ Before being passed by the Senate as a whole, the bill was sent to, and amended by, both the Senate Committee on Rules and Senate Committee on Finance.³⁰⁹ Likewise, before being passed by the House, Senate Bill 1441 was sent to, and amended by, the House Committee on Banking and Insurance and the House Committee on Rules.³¹⁰ Finally, after the Senate concurred in the House's amendments, the bill was signed by the Governor and passed into law on April 24, 2017.³¹¹ The bill mandates arbitration for disputes relating to balance bills from out-of-network health care providers.³¹²

The scope of the bill encompasses any balance bill³¹³ from an out-of-network health care provider, either issued directly from the provider or through a billing company, that seeks payment from an enrollee of a health insurance plan for payment of covered health care services performed in a network facility.³¹⁴ The bill provides for mandatory arbitration, in which the health care provider and the health insurer must participate, for health insurance plan enrollee's who have received a balance bill and who dispute the amount of such balance bill.³¹⁵ The bill provides guidelines and rules for conducting the arbitration proceedings.³¹⁶

C. Iowa House File 291

Iowa House File 291 was introduced on February 9, 2017 by the Committee on Labor in the Iowa House of Representatives as a companion to Senate File 213, which was introduced by Republican Senator Jason Schultz.³¹⁷ House File 291 was fast-tracked through both legislative chambers, with the vast majority of nearly 80 proposed amendments failing.³¹⁸ Governor Terry Branstad signed it into law on February 17, 2017.³¹⁹ The law makes sweeping changes to Iowa Code Chapter 20, the Public Employment Relations Act, and other Iowa Code provisions relating to collective bargaining by public employees.³²⁰ In particular, the law changes procedures for arbitration of impasses in collective bargaining, including the factors an

308. S.B. 1441, 53rd Leg., Reg. Sess. (Ariz. 2017).

309. *Id.* (review of LEXIS bill tracking).

310. *Id.*

311. *Id.*

312. Ariz. S.B. 1441.

313. A "balance bill" is "any bill for health care services or durable medical equipment from a health care provider that seeks payment from an enrollee in excess of the enrollee's cost sharing requirements."
Id.

314. *Id.*

315. *Id.* An enrollee may seek arbitration of the balance bill dispute if all of the following apply:
(1) The amount of the balance bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple balance bills, after application of the enrollee's cost sharing requirements, including the amount unpaid by the health insurer, is at least one thousand dollars.

(2) The balance bill is for health care services provided in a network facility by a health care provider that is not a contracted provider.

316. *Id.*

317. H.F. 291, 87th Gen. Assemb., Reg. Sess. (Iowa 2017) (status provided by LEXIS bill tracking).

318. *Id.*

319. *Id.*

320. *Id.*

arbitrator is required to consider in making a final determination on an impasse item.³²¹ Previously, an arbitrator considering a wage impasse would consider the final offers of the union and management, and choose one of the two.³²² There was no financial cap on the arbitration award, and an arbitrator could consider past collective bargaining agreements, interests and welfare of the public, and the power of the public employer to levy taxes and appropriate funds.³²³ The arbitrator could also compare wages, hours and conditions of employment with other public employees doing comparable work. Under the new law, an arbitrator's award is restricted to the final offers, but the award cannot exceed whichever is lower: three percent, or a percent equal to the cost of living increase outlined in the consumer price index.³²⁴ Further, arbitrators can no longer consider past collective bargaining agreements or the power of the public employer to increase or impose new taxes, fees or charges.³²⁵ Under the new law, arbitrators must consider the financial ability of the employer to meet the cost of an offer in light of economic conditions.³²⁶ The new law significantly curtails the rights of public sector employees and their unions.

D. Illinois Senate Bill 1305

Republican Senator Michael Connelly introduced Illinois Senate Bill 1305 in the Illinois State Senate on February 9, 2017.³²⁷ The bill was assigned to the Labor Committee on February 15, 2017 and assigned to the Subcommittee on special Issues on March 1, 2017.³²⁸ It was subsequently re-referred to the Assignments Committee on May 5, 2017, where it remains.³²⁹ The bill would amend the Illinois Public Labor Relations Act.³³⁰ In particular, it would require an arbitration panel to fully consider certain statutory factors upon which it must base its findings, opinions, and orders during the dispute of a new or amended security labor agreement's wage rates or other employment conditions.³³¹ The bill specifies the bases for the statutory factor of the unit of government's financial ability to meet costs, and would require arbitrators to "fully consider and base its findings, opinions and order upon" upon factors including the interests and welfare of the public and the financial ability of the government to meet costs based upon current tax levels and budget considerations, including (1) current budget shortfalls, (2) pension funding obligations, (3) increased benefit costs, and (4) proportionality of last wage increases to proposed budgetary considerations.³³² Further, the arbitrator may not consider the ability of the unit of government to increase tax levels.³³³ The bill was introduced in the context of intense state budget deliberations.

321. *Id.*

322. *Id.*

323. Iowa H.F. 291.

324. *Id.*

325. *Id.*

326. *Id.*

327. S.B. 1305, 100th Gen. Assemb., Reg. Sess. (Ill. 2017) (status provided by LEXIS bill tracking).

328. *Id.*

329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. Ill. S.B. 1305.

E. Minnesota House File 1538

Representatives Dennis Smith, Peggy Scott, Raymond Dehn, and Michael Nelson introduced the bill in the Minnesota House of Representatives Ninetieth Session with bipartisan support.³³⁴ On February 22, 2017, the bill was read for the first time and was then referred to the Committee on Civil Law and Data Practices Policy.³³⁵ Representative Cindy Pugh was added as an author of the bill on March 2, 2017.³³⁶ The Minnesota House of Representatives passed the bill on April 27, 2017.³³⁷ It was sent to the Senate where it was sent back to the House with amendments and the bill was repassed as amended by the Senate on May 20, 2017.³³⁸ Governor Mark Dayton approved the bill on May 30, 2017.³³⁹ The act is effective August 1, 2017.³⁴⁰

The bill alters the Minnesota Common Interest Ownership Act to include provisions regarding construction defect claims.³⁴¹ “Construction defect claims” are civil actions brought for damages resulting from a defect in the initial design or construction of an improvement to real property; claims relating to subsequent maintenance or repairs are not classified “construction defect claims.”³⁴² The bill requires parties to submit their claim to a mutually agreeable neutral third party for mediation as condition precedent to a construction defect claim.³⁴³ However, mediation will not be required if the parties have completed home warranty dispute resolution under Minnesota Section 327A.051.³⁴⁴

F. New Jersey Senate No. 602

Senators Sandra B. Cunningham, Thomas H. Kean Jr, Jamel C. Holley, and Nicholas Chiaravalloti were primary sponsors and Joann Downey was a co-sponsor of this bill.³⁴⁵ The senators introduced this bill on January 12, 2016, and it was then referred to the Senate Commerce Committee.³⁴⁶ The Senate unanimously passed it on September 15, 2016.³⁴⁷ The House of Representatives had an identical bill, which replaced the Senate bill and was passed by both houses on December 19, 2016.³⁴⁸ Governor Chris Christie approved the bill on February 6, 2017.³⁴⁹

The bill aims to facilitate disputes regarding international trade through arbitration, mediation, and conciliation.³⁵⁰ Disputes involving nonresidents of the

334. H.F. 1538, 90th Leg., Reg. Sess. (Minn. 2017).

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. Minn. H.F. 1538.

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. N.J. State Leg., S602 Sca (1R) “New Jersey International Arbitration, Mediation, and Conciliation Act.,” <http://www.njleg.state.nj.us/bills/BillView.asp>.

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. New Jersey International Arbitration, Mediation, and Conciliation Act, ch. 1, 602 N.J. Sess. Law Serv. (2016).

United States, property located outside the United States, and contracts performed outside the United States are included in this act.³⁵¹ The act does not require arbitration for matters involving real property located in New Jersey or family law.³⁵² Arbitration centers are given the authority to create their own rules and procedures and are not considered a State department.³⁵³ An arbitration tribunal established in this act has the power to subpoena any person to appear as a witness and to bring documents; if this individual refuses to attend, the tribunal has the authority to compel that person to appear or they would be held in contempt.³⁵⁴ Arbitral awards are enforceable pursuant to this act and the Federal Arbitration Act.³⁵⁵

G. Ohio House Bill 128³⁵⁶

Representative Kristina Roegner introduced this bill, amending Chapter 3781 of the Revised Code of Ohio governing Building Standards, on March 14, 2017.³⁵⁷ The bill was referred to the House Committee on Economic Development, Commerce, and Labor on March 21, 2017.³⁵⁸ The intended purpose of this bill is to establish an inspection process for residential and nonresidential building construction projects,³⁵⁹ and an expedited arbitration process in which an owner or general contractor of a residential or nonresidential building construction project may appeal the results of an inspection.³⁶⁰ The bill provides that the arbitration hearing regarding an appeal of the inspection results shall be conducted within 24 hours of the owner or general contractor's request.³⁶¹ The bill also provides that the appeal may be heard via conference call.³⁶² The expedited arbitration process allows the arbitrator to overrule the inspector's decision upon a showing by the party requesting arbitration that there was malicious purpose in the inspection results by the inspector and that the delay in building will cause irreparable harm.³⁶³ If the arbitrator does not overrule the inspector's decision, then the dispute moves to the existing appeals system for inspection results.³⁶⁴ The bill continues to reside in the House Committee on Economic Development, Commerce, and Labor.³⁶⁵

351. *Id.*

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. H.R. 128, 132nd Gen. Assemb., Reg. Sess. (Ohio 2017).

357. *Id.*

358. *Id.*

359. *Id.* at § 3781.181.

360. *Id.* at § 3781.182.

361. *Id.*

362. Ohio H.R. 128.

363. *Id.*

364. *Id.*

365. *Id.*

*H. Pennsylvania House Bill 595*³⁶⁶

Representative Rosemary Brown introduced this amendment to Title 68 of the Pennsylvania Consolidated Statutes governing real and personal property on February 23, 2017.³⁶⁷ The bill passed the House on April 19, 2017, and was referred to the Senate Committee on Urban Affairs and Housing on April 20, 2017.³⁶⁸ The bill was sent from the Senate Committee on Urban Affairs and Housing to the Senate on May 24, 2017.³⁶⁹ The bill was tabled in the Senate on June 27, 2017.³⁷⁰ This bill would establish alternative dispute resolution procedures for certain disputes arising in condominiums, cooperatives, and planned communities.³⁷¹ Condominiums, cooperatives, and planned communities that are established after the effective date of the new sections set forth by the bill would be required to adopt bylaws that provide for alternative dispute resolution for disputes between two or more unit owners or a unit owner and the association.³⁷² This bill would require unit owners to file complaints through the available alternative dispute resolution procedure before filing a complaint with the Bureau of Consumer Protection unless the association refuses alternative dispute resolution or there is not an available alternative dispute resolution procedure under the association's declaration.³⁷³ The bill awaits a vote in the Senate.³⁷⁴

I. Texas House Bill 72

Republican representative Mark Keough authored and introduced this bill allowing for mediation of criminal acts between the victim, the prosecutor, and the perpetrator.³⁷⁵ The bill passed the House with a 135-10 vote.³⁷⁶ After passing, the bill went to the Texas Judicial Committee for review.³⁷⁷

The bill allows for individuals charged with a first-time property offense in Texas to participate in victim-offender mediation.³⁷⁸ The defendant would be required to apologize, compensate the victim, and perform community service in lieu of going to trial and possibly being assessed criminal penalties.³⁷⁹ Studies have shown this type of victim-offender mediation has reduced recidivism.³⁸⁰ This process would also allow the defendant to possibly obtain an order of non-disclosure,

366. H.R. 595, 201st Gen. Assemb., Reg. Sess. (Penn. 2017).

367. *Id.*

368. *Id.*

369. *Id.*

370. *Id.*

371. *Id.*

372. Penn. H.R. 595.

373. *Id.*

374. *Id.*

375. H.R. 72, 2017 Reg. Sess. (Tex. 2017) (status provided by LEXIS Tracking report).

376. *Id.*

377. *Id.*

378. *Id.*

379. *Id.*

380. Haley Stevens, Fact Sheet 2017 H.B. 72, <https://www.texasjc.org/system/files/publications/H.B.%2072%20Fact%20Sheet%20%28Victim-Offender%20Mediation%29.pdf>.

limiting the ability of future employers to know about the defendant's criminal history.³⁸¹ The bill is awaiting Judicial Committee review.³⁸²

J. Washington Senate Bill 5075

Washington - 2017 S.B. 5075

Democrat Senator Dean Takko introduced this bill relating to seed disputes on January 11, 2017.³⁸³ The bill changes the requirement of non-binding arbitration for seed disputes before litigation can proceed to non-binding mediation for disputes greater than 2,000 dollars.³⁸⁴ The goal is reducing the cost of seed dispute litigation, because of high arbitration costs under the previous law.³⁸⁵ Costs are high because of the experts required to testify during the arbitration process.³⁸⁶ If the non-binding arbitration did not result in an agreement, experts must be paid again at trial.³⁸⁷ The mediation process will not require an expert to opine about the seed dispute.³⁸⁸ After being introduced, the bill passed both the Senate and the House.³⁸⁹ On April 11, 2017, Governor Ingress signed the bill.³⁹⁰ The bill will become effective on July 23, 2017.³⁹¹

III. CATALOG OF STATE LEGISLATION

ALABAMA

Bills Enacted: 2017 H.B. 250 (requires the Interstate Emergency Medical Services Personnel Licensure Commission to promulgate rules providing for mediation and other binding dispute resolution).

Bills Pending: None.

ALASKA

Bills Enacted: None.

Bills Pending: 2017 H.B. 244 (authorizes employers and employees to mediate disputed workers' compensation claims).

381. *Id.*

382. H.R. 72, 2017 Reg. Sess. (Tex. 2017) (status provided by LEXIS Tracking report).

383. S.B. 5075, 2016 Reg. Sess. (Wash. 2017) (status provided by LEXIS Tracking report).

384. *Id.*

385. Karen Epps, Senate Bill Report 5075, <http://lawfilesexternal.leg.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/5075%20S.B.A%20AWTE%2017.pdf>.

386. *Id.*

387. *Id.*

388. *Id.*

389. S.B. 5075, 2016 Reg. Sess. (Wash. 2017) (status provided by LEXIS Tracking report).

390. *Id.*

391. *Id.*

ARIZONA

Bills Enacted: 2017 S.B. 1441 (creates a dispute resolution process for out-of-network insurance claim disputes); 2017 S.B. 1107 (allows for dispute resolution to determine permanent guardianship, in some circumstances); 2017 S.B. 1406 (encourages the use of alternative dispute resolution for claims relating to failure to make public accommodations); 2017 S.B. 1099 (requires a dispute resolution process to be included in agreements between a school district and law enforcement agency servicing the school).

Bills Pending: None.

ARKANSAS

Bills Enacted: 2017 Ark. H.B. 2055 (provides a non-binding mediation process for employees terminated in violation of the Arkansas Whistle-Blower Act); 2017 Ark. S.B. 78 (requires Interstate Medical Licensure Commission to promulgate rules providing for both mediation and binding dispute resolution); 2017 Ark. S.B. 763 (allows a non-profit organization to represent itself, in its own name, in an alternative dispute resolution proceeding); 2017 H.B. 1482 (requires the Interstate Nurse Licensure Commission to promulgate rules providing for mediation and binding dispute resolution); 2017 S.B. 611 (calls for a hearing panel or arbitration for disputes concerning a physician under investigation); 2017 S.J.R. 8 (limits the maximum possible contingency available to a lawyer in civil action (including arbitration) to 33.33% of the net recovery); 2017 H.B. 1613 (exempts long-term care ombudsman from the statutory reporting requirements for adult maltreatment).

Bills Pending: None.

CALIFORNIA

Bills Enacted: 2017 A.B. 626 (requires disputed construction claims of public contracts to be decided in mediation).

Bills Pending: 2017 A.B. 1428 (authorizes an agency or department employing peace officers to establish a mediation program for biased policing disputes); 2017 S.B. 217 (makes communications made, disclosed, and prepared for mediation admissible as evidence); 2017 A.B. 1692 (requires courts to order mediation for disputes in which custody or visitation appear contested); 2017 S.B. 76 (permits excluded employees to initiate arbitration for certain employee grievances); 2017 S.B. 33 (allows courts to refrain from enforcing an arbitration agreement if certain circumstances are met, including the existence of a fraudulent relationship with a financial institution); 2017 S.B. 1007 (allows a short-hand reporter to create official transcript record of arbitration proceedings); 2017 A.B. 1017 (amends Sec. 1128 of Labor Code to extend to public employment; prohibits the cost of attorney's fees to be passed along to an employee in a dispute against a party to a Collective Bargaining Agreement); 2017 S.B. 538 (prohibits contracts between hospitals and contract-

ing agents to require alternative dispute resolution); 2017 S.B. 713 (provides qualifications for third party dispute resolution process, including arbitration/arbitrator requirements); 2017 A.B. 748 (requires an arbitration provision in a time-share plan management agreement); 2017 S.B. 766 (permits a qualified lawyer to provide legal services in international commercial arbitration or alternative dispute resolution if certain conditions are met).

COLORADO

Bills Enacted: 2017 H.B. 1177 (allows for mediation of disputes arising from claim of violation of the Colorado Open Records Act); 2017 S.B. 88 (provides that the Commissioner of Insurance shall not mediate, arbitrate, or settle decisions not to include a health care provider in a network).

Bills Pending: None.

CONNECTICUT

Bills Enacted: None.

Bills Pending: 2017 H.B. 7135 (adopts the Revised Uniform Arbitration Act to respond to the increased use of arbitration and revise and modernize arbitration procedures).

DELAWARE

Bills Enacted: 2015 S.B. 207 (creates the Office of School Criminal Offense Ombudsman); 2017 S.B. 59 (requires the Interstate Nurse Licensure Commission to promulgate rules providing for both mediation and binding dispute resolution).

Bills Pending: 2017 S.B. 35 (requires the Interstate Emergency Medical Services Personnel Licensure Commission to promulgate rules providing for both mediation and binding dispute resolution); 2017 H.B. 25, sec. 64 (permits the Office of Management and Budget (OMB) Director to implement mediation procedure and promulgate rules for grievances).

FLORIDA

Bills Enacted: 2017 H.B. 1237 (requires mandatory nonbinding arbitration and voluntary mediation for disputes arising under The Division of Florida Condominium, Timeshares, and Mobile Homes); 2017 H.B. 7069 (requires the Department of Education to provide mediation services for disputes arising out of the charter school contract approval process).

Bills Pending: None.

GEORGIA

Bills Enacted: 2017 S.B. 109 (requires the Interstate Emergency Medical Services Personnel Licensure Commission to promulgate rules providing for both mediation and binding dispute resolution); 2017 H.B. 221 (grants a person acting as Power of Attorney the authority to initiate or enter into alternative dispute resolution processes for disputes relating to commerce and trade).

Bills Pending: 2017 H.B. 321 (permits a court to order mediation for de facto guardian visitation rights; permits arbitration for such hearings when a guardian is deployed); 2017 H.B. 497 (same as H.B. 321, but for delinquency); 2017 H.B. 159 (establishes that a court may order mediation for post-adoption contact agreement disputes); 2017 H.B. 402 (requires the Interstate Nurse Licensure Commission to promulgate rules providing for both mediation and binding dispute resolution); 2017 H.B. 637 (requires the Interstate Medical Licensure Commission to promulgate rules providing for both mediation and binding dispute resolution); 2017 H.B. 374 (permits a taxpayer to arbitrate an appeal of an assessment to property); 2017 S.B. 60 (provides for arbitration of certain disputes between employers and employees (ex. sex discrimination, wages)); 2017 S.B. 8 (promulgates independent dispute resolution procedures for disputes arising out of “surprise” medical billings).

HAWAII

Bills Enacted: 2017 H.B. 1235 (authorizes the use of arbitration to resolve certain family law disputes, and specifies law applicable to arbitrations); 2017 S.B. 314 (clarifies provisions relating to required disclosures by arbitrators).

Bills Pending: 2017 H.B. 1499 (amends the conditions that mandate mediation and exceptions to mandatory mediation); 2017 S.B. 121 (broadens the scope of condominium related disputes for which an apartment owner or the board of directors can mandate mediation); 2017 H.B. 649 (allows unit owners in planned community associations and condominium associations to withhold legal fees from assessments claimed by associations pending decision in any mediation, arbitration, or court proceeding in which the owner has filed for a determination of the validity of the amounts and attorney’s fees claimed by the association); 2017 S.B. 201 (clarifies the dispute resolution process, including payment obligations and mediation requirements); S.B. 1177 (requires that disputes between the association and parcel owners or between two or more parcel owners regarding the common interest agricultural community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding); 2017 H.B. 810 (allows collective bargaining parties to resolve impasses related to contribution disputes through binding arbitration); 2017 H.B. 468 (establishes collective bargaining unit for employees with the Hawaii Health Systems Corporation); 2017 H.B. 1565 (establishes science and technology research subzones and an approval process for future research facilities that incorporates alternative dispute resolution principles); 2017 H.B. 164 (clarifies laws regarding an arbitrator’s failure to disclose certain facts prior to or during arbitration); 2017 H.B. 1234 (clarifies provisions relating to required disclosures by arbitrators); 2017 H.B. 1285 (requires all arbitrators to disclose known, direct, and material financial or personal interests; authorizes a court

to vacate an arbitration award if that arbitrator failed to make a proper disclosure); 2017 S.B. 165 (creates the Condominium Dispute Resolution Commission to address disputes between a condominium owner and condominium association); 2017 H.B. 860 (provides that actions for quiet title of kuleana lands shall be subject to mandatory mediation).

IDAHO

Bills Enacted: 2017 H.B. 230 (revises provisions relating to procedures associated with depredation claims); 2017 H.B. 101 (provides that a jurisdiction may not be recognized as a qualified jurisdiction if the director has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards).

Bills Pending: 2017 S.B. 1007 (provides that the Board may require mediation of disputes between professional land surveyors); 2017 H.B. 94 (provides that no court or arbitrator shall interpret certain statutory provisions to limit the right of any person to the free exercise of religion as guaranteed by the First Amendment to the Constitution of the United States and Section 4, Article I, of the Constitution of the State of Idaho).

ILLINOIS

Bills Enacted: 2017 H.B. 2618 (for parties who agree not to use mediation during a challenge, provides that a parent shall have 10 days after a party declines to use mediation to file a request for a due process hearing); 2017 S.B. 1444 (repeals provisions concerning arbitration of physical damage subrogation claims arising from automobile disputes); 2017 S.B. 67 (creates the Collaborative Process Act concerning alternative dispute resolution).

Bills Pending: 2017 H.B. 448 (provides that if a unit of local government, as an employer, and public employees provide for arbitration of impasses, the employer's financial ability to fund the proposals based on existing available resources shall be given primary consideration, subject to certain conditions); 2017 S.B. 1954 (removes language concerning impasse procedures involving an educational employer whose territorial boundaries are coterminous with those of a city having a population in excess of 500,000); 2017 S.B. 2196 (amends provisions concerning interest arbitration for security employee, peace officer, and fire fighter disputes); 2017 S.B. 1305 (requires an arbitration panel to fully consider the statutory factors upon which it must base its findings, opinions, and orders during the dispute of a new or amended security labor agreement's wage rates or other employment conditions, and specifies the bases for the statutory factor of the unit of government's financial ability to meet costs); 2017 H.B. 238 (amends the Nursing Home Care Act; provides that a facility must not enter into a pre-dispute agreement for binding arbitration with any resident or consumer); 2017 S.B. 983 (creates the Limitations on Forced Arbitration Act); 2017 S.B. 1646 (provides that no policy which provides underinsured motor vehicle coverage shall be renewed, delivered, or issued for delivery unless it provides that any dispute with respect to the coverage and the

amount of damages shall be submitted for arbitration to the American Arbitration Association); 2017 S.B. 640 (provides that arbitrator or Commission may correct a clerical error or error in computation within 21 (instead of 15) days after date of receipt of an award); 2017 H.B. 2544 (amends the Nursing Home Care Act; provides that for informal dispute resolution under the Act, if the Department of Public Health determines that the submitted evidence or arguments were insufficient to refute either the State's informal dispute resolution findings or federal informal dispute resolution deficiencies, the Department shall provide a detailed written explanation of the reasons for such determination); 2017 S.B. 311 (makes technical change in Illinois Insurance code concerning arbitration of medical malpractice disputes); 2017 H.B. 332 (requires a school authority or its employees, agents, volunteers, or students to arbitrate any dispute arising out of or otherwise connected to student data).

INDIANA

Bills Enacted: 2017 S.B. 478 (establishes a framework for resolving disputes between electricity suppliers and property owners).

Bills Pending: 2017 H.B. 1593 (requires that before a malpractice or disciplinary action against an attorney may proceed, the complaint by the client against the attorney must be submitted to mediation); 2017 S.B. 531 (amends timelines for an impasse to be declared and for certain mediation requirements).

IOWA

Bills Enacted: 2017 H.F. 291 (revises arbitration in collective bargaining); 2017 S.F. 401 (establishes that in a criminal action arising from sexual abuse, the prosecuting attorney or court shall not refer or order the parties involved to participate in mediation or other nonjudicial procedures prior to judicial resolution of the action).

Bills Pending: 2017 H.F. 402 (requires that a project labor agreement set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement); 2017 S.F. 465 (establishes that all communications made related to the open discussion between health care provider and patient are privileged and confidential, are not subject to discovery or subpoena, and are not admissible in evidence in a judicial, administrative, or arbitration proceeding).

KANSAS

Bills Enacted: None.

Bills Pending: 2017 H.B. 2186 (enacts the Uniform Arbitration Act of 2000).

KENTUCKY

Bills Enacted: 2017 H.B. 520 (requires process by which the school will resolve any disputes with the public school charter authorizer).

Bills Pending: 2017 H.B. 525 (creates a citizens' commission on judicial compensation, which would look at comparable service performed in private sector, "including arbitration and mediation"); 2017 H.B. 446 (amends teachers' retirement provisions, specifically KRS 161.614 (court-ordered back salary and reinstatement), to include mediation awards); 2017 H.B. 40 (provides that a court, arbitrator, administrative agency, or other adjudicative body or authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of Kentucky or of the United States).

LOUISIANA

Bills Enacted: 2017 H.B. 492 (provides that for all adverse determinations related to claims filed on or after January 1, 2018, the state shall not mandate that the provider and managed care organization resolve the claim payment dispute through arbitration).

Bills Pending: None.

MAINE

Bills Enacted: None.

Bills Pending: 2017 S.P. 466 (amends the labor relations laws governing municipal public employees and University of Maine System employees to provide that determinations by arbitrators with respect to controversies over all subjects, including salaries, pensions and insurance, are final and binding on the parties); 2017 H.P. 848 (clarifies the law regarding arbitration policy with respect to executive and legislative branch employees); 2017 S.P. 295 (seeks to establish mediation process between milk producers and auditors of organic certification).

MARYLAND

Bills Enacted: 2017 H.B. 456 (requires that the State Department of Education develop a dispute resolution process to be used by families of children with disabilities and child care providers for resolving complaints of discrimination based on a child's disability); 2017 S.B. 760 (alters certain procedures for suspending or dismissing certain public school personnel; authorizing certain public school personnel to request arbitration under certain circumstances; specifying the procedures for arbitration; assigning responsibility for certain costs; providing that an arbitrator's award is final and binding on the parties, subject to review by a circuit court).

Bills Pending: None.

MASSACHUSETTS

Bills Enacted: None.

Bills Pending: 2017 S.B. 500 (establishes a Foreclosure Mediation Program and details mediation process); 2017 S.B. 743 (appoints members of commission to conduct a mediation between parties in a disputes regarding manufactured housing); 2017 S.B. 92 (provides procedures for mediation of disputes if parties consent to mediation for zoning appeals); 2017 S.B. 614 (establishes that the Attorney General may appoint an impartial mediator for disputes between insurers and providers of mental/behavioral health services); 2017 S.B. 1399 (provides that if an impasse between public employee unions and the government employer continues for more than 30 days, either party and petition the Labor Relations board to order arbitration); 2017 H.B. 1385 (establishes procedures for arbitration for fire fighters and police officers); 2017 H.B. 50 (requires giving a prospective party information regarding ADR); 2017 S.B. 409 (provides that disputed issues regarding pesticide agreements will be submitted to binding arbitration); 2017 H.B. 183 (provides that disputes regarding supplier-wholesaler relationship shall be determined by binding arbitration); 2017 H.B. 479 (provides for binding arbitration to decide amount loss occurred in automobile insurance disputes); 2017 H.B. 1001 (inserts provision for arbitration regarding labor relations for public employees); 2017 H.B. 2823 (requires arbitration for unresolved disputes between emerging breweries and affected wholesalers who cannot agree on compensation); 2017 H.B. 2822 (requires arbitration for unresolved disputes between successor suppliers and affected wholesalers who cannot agree on compensation); 2017 H.B. 48 (revises the procedures of the Uniform Arbitration Act); 2017 H.B. 474 (establishes that disputed issue regarding vegetation management can go to binding arbitration); 2017 H.B. 233 (provides that teachers can request arbitration to evaluate termination); 2017 S.B. 279 (establishes that teachers/school can petition for arbitration if negotiations have been unsuccessful); 2017 H.B. 304 (establishes that either party can request arbitration for disputes regarding collective bargaining agreements and implementing the Innovation Partnership Zone plan); 2017 H.B. 1444 (provides that arbitrator will review whether terminated firefighter candidate was rightly terminated, arbitrator can order reexamination of candidate); 2017 H.B. 157 (establishes that companies forcing arbitration on consumers is against public policy); 2017 S.B. 2062 (provides that internet service provider shall not require binding arbitration under this chapter).

MICHIGAN

Bills Enacted: None.

Bills Pending: 2017 H.B. 4399 (provides mediation of grievances for certain public employees); 2017 H.B. 4632 (establishes that Interstate Commission shall provide mediation and binding dispute resolution); 2017 H.B. 4066 (establishes that Interstate Commission shall provide mediation and binding dispute resolution); 2017 H.B. 4086 (establishes that disputes can be resolved by arbitration).

MINNESOTA

Bills Enacted: 2017 H.F. 1545 (extends the Farmer-Mediation Program by requiring good faith by the lender); 2017 H.F. 1538 (establishes that parties must submit construction defect claims to mediation).

Bills Pending: 2017 S.F. 1015 (establishes farmer-neighbor mediation program; requires mediation for certain disputes w/ farming operations); 2017 S.F. 901 (modifies nuisance liability protection; requires mediation); 2017 H.F. 1717 (extends the Farmer-Mediation Program by requiring good faith by the lender and allows the director to obtain credit reports); 2017 H.F. 302 (establishes cooperative private divorce program; discusses Bureau of Mediation Service's responsibilities); 2017 H.F. 1362 (requires that parenting plan assistance must include option of private mediation); 2017 H.F. 1013 (provides that department must offer mediation to employers to resolve benefit disputes); 2017 S.F. 2428 (establishes that retailer can demand arbitration in disputes regarding compensation).

MISSISSIPPI

Bills Enacted: None.

Bills Pending: 2017 H.B. 488 (creates Nursing Licensure Compact; provides that parties can submit dispute to arbitration panel); 2017 H.B. 1056 (creates Prosperity States Compact and provides that arbitration can include equitable remedies); 2017 H.B. 1004 (creates program for mediation between borrowers and lenders before foreclosure); 2017 H.B. 785 (alters arbitration procedures when arbitration clauses are determined nonbinding).

MISSOURI

Bills Enacted: None.

Bills Pending: 2017 H.B. 977 (allows siblings to request mediation order (in addition to grandparent)); 2017 S.B. 154 (provides for a restorative justice mediation for victim's rights); 2017 M.O. 238 (establishes that a public body and labor organization shall not be subject to binding mediation); 2017 H.B. 111 (establishes that an agency is authorized and directed to solve labor disputes by arbitration); 2017 H.B. 251 (establishes that a public body and a labor organization shall not be subject to binding mediation); 2017 S.B. 398 (provides that an executive session may be held to discuss potential litigation, mediation, or arbitration); 2017 H.B. 637 (requires that there cannot be more than one exclusive bargaining representative); 2017 H.B. 156 (substantially alters Uniform Arbitration Agreement in MO by requiring certain controversies to be decided by arbitration instead of litigation); 2017 S.B. 45 (alters arbitration procedures for employment disputes); 2017 H.B. 876 (repeals RSMo 226.095 relating to mandatory arbitration in certain negligence actions); 2017 H.B. 299 (discusses which arbitration clauses violate public policy); 2017 S.B. 20 (repeals minimum wage law; contains arbitration provisions); 2017

H.B. 944 (provides that a prevailing party can recover attorney fees including arbitration); 2017 S.B. 466 (includes arbitration clauses, equitable remedies).

MONTANA

Bills Enacted: 2017 H.B. 124 (requires training for commissioners and mediators for the water courts); 2017 H.B. 365 (adds sections for mediation for civil penalty procedures, duties of department; 2017 S.B. 137 (alters alternative dispute resolution procedures for taxpayer disputes).

Bills Pending: None.

NEBRASKA

Bills Enacted: 2017 L.B. 307 (provides for mediation for child abuse prevention, fee change); 2017 L.B. 180 (establishes that no mediation/ ADR shall be required where the juvenile has entered a bridge order); 2017 L.B. 88 (provides that interstate commission shall promulgate rules for mediation and dispute resolution).

Bills Pending: 2017 L.B. 342 (provides that commission shall promulgate rule for mediation and binding dispute resolution).

NEVADA

Bills Enacted: 2017 NV AB 382 (establishes mediation provisions regarding emergency services and patient care); 2017 S.B. 375 (provides that resolution of disputes between tribal government and NV may include mediation); 2017 AB 316 (provides that before offender released from prison, Director may provide mediation services).

Bills Pending: 2017 S.B. 356 (modifies arbitration provisions relating to collective bargaining, including authorizing CBAs to remain in effect beyond the term of office of local government employer); 2017 A.B. 18 (ratifies the Nurse Licensure Compact and introduces a dispute resolution provision, allowing the Commission to resolve disputes with arbitration or mediation); 2017 S.B. 465 (authorizes state employees to submit grievances to arbitration); 2017 A.B. 121 (modifies arbitration for collective bargaining for local government employers and employee organizations).

NEW HAMPSHIRE

Bills Enacted: 2017 H.B. 405 (establishes that bureau of employee relations investigate, prepare, represent the state in grievance mediation); 2017 H.B. 517 (establishes a bureau of employee relations, and provides that the bureau shall investigate, prepare, represent the state in grievance mediation).

Bills Pending: 2017 S.B. 151 (prohibits a nursing facility from requiring that a patient sign a mandatory arbitration agreement).

NEW JERSEY

Bills Enacted: None.

Bills Pending: 2016 A.B. 2998 (provides that a secondary term requiring arbitration of disputes arising under the contract is enforceable if the arbitration will be impartial and the fee is reasonable for form contracts); 2016 S.B. 285 (establishes an arbitration process for resolving payment disputes for out-of-network healthcare providers); 2016 A.B. 1952 (establishes that self-funded plan member or out-of-network provider can initiate binding arbitration); 2016 A.B. 1039 (establishes arbitration standards for new home warranty arbitrators by requiring the arbitrators to complete a commissioner-approved training program); 2016 S.B. 1925 (regulates arbitration organizations including requiring an arbitration organization to waive the fees of an indigent consumer); 2016 S.B. 1873 (requires mediation for disputes regarding shared ownership communities if no settlement arrangement is approved by the counsel in 180 days); 2016 A.B. 1395 (requires agricultural mediation under New Jersey Agricultural Mediation Program); 2016 A.B. 579 (establishes a mediation system for the resolution of medical injury claims as alternatives for medical malpractice actions); 2016 S.B. 1 (provides that for collective bargaining agreements, the dispute shall be settled by mediation and if unsuccessful, binding arbitration); 2016 A.B. 4505 (includes provisions regarding the Foreclosure Mediation Program or another form of mediation); 2016 S.B. 1723 (requires policy on use of alternative dispute resolution for State agencies; expands duties of Dispute Settlement Office); 2016 AB 3915 (creates foreclosure mediation assistance for qualified families that are delinquent on their mortgage); 2016 A.B. 1029 (establishes the New Jersey Foreclosure Mediation Act, which continues the work of the New Jersey Judiciary's Foreclosure Mediation Program).

NEW MEXICO

Bills Enacted: 2017 HD 131 (allows district courts to recover costs for alternative dispute resolution on a sliding fee scale).

Bills Pending: None.

NEW YORK

Bills Enacted: None.

Bills Pending: 2017 S.B. 1017 (amends the civil practice law and rules by establishing the Uniform Mediation Act); 2017 A.B. 5155 (adds a new chapter to the administrative code of the city of New York governing commercial lease arbitration and mediation); 2017 S.B. 5839 (creates the Office of the Cooperative and Condominium Ombudsman); 2017 S.B. 6060 (allows for the vacating of arbitration awards on the basis of arbitrator disregard of the law); 2017 S.B. 4537 (authorizes the use of voluntary and non-binding mediation for land use decisions); 2017 A.B. 5240 (repeals Section 399-c of the general business law and replaces it with a new section governing prohibited mandatory arbitration clauses in certain contracts and

agreements); 2017 S.B. 6484 (adds a new section to civil practice law and rules which governs arbitration of disputes regarding contracts or agreements in a consumer transaction); 2017 A.B. 5345 (adds mediation to child custody and support decision-making process if the court believes the case is suitable for mediation); 2017 NY S.B. 6077 (allows for the conducting of arbitration and mediation on Saturdays and Sundays in certain cases); 2017 A.B. 6983 (amends civil practice law and rules governing arbitration agreements).

NORTH CAROLINA

Bills Enacted: None.

Bills Pending: 2017 H.B. 814 (allows for use of binding or nonbinding alternative dispute resolution when a dispute arises under the Planned Community Act); 2017 S.B. 593 (establishes an arbitration and mediation program for North Carolina business court); 2017 H.B. 822 (regulates arbitration agreements between residents and certain long-term care facilities); 2017 H.B. 772 (amends various sections of the North Carolina International Commercial Arbitration and Conciliation Act).

NORTH DAKOTA

Bills Enacted: 2017 S.B. 2231 (sets up Air Ambulance Provider mediation process for health care insurer's payment of out-of-network air ambulance provider bills).

Bills Pending: None.

OHIO

Bills Enacted: None.

Bills Pending: 2017 H.B. 2 (allows Ohio Civil Rights Commission to resolve allegations of unlawful discriminatory practices relating to employment by use of ADR under certain circumstances); 2017 H.B. 128 (sets up expedited arbitration process for general contractor or owner of a residential or nonresidential building construction project to appeal inspection results).

OKLAHOMA

Bills Enacted: None.

Bills Pending: 2017 S.B. 107 (declares a public policy of Oklahoma that in arbitration cases where the municipality seeks the termination of the employee, either side shall have the right to appeal to the district court for a trial de novo).

OREGON

Bills Enacted: None.

Bills Pending: 2017 H.B. 2096 (sets forth mediation and arbitration procedure for the negotiation of an urban service agreement between a city with population greater than 5,000 and certain districts); 2017 H.B. 3331 (directs the Office of Manufactured Dwelling Park Community to establish a landlord-tenant dispute resolution program that includes mediation for disputes arising from notices of certain rent increases).

PENNSYLVANIA

Bills Enacted: None.

Bills Pending: 2017 S.B. 467 (establishes a housing ombudsman for homeless veterans); 2017 H.B. 55 (provides for compulsory mediation and provides for arbitration for collective bargaining impasses involving public employees); 2017 H.B. 781 (extensively revises sections governing statutory arbitration); 2017 H.N. 595 (provides for ADR for disputes in condominiums, cooperatives, and planned communities); 2017 S.B. 678 (establishes the dispute resolution process for surprise medical billing).

RHODE ISLAND

Bills Enacted: None.

Bills Pending: 2017 H.B. 5097 (establishes an arbitration process to resolve certain condominium disputes); 2017 S.B. 155 (creates an ombudsperson program to provide as a resource for adults with developmental disabilities); 2017 S.B. 272 (establishes a dispute resolution process for emergency services and surprise bills for medical services performed by non-participating/out-of-network health care providers); 2017 H.B. 6056 (authorizes the creation of the position of Student Loan Ombudsman within the Department of Business Regulation to resolve complaints from student loan borrowers); 2017 H.B. 5313 (grants municipal employees the right to binding arbitration on financial issues in contract formation).

SOUTH CAROLINA

Bills Enacted: None.

Bills Pending: 2017 S.B. 118 (provides that in any case in which magistrates have concurrent jurisdiction, if the amount-in-controversy equals or exceeds \$5,000, the case must be ordered for mandatory mediation, except for landlord-tenant matters); 2017 S.B. 650 (prevents arbitrator or mediation authority from enforcing a foreign law if it would violate a constitutionally guaranteed right of South Carolina or of the United States); 2017 H.B. 3886 (creates the Office of Homeowners Association Ombudsman).

SOUTH DAKOTA

Bills Enacted: None.

Bills Pending: None.

TENNESSEE

Bills Enacted: 2017 S.B. 1307 (prevents employers from requiring military personnel to sign a mandatory arbitration clause as a prerequisite for employment).

Bills Pending: None.

TEXAS

Bills Enacted: 2017 S.B. 507 (allows the enrollee of an insurance provider the right to a mediation for out-of-network bills); 2017 S.B. 317 (adds provision for the Executive Council of Physical Therapy and Occupational Therapy Examiners, the Texas Board of Physical Therapy Examiners, and the Texas Board of Occupational Therapy to develop a policy to encourage the use dispute resolution and monitor the results); 2017 S.B. 924 (requires disputes between a long-term care facility and the commission to go through a dispute resolution process before issuing citations if the long-term care facility requests ADR); 2017 H.B. 2561 (adds provision that the Texas State Board of Pharmacy develop a policy to encourage the use dispute resolution and keep track of the results)

Bills Pending: 2017 H.B. 72 (creates an option for criminal defendants to enter into a binding mediation contract between themselves and the victim).

UTAH

Bills Enacted: None.

Bills Pending: None.

VERMONT

Bills Enacted: 2015 S.B. 72 (addresses binding arbitration as a grievance procedure for state employees under a collective bargaining agreement).

Bills Pending: 2017 S.B. 105 (requires companies who conduct more than five arbitrations a year in Vermont to disclose statistics on remedies granted and the party that prevailed after conducting arbitration proceedings).

VIRGINIA

Bills Enacted: None.

Bills Pending: None.

WASHINGTON

Bills Enacted: 2017 S.B. 5075 (changes the dispute resolution procedure for disputes with a seed dealer from arbitration to mediation); 2015 S.B. 5805 (creates a volunteer conflict resolution and mediation program for neighborhood groups and schools, and creates a mediation training program for students); 2015 S.B. 5227 (establishes policies and procedures for the management of international commercial arbitration agreements); 2015 H.B. 1601 (exempts arbitration from venue concerns in public work contracts).

Bills Pending: 2017 H.B. 2184 (creates an ombuds program for inmates must use after exhausting the remedies at the correctional facility); 2017 S.B. 5866 (allows for a voluntary mediation process for tax disputes); 2017 H.B. 2114 (requires health insurer and provider disputes to be settled through arbitration if the amount is over \$2,000 and allows mediation for amounts less than that).

WEST VIRGINIA

Bills Enacted: 105 S.B. 37 (adopts the revised Uniform Arbitration Act).

Bills Pending: None.

WISCONSIN

Bills Enacted: None.

Bills Pending: None.

WYOMING

Bills Enacted: None.

Bills Pending: None.