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An Overview of Surprise Bill Legislation at the State Level

Summary

In recent years, several states enacted legislation protecting consumers from "surprise bills." Surprise bills arise when a consumer is charged, often unknowingly, for services rendered by non-participating (i.e., out-of-network) providers recommended by a participating doctor, or when a non-participating doctor performs services within a participating hospital. The ensuing payment difficulties that arise from surprise bills are the impetus for this legislation; however, the terms and conditions vary from state to state. Below is a general summary of the developments and variation you will find in Surprise Bill legislation between states.

Recent Developments

There have been several recent developments in multiple states regarding Surprise Bill legislation. Notable examples of these developments include in-progress OON (Out of Network) legislation in Michigan and Ohio and recently passed billing legislation in Texas.

In Michigan, two bills on balance billing (HB 4459 and H 4460) were recently re-referred to the House Committee on Ways and Means. The first bill (HB 4459) requires OON emergency service providers to be reimbursed at 125% of the Medicare rates. However, it limits fees that can be collected from the enrollee to applicable coinsurance, copayment, and deductibles. Attempting to collect excess amounts from the enrollee may result in a fine for the provider. The second bill (H 4460) provides a list of requirements for billing enrollees for OON elective services, including: 1) the enrollee must consent in writing at least 24 hours in advance of service 2) the enrollee must be provided a written estimate of the cost of services 3) enrollee must be informed they can seek in-network care. This bill provides required language for all providers and may bestow a fine if these stipulations are not followed.

In Ohio, the House Finance Committee is engaged in hearings regarding the bill H 388. This bill requires health plan issuers to reimburse OON providers for unanticipated or emergency health care service provided at either a network facility or an OON emergency facility. The reimbursement rate is the greatest of the following: 1) median amount issuer pays in-network providers for comparable service 2) OON service rate under health benefit plan or 3) the Medicare rate. The following conditions must be met for OON providers to bill the enrollee: 1) enrollee is aware provider is OON 2) a good faith estimate of cost for services is provided to the enrollee 3) the enrollee is made aware they are not required to accept these services 4) the enrollee consents to service and costs. If there is a dispute, an arbiter will determine the appropriate billing amount and split the arbitration fees 70/30 between the prevailing and non-prevailing parties.

In Texas, legislation was recently passed requiring the following: 1) Protections do not apply to non-emergency services if an enrollee elects in advance in writing to use a specific OON provider and if that provider offers an advance written disclosure informing the enrollee about their network status and projected cost 2) Hold harmless protection only applies to HMOs and EPOs (Exclusive Provider Organization) but not PPOs and 3) For facilities there is a mediation process instead of binding arbitration. For more information, we recommend reading Texas Senate Bill 1264.

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Check back with our practice management team often, as APS will update and reissue this document as new information becomes available. To follow, you will find information on which states have "surprise bill" protection and the level of protection provided.

Full Protection States
Full protection from surprise bills is offered in many states, but the specifics vary from state to state. Often this legislation 1) prohibits billing in excess of in-network rates in the case of surprise bills 2) holds consumers harmless and 3) outlines a dispute resolution process. This is not always the case but applies to numerous full-protection states. For state-specific legislation, we recommend contacting your Practice Manager. The following states provide full protection for surprise bills:

California, Colorado, Connecticut, Florida, Illinois, Maryland, New Hampshire, New Jersey, New Mexico, New York, Oregon, Texas, Washington

Special cases in this group include New Jersey and California. In New Jersey, OON (out-of-network) charges are permitted but, OON providers cannot balance-bill patients in excess of In-Network rates. An EOB (explanation of benefits) is also required to incorporate verbiage explaining that the OON charges cannot be balance billed. If agreement cannot be reached on reimbursement rate between insurer and provider, the insurer must pay the final offer (unless the amount exceeds $1,000, at which point they may go to arbitration). For more information, we recommend reading the New Jersey Assembly Bill 2039.

In California, balance billing protections in the ER setting only apply to those plans regulated by the CA Department of Managed Care which includes most HMOs (Health Maintenance Organization) and most PPOs (Preferred Provider Organization). The payment standard is less specific in situations involving emergency services. California legislation guarantees a minimum of 125% of the Medicare rates for services provided and stipulate that payment must be made to the providers. Naturally, this provides a protection to service providers not always found in states with full Surprise Bill legislation. For more information, we recommend reading California Assembly Bill 72.

Partial Protection States
In some states, only partial protection is provided by Surprise Bill legislation. This means that protection is only provided in special circumstances and does not completely eliminate the possibility of surprise billing, but specific regulations are still in place to mitigate potential billing issues. States with partial protection for surprise billing include the following:

Arizona, Delaware, Indiana, Iowa, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Pennsylvania, Rhode Island, Vermont, West Virginia

Notably, these states would be impacted by federal legislation and therefore are not immune to changes in Surprise Bill legislation, even if at the state level they are not undergoing active revision.

No Protection States
Currently, there are still several states that have no protective legislation preventing surprise billing. Those states are as follows:

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Alabama, Alaska, Arkansas, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Michigan, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin, Wyoming

As with partial-protection states, these states would also be affected by Surprise Bill legislation at the federal level. Currently, there is little indication that these states will be enacting new state-level legislation regarding surprise bills in the near future.

As always, APS will continue to monitor these laws and all legislative actions that affect your practice's compliance and reimbursement. There will certainly continue to be movement in this direction to help protect patients from unexpected out of pocket costs. If you have further questions on your state's regulation on balance billing, please contact your Practice Manager.