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Federal and New Mexico Surprise Billing Protections

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Surprise billing protections are part of both state and national policy agendas this year in an effort to provide health-care transparency and consumer transparency. New Mexico's new law now protects consumers by specifically prohibiting health care providers from balance billing, and President Trump also signed an Executive Order with the same goals. New Mexico health care providers need to be aware of federal and state level developments regarding surprise billing because of the significant changes that could result in civil penalties for noncompliance if the proposed federal regulations are adopted.

On the state level, effective January 1, 2020, New Mexico's Surprise Billing Protection Act (SB 337) (the Act) will generally prohibit providers from submitting a surprise bill to an insured person, or a collection agency, and provides for rights for insureds to appeal a health insurance carrier's decision regarding a surprise bill. Among other things, the Act aims to prevent insured's receipt of “surprise bills” by: (1) requiring a health insurance carrier to pay nonparticipating providers for emergency care necessary to evaluate and stabilize a covered person if a prudent layperson would believe such treatment is necessary, without requiring a prior authorization for such services; (2) requiring health insurance carriers to pay, and relieving an insured from liability for payment for, non-emergency care by an out-of-network provider when (a) the insured received care at an in-network facility, but did not have the ability or opportunity to choose an in-network provider who is available to provide covered services, or (b) medically necessary care is unavailable within the health benefit plan's network; and (3) in nonemergency circumstances, requiring an out-of-network provider, with advance knowledge that the out-of-network provider is out of network, to inform the insured of that fact and to advise the insured person to contact their health insurance carrier to discuss the insured's options. Balance billing is permitted by out-of-network providers to an individual who knowingly choses to receive services from the out-of-network provider. By July 1, 2020, the Act will require licensed health care facilities to post information about consumers' rights.

A number of other states also have surprise/balance billing protections for patients, including Arizona, California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New York, Oregon, Texas, and Vermont, with statutory protections for surprise bills. There is also interest in cost transparency at the federal level, with bipartisan interest in federal legislation.

On the federal side, on June 24, 2019, President Trump signed an

Executive Order to ensure transparency by health care facilities in the setting of costs. The Executive Order also requires the issuance of proposed regulations within 60 days for publishing charges for health care "that will meaningfully inform patients' decision making and allow patients to compare prices across hospitals." The Executive Order requires the Secretary of Health and Human Services to issue a report describing the manners in which the government or the private sector are impeding healthcare price and quality transparency for patients, providing recommendations for eliminating these impediments in a way that promotes competition, and describing why, under current conditions, lower-cost providers generally avoid healthcare advertising. The Executive Order also requires the Secretary of the Treasury to propose regulations to treat expenses related to certain types of arrangements, potentially including direct primary care arrangements and healthcare sharing ministries, as eligible expenses under the Income Tax Code.

On August 9, 2019, CMS issued proposed rules establishing the hospital price transparency requirements.[1] Under the proposed rules, a hospital must establish, update, and make public a list of all standard charges for all items and services online. A hospital must also make public its payer-specific negotiated charges for as many of the 70 CMS-selected shoppable services that are provided by the hospital, and as many additional hospital-selected shoppable services as is necessary for a combined total of at least 300 shoppable services. The rules also include monitoring and enforcement provision, with a corrective action procedure, and the imposition of civil monetary penalties for noncompliance. Specifically, the rules provide: (1) a definition of "hospital"; (2) different reporting requirements that would apply to certain hospitals; (3) definitions for two types of "standard charges" (specifically, gross charges and payer-specific negotiated charges) that hospitals would be required to make public, and a request for public comment on other types of standard charges that hospitals should be required to make public; (4) a definition of hospital "items and services" that would include all items and services (both itemized and packaged) provided by the hospital to a patient in connection with an inpatient admission or an outpatient department visit; (5) requirements for making public a machine-readable file that contains a hospital's gross charges and payer-specific negotiated charges for all items and services provided by the hospital; (6) requirements for making public payer-specific negotiated charges for select hospital-provided items and services that are "shoppable" and that are displayed and packaged in a consumer-friendly manner; (7) monitoring for hospital noncompliance with public disclosure requirements to make public standard charges; (8) actions that would address hospital noncompliance, which include issuing a written warning notice, requesting a corrective action plan, and imposing civil monetary penalties (CMPs) on noncompliant hospitals and publicizing these penalties on a CMS website; and (9) appeals of CMPs.

Given the forthcoming changes in both state and federal law with surprise/balance billing, New Mexico health care providers will need to carefully update their billing practices to ensure compliance with the new laws and should consult with legal counsel to ensure compliance with these new legal requirements.

For questions regarding this update, please contact:

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[1] 45 CFR pt. 180

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