New Out-Of-Network Bill: Practitioners and Facilities Face Onerous Requirements

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Today Governor Phil Murphy signed the "Out-of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act" to protect consumers from surprise medical bills. The intent of the Bill is to increase transparency to consumers with regard to in-network and out-of-network health care services, enhance consumer protections, create an arbitration system to resolve certain health care billing disputes between insurers and providers, and contain rising costs associated with out-of-network health care services.

The proponents of the Bill claim that it will protect patients from the financial responsibility of paying the balance of out-of-network medical bills in excess of in-network copayments and deductibles, unless the patient knowingly and voluntarily chooses to engage an out-of-network provider for a particular service. By limiting patient responsibility for out-of-network charges, however, the Bill provides a huge benefit to insurance carriers who typically negotiate with out-of-network providers the amount of reimbursement for out-of-network charges. Meanwhile, health care facilities and providers will be negatively impacted due to a decrease in their ability to balance bill patients. Most importantly, as more providers choose to become in-network due to their inability to balance bill for out-of-network charges, insurance carriers will have further leverage to negotiate lower in-network rates with providers.

The Bill may result in physicians, particularly specialists, leaving or not coming to New Jersey because they will not be able to maintain the reimbursement rates necessary to do business in the state.

The Bill imposes onerous disclosure requirements on health care facilities, such as hospitals and ambulatory surgery centers, as well as health care professionals. For example, prior to scheduling an appointment for a non-emergency or elective procedure, a health care facility will be required to disclose to the patient whether the facility is in-network or out-of-network. Unless the patient knowingly, voluntarily, and specifically selects an out-of-network provider, the patient cannot be charged any costs in excess of the charges applicable to an in-network procedure. Furthermore, facilities will be required to make available lists of their standard charges for items and services. In addition, facilities will be required to post on their websites the health benefits plans that they participate in and the fact that the providers who provide services at the facility may not participate in the same health benefits plans.

Health care professionals will be subject to similar disclosure requirements. For example, prior to the provision of non-emergency services, professionals will be required to disclose to the patient the health benefits plans that they participate in. If a professional does not participate in the network of a patient, the professional must, upon the patient's request, disclose to the patient an estimated cost for the services to be provided and explain to the patient that the patient will have a financial responsibility for those costs. In addition, if a patient inadvertently receives out-of-network services, including out-of-network laboratory testing ordered by an in-network health care provider, or emergency or urgent services from an out-of-network provider, the patient will only be financially responsible for the patient's copayment or deductible.

The most controversial provisions in the Bill relate to the binding arbitration process to resolve disputes between out-of-network providers and insurance carriers. If attempts to negotiate reimbursement for services provided by an out-of-network provider do not result in a resolution of the dispute, and the difference between the carrier's and the provider's final offers is $1,000 or more, the carrier or out-of-network provider may initiate binding arbitration to determine payment for the services. The arbitrator's decision will be one of the two amounts submitted by the parties as their final offers and will be binding on both parties. Each party may submit evidence to support its case. The arbitrator will take into account the provider's training and

experience, the provider's usual charges for comparable services provided in-network and out-of-network, the circumstances and complexity of he particular case, and the average in-network and out-of-network amounts paid by the carrier for those services.

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