

LEGAL UPDATE

New York – Emergency Medical Services and Surprise Bills

The Emergency Medical Services and Surprise Bills Law¹ (the "New Law"), which goes into effect March 31, 2015, increases protection of New York consumers from "surprise bills" received for medical services performed by certain non-participating (out-of-network) physicians.² The New Law also provides protections to consumers from bills for emergency services.³

The New Law is likely to have a significant impact on balance billing practices in New York, which is frequently a frontrunner in developing state-specific rules and regulations of the medical billing and revenue cycle management industries. "Balance billing" is the term commonly used to describe the practice of many healthcare providers who bill their patients for the difference between the amount a patient's insurer reimburses the provider and the amount the provider charged the patient for the medical services. A common expression of balance billing is a patient's receipt of emergency medical services from a provider outside the patient's network. Because of the patient's immediate need for medical attention, he or she is not afforded the luxury of ensuring the services are provided by an in-network provider. Later, when the insurer refuses to reimburse the out-of-network provider for the full amount of the emergency services, the patient is left holding the bag for a large, unforeseen medical bill.

Prior to the New Law, consumer complaints received by the New York Attorney General's Health Care Bureau related to balance billing and inadequate reimbursements from insurers for non-participating provider services were consistently a top concern.⁴ The New Law is therefore a response to such complaints and an apparent recognition by the New York State Department of Financial Services ("DFS") that "[b]ehind many of these complaints is a struggling family

¹ See N.Y. Fin. Serv. § 601 et seq.

² See N.Y. Fin. Serv. § 603(h)(1)-(3). See also New York State Department of Financial Services, Protection from Surprise Bills and Emergency Services, available at <http://www.dfs.ny.gov/consumer/hprotection.htm>.

³ See N.Y. Fin. Serv. § 603(b).

⁴ See N.Y. Attorney Gen.'s Health Care Bureau, 2014 Healthcare Helpline Report, at 4 (2014), available at http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/health_care/2014%20Healthcare%20Helpline%20Report%20Final.pdf.

trying to take care of a loved one with health problems and make ends meet."⁵ Such comments indicate that the New Law is intended primarily to be a consumer protection measure.

Surprise Bill

Under the New Law, if a patient has coverage through a health maintenance organization (HMO) or an insurer subject to New York state law, then a medical bill will be considered a surprise bill in the following instances:

1. Hospitals/Surgery Centers: The patient receives services from a non-participating physician at a participating hospital or ambulatory surgical center, where:
 - a. A participating physician is unavailable;
 - b. A non-participating physician renders services without the patient's knowledge; or
 - c. Unforeseen medical services arise at the time the health care services are provided.⁶

2. Referrals: The patient is referred by a participating physician to a non-participating provider, and the patient has not signed a written consent acknowledging that the services will be out-of-network and that the referral may result in costs not covered by the patient's health care plan.⁷ A referral occurs:
 - a. When a non-participating provider treats the patient during the course of a visit with a participating physician;
 - b. The Patient's participating physician takes a specimen from the patient and sends it to a non-participating laboratory or pathologist; or

⁵ See Press Release, Superintendent Lawsky Sends Letter to Legislature Urging Passage of Legislation in State Budget to Protect Consumers from Surprise, Out-Of-Network Medical Bills, New York Department of Financial Services March 24, 2014, [available at](http://www.dfs.ny.gov/about/press2014/pr1403241.htm) <http://www.dfs.ny.gov/about/press2014/pr1403241.htm>.

⁶ See N.Y. Fin. Serv. § 603(h)(1). Note however that a surprise bill does not mean a bill received for health care services when a participating physician is available and the insured elects to receive services from a non-participating physician. Id.

⁷ See N.Y. Fin. Serv. § 603(h)(2). Note also that surprise bill means a medical bill received by a patient who is not an insured for services rendered by a physician at a hospital or ambulatory surgery center, where the patient has not timely received all of the statutory disclosures under N.Y. Pub. Health Law § 24 concerning the health care plans in which the physician is a participating provider and the hospitals with which the physician is affiliated,

- c. For any other health care services when referrals are required under the patient's plan.⁸

Practical, interpretive guidance from the DFS instructs that a physician billing a patient for what could be deemed to be a surprise bill in any of the above scenarios is required to include with the patient's bill an Assignment of Benefits form and a Claim Form for a third party payor.⁹ Once these forms are received from the physician, it is the patient's responsibility to complete and send them to the insurer and physician, along with copies of the apparent surprise bills. This process allows the physician to in turn seek payment for the apparent surprise bills directly from the insurer.¹⁰

A patient who follows these instructions from the DFS will only be responsible to pay his or her in-network copayment, coinsurance or deductible.¹¹ Thereafter, the physician and insurer must deal directly with each other to attempt to negotiate payment of the physician's remaining fee.¹² During this negotiation process, if disputes between the provider and insurer over the fee arise, the New Law directs that the dispute be referred to the state's new, statutorily mandated "independent dispute resolution process."¹³

Emergency Services

In addition to increased patient protection from surprise bills, the New Law also provides that a patient's health plan must protect the patient from bills received for out-of-network emergency services provided in a hospital, if the patient has coverage through an HMO or an insurer subject to New York law.¹⁴ Guidance from the DFS suggests that the onus is on the insurer in this context to actively shield those it insures from out-of-network bills for emergency services, as a patient is not required to pay more than his or her in-network copayment, coinsurance or deductible.¹⁵

As with the new requirement concerning surprise bills, emergency service providers and insurers will now be forced to negotiate directly with one another over fees for emergency

⁸ See New York State Department of Financial Services, Protection from Surprise Bills and Emergency Services, available at <http://www.dfs.ny.gov/consumer/hprotection.htm>.

⁹ Id.

¹⁰ Id.

¹¹ See N.Y. Fin. Serv. § 606.

¹² Id.

¹³ See N.Y. Fin. Serv. § 601. See also New York State Department of Financial Services, Protection from Surprise Bills and Emergency Services, available at <http://www.dfs.ny.gov/consumer/hprotection.htm>. According to the DFS, healthcare providers desiring to dispute fees received from insurers for surprise bills or emergency services must visit the Department's website to receive a file number, complete the appropriate application, and work with the assigned independent dispute resolution entity to settle the dispute. Id.

¹⁴ See N.Y. Fin. Serv. § 603(a)-(b); see also N.Y. Fin. Serv. § 602(a)(2).

¹⁵ See N.Y. Fin. Serv. § 605(a)(1).

services.¹⁶ When an insurer receives a bill for emergency services from a non-participating physician, the New Law instructs that the insurer pay an amount that "it determines is reasonable for emergency services rendered by the non-participating physician,"¹⁷ excluding the patient's copayment, coinsurance, or deductible. A physician unsatisfied with the insurer's reimbursement rate for these emergency services may submit a dispute regarding the fee according to the New Law's independent dispute resolution process.¹⁸

Conclusion

As one commentator has noted, "It remains to be seen how [the New Law] will work in practice."¹⁹ The purpose of the New Law however, which is the protection of New York consumers from damages arising out of surprise medical bills, is likely to be achieved through implementation of this comprehensive approach to out-of-network billing.²⁰

While the New Law may be a test case of sorts, whose exact impact within New York and influence in sister states is yet to be determined, medical billing companies and revenue cycle management companies should be aware of the changing landscape regarding the practice of balance billing and the potential repercussions of such laws on their medical provider clients in the future.

For more information regarding the New Law and other hot topics within the medical billing and revenue cycle management industries, please contact please contact the [Health Care Section](#) at Chambliss, Bahner & Stophel, P.C.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Chambliss attorney, please call 423.756.3000.

¹⁶ See Families USA, [New York's New "Surprise Bill" Law Rolls Out New Health Insurance Protections for Consumers](http://familiesusa.org/blog/2014/04/new-york%E2%80%99s-new-surprise-bill-law-rolls-out-new-health-insurance-protections-consumers), (April 10, 2014), available at <http://familiesusa.org/blog/2014/04/new-york%E2%80%99s-new-surprise-bill-law-rolls-out-new-health-insurance-protections-consumers>. Patients are advised by the New York Department of Financial Services to contact their health plan providers if they receive bills from non-participating providers for emergency services. See New York State Department of Financial Services, [Protection from Surprise Bills and Emergency Services](http://www.dfs.ny.gov/consumer/hprotection.htm), available at <http://www.dfs.ny.gov/consumer/hprotection.htm>.

¹⁷ See N.Y. Fin. Serv. § 605(a)(1).

¹⁸ *Id.* at § 605(a)(2).

¹⁹ See Families USA, [New York's New "Surprise Bill" Law Rolls Out New Health Insurance Protections for Consumers](http://familiesusa.org/blog/2014/04/new-york%E2%80%99s-new-surprise-bill-law-rolls-out-new-health-insurance-protections-consumers), (April 10, 2014), available at <http://familiesusa.org/blog/2014/04/new-york%E2%80%99s-new-surprise-bill-law-rolls-out-new-health-insurance-protections-consumers>.

²⁰ *Id.*