MARSH & McLENNAN AGENCY

SpecialAlert

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MICHIGAN'S SURPRISE BILL LAW

On October 22, Governor Whitmer signed Public Act 234 regulating surprise medical bills. Surprise medical bills occur when an insured uses an out-of-network provider. Those providers do not need to accept an approved fee; they can charge a patient whatever they want. Health plans, however, often limit what they pay nonparticipating providers. Unfortunately, this situation often leaves the patient with a surprise medical bill. The amount billed is the difference between what a provider charges and what the plan pays. These surprise medical bills can often be a significant, unexpected medical expense for a patient.

This new Michigan law will limit what non-participating providers can charge for health care services if any of the following apply:

1. The health care service is provided to an emergency patient who is covered by a health plan in a participating or non-participating facility
2. The health care service meets all the following requirements:
   a. The service is provided to a nonemergency patient
   b. The service is covered by the nonemergency patient's health plan
   c. The service is provided to the nonemergency patient at a participating health care facility and either of the following is true:
      i. The nonemergency patient does not or cannot choose a participating provider
      ii. The nonemergency patient has not been given the required disclosure discussed later in this *Alert*.
3. A nonparticipating physician treats the patient at a participating hospital if the patient was admitted within 72 hours after receiving care in the emergency room.

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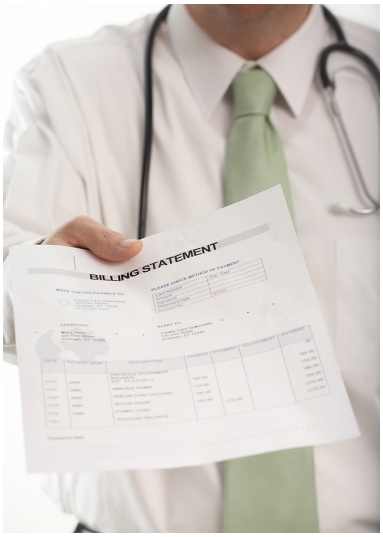

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In most situations, nonparticipating health care providers must submit a claim to the patient's health plan within 60 days of the health care service. The nonparticipating health care provider must accept the greater of the following as payment in full:

- The median amount negotiated by the carrier for the region and provider specialty excluding any in-network coinsurance, copayments or deductibles.
- 150 percent of the Medicare fee for service schedule excluding any in-network coinsurance, copayments or deductibles.

The health plan must pay the claim within 60 days of receiving it.

As of July 1, 2021, if a nonparticipating provider believes the payment calculated under the new rules is incorrect, the provider can ask the Department of Insurance and Financial Service (DIFS) to review it.

If a nonparticipating provider provides emergency health care services involving a complicating factor, the provider may charge more than the amounts above. The nonparticipating provider must document the complicating factor clinically. If the insurance carrier agrees, it will issue an additional payment of 25 percent of the initial payment.

This law does not prohibit a nonparticipating provider and a carrier from agreeing to pay more than the amounts noted above. This amount can be agreed upon through private negotiations or a dispute resolution process. The nonparticipating provider cannot charge a patient any more than the agreed upon amount. The provider can only collect amounts from the patient that constitute coinsurance, copayments or deductibles.

This act is tied to three other laws that were passed at the same time. Two of those detail consequences for not complying with these rules. The third, Public Act 235, requires nonparticipating providers to notify nonemergency patients in not less than 14 point type of their nonparticipating status. The following is model language included in the act:

> "Your health benefit plan may or may not provide coverage for all of the health care services you are scheduled to receive or the providers providing those services. You may be responsible for the costs of the services that are not covered by your health benefit plan. The nonparticipating provider must provide a good-faith estimate of the cost of the health care services to be provided. A good-faith estimate does not take into account unforeseen circumstances, which may affect the cost of the health care services provided. You also have a right to request that the health care services be performed by a provider that participates with your health benefit plan, and may contact your carrier to arrange for those services to be provided at a lower cost and to receive information on in-network providers who can perform the health care services that you need.
>
> I have received, read, and understand this disclosure.
>
> _____
> (Patient or patient's representative's signature)
>
> _____
> (Date)
>
> _____
> (Type or print name of patient or patient's representative)".

Providers must also offer a good faith estimate of the cost of their health care services at the earliest of the following:

- At least 14 days before providing the health care service if the health care service was scheduled and is being provided in a health facility or, within 14 days after scheduling the health care service.
- If the health care service is being provided in a health facility during the nonparticipating provider's first contact with the nonemergency patient, the notice must be provided during one of the following:
  a. A presurgical consultation for the health care service
  b. A scheduling or intake call for the health care service

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c. A preoperative review for the health care service

d. Any other contact occurring before a health care service that is similar to a contact described above

A nonparticipating provider cannot first disclose the estimate to a nonemergency patient after the nonemergency patient is already admitted to a health facility or while preparing the nonemergency patient for surgery or any other medical procedure.

Nonparticipating providers who do not disclose their fees must accept the nonemergency patient's insurer payment of either 150 percent of the Medicare fee for services or the median amount negotiated by the patient's insurer for the region and provider specialty, whichever is greater.

The provider must obtain the patient's signature on a document acknowledging that the patient has received, read, and understood the disclosure. The provider must keep a copy of the notice for at least seven years.

While this new Michigan law will have only a minor impact on employers and their health plans, it will have significant impact on the members your plan covers, especially if they go to a non-participating provider. They will no longer need to be concerned about surprise bills for emergency treatment if one of their providers does not participate with your health plan's network. In addition, for non-emergency care from a nonparticipating provider, providers will need to let members know they are nonparticipating providers and include an estimate of the cost for services to be provided.

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