NEW "SURPRISE BILLING" LAW – **What Minnesota Physicians Need to Know**

Minnesota Medical Association

The Minnesota Legislature passed legislation in 2017 to address the issue of "surprise billing." Surprise bills are bills that patients receive for care provided by out-of-network physicians or providers without the patients' awareness or authorization. The new law, effective January 1, 2018, governs how much patients will be expected to pay for certain unauthorized, non-emergency services and builds on existing law that sets analogous standards for unauthorized emergency services. Below is a guide for understanding these new requirements. The new law does not prohibit a physician from providing any types of services; rather, the law limits how much a patient may be billed for services that are not covered by a patient's health insurance plan. Additionally, the new law only applies to plans that are regulated primarily by state law and does not apply to Medicaid, Medicare, or self-funded health plans.

"Authorized" vs. "Unauthorized" Services

According to the new law, unauthorized provider services occur when:

- A provider participating in the patient's health plan sends a specimen from their practice to a nonparticipating lab, pathologist, or other testing facility
- A patient receives care from a nonparticipating provider at a participating hospital or ambulatory surgical center, if the care is provided:
  - Because a participating provider is unavailable
  - By a nonparticipating provider without the patient's knowledge, or
  - Due to the need for unforeseen services at the time that services are provided

Unauthorized services do not include:

- Emergency services, including responses to mental health crises and emergency screening and stabilization
- Lab, pathologist, or other specimen testing when the patient gives advance written consent acknowledging that the test may result in costs not covered by the patient's insurance. Providers should also be aware that, by obtaining consent to send specimens to out-of-network lab or pathologist, the patient may incur additional out-of-pocket costs

Payment for Unauthorized Services

If patients receive an unauthorized service, their financial responsibility is the same as the cost-sharing requirement under their insurance had the service been provided by an in-network provider. For example, if a patient has met their deductible and has a 20% co-pay for in-network provider services and the service costs $400, he or she is only responsible for $80 for the unauthorized service, even though the service was provided by a nonparticipating provider. The provider must negotiate with the patient's health plan for reimbursement of the remaining $320 cost of the unauthorized service.

Arbitration is Available

If a provider and health plan are unable to reach an agreement on payment for an unauthorized service, arbitration is available. The Minnesota Department of Health and Bureau of Mediation Services are required to develop a list of qualified arbitration specialists to assist with unauthorized services reimbursement disagreements. Arbitrators will be required to consider relevant information, including payments to other nonparticipating providers, the circumstances and complexity of the particular case, the usual and customary rate for the same service, and similar fees received by the provider for the service from other health plans. The cost of arbitration must be shared equally by the provider and health plan.

Additional Resources

- Minnesota Statutes 62Q.556 – Unauthorized Provider Services
- Minnesota Bureau of Mediation Services
- Minnesota Department of Health – Health Care and Coverage

For More Information, Contact:

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