

IT'S TIME FOR A SURPRISE BILLING COMPROMISE

After over three years of unsuccessful discussions, Virginia's health plans and hospitals/doctors remain completely divided about how much health plans should pay out-of-network providers. As a result of this impasse, insured Virginians are still being charged for out-of-network medical services, both in emergency situations and when elective services are received in an in-network hospital.

We are offering these suggestions to reach a resolution that make sure that no Virginia resident with health insurance is ever billed for any emergency services or for elective services they receive in an in-network facility. **Consumers must be taken out of the middle of this debate.** Following examples in Texas and New York, we believe a comprehensive arbitration system is needed, as follows:

Consumer Protections

- Bans balance billing and protects patients
- Includes both emergency services and non-emergency out-of-network services provided at an in-network facility
- Utilizes the “prudent layperson protection” for emergency care, regardless of final diagnosis
- Requires direct payment to provider (i.e. no bill to the patient)
- Allows ERISA plans to opt-into the system, to offer these protections more broadly

Initial Payments and Option for Arbitration

- Initial payment, from the health plan - paid directly to the provider - reflects in-network or a “usual and customary” reimbursement
- If the provider disputes the amount, arbitration can be initiated via BOI website
- Providers can batch claims to promote efficiency
- BOI contracts with qualified arbitrators who have no conflicts
- BOI establishes rules for an expedited arbitration process
- Arbitrator determines reasonable amount; issues binding decision; appeal rights are available
- Reasonable costs for arbitration are split between parties

Factors Arbitrators Shall Consider When Making Determination for a Reasonable Payment:

- Whether there is a gross disparity between the fee billed by the OON provider and fees paid to the OON provider for the same services to other enrollees and fees paid by the health benefit plan issuer to reimburse similarly qualified providers for the same services in the same region. This considers:
 - the level of training, education, and experience of the provider
 - the circumstances and complexity of the enrollee's case, including the time and place of the provision of the service;
 - individual enrollee characteristics;
 - the history of network contracting between the parties
- ***Health-carrier specific median in-network rate*** with respect to health care services covered by a group health plan or group or individual health insurance coverage which is the median negotiated rate under the applicable plan or coverage recognized under the plan or coverage as the total maximum payment for the service under the plan or coverage, for the same or a similar service that is provided by a provider in the same or similar specialty and in the geographic region in which the service is furnished. **[Note: this is the benchmark preferred by health plans.]**
- ***Regional average for commercial payments*** means the fixed price, based on data submitted by data suppliers in 2018 pursuant to subdivisions B 1 and 2 of § [32.1-276.7:1](#) and reported to the Commission's Bureau of Insurance by the nonprofit data services organization, that is determined on the basis of the amounts paid to and the amounts accepted by health care providers from health carriers by category of providers for comparable out-of-network emergency services, identified by codes, in the community where the services were rendered. **[Note: this is the benchmark preferred by hospital/ER doctors.]**
- ***Fair market value*** means the amounts billed to and the amounts accepted from health carriers or managed care plans by similar providers for comparable out-of-network emergency services in the community where the services are rendered, including amounts accepted under single case agreements, emergency-only participation agreements, and rental network agreements.

Statutory Revisions Necessary:

Repeal Notice statute in §38.2-3445.1

Repeal current "greater of three" emergency services payment structure in §38.2-3445

Enactment clause - Include data collection requirements, including BOI report on the number of surprise billing dispute resolutions and the disposition of such cases.

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