Statement and Recommendations: Surprise Bill Law, Balance Billing Prohibition
Governor’s Proposed Budget (S7507-A/A9507-A Article VII, Health and Mental Hygiene, Part J)

The New York American College of Emergency Physicians (New York ACEP) strongly supports the “Surprise Bill” law which was passed by the New York State Legislature and signed into law in 2014 to provide transparency to consumers and protect them from excessive bills when a patient unknowingly receives services from a physician who is not part of their health care plan’s network of providers. The law, Chapter 60 of the Laws of 2014, also provides an Independent Dispute Resolution (IDR) process for uninsured patients, physicians and health plans to dispute Out of Network (OON) emergency and non-emergency “surprise bills”.

The Surprise Bill law was put forward by Governor Andrew M. Cuomo in response to complaints made to the Department of Financial Services (DFS) by consumers who were receiving large bills from out-of-network providers. Prior to the 2014 passage of New York State’s Surprise Bill law, the DFS conducted a review of more than 2,000 complaints received regarding surprise bills and found that 90% of surprise bills were not for emergency services. The majority were for in-hospital services provided by out-of-network providers who were often called in without the patient’s knowledge.¹

Since the effective date of the law, data from DFS shows that the number of disputes filed through the IDR process for emergency physician services is extremely low. From March 31, 2015 to December 31, 2018, with a total of 30 million emergency department visits during that time, only 495 disputes (.0016%) were filed for emergency services provided by emergency physicians.²

Studies show that New York’s law has been effective at reducing OON billing for emergency services. An analysis by Yale University found that billings decreased from 20.1% in 2013 before the law was passed to 6.4% in 2015 after it was implemented.³ In addition, the State’s decrease in OON billing for emergency services was significant when compared to other states such as Connecticut, Massachusetts, New Jersey, Pennsylvania and Vermont, which remain unchanged.⁴

New York State’s Surprise Bill law is fair and balanced. It requires health care providers and insurance companies to share responsibility for informing and ensuring patients of their rights. The law holds patients harmless from excessive fees and places responsibility on insurance companies to ensure that the patient receives no greater out-of-pocket costs than they would have incurred with a participating health care provider.


New York ACEP strongly supports taking the patient out of the middle of payment disputes for emergency services. However, it must be recognized that hospital emergency departments are a unique environment where physicians are required to evaluate and treat every patient who enters their door, regardless of insurance status or ability to pay. Because these visits are emergent, the likelihood that a patient will be out-of-network is significant. In most cases, out-of-network fees are substantially lower than the negotiated fees for in-network providers.

In many areas of the State, the high concentration of managed care plans has seriously eroded the negotiating power of physicians to get a fair price for their services. In order to protect the quality of the emergency services safety network, and to fully protect patients from costs their insurance companies will not cover, stronger State oversight and enforcement of network adequacy is needed. This should include an adequate ratio of emergency physicians, hospital-based physicians, and on-call specialists, as well as geographic and driving distance standards and maximum wait times.

In addition, New York ACEP recommends that New York’s IDR law be amended to allow bundling of substantially similar claims which are for the same or similar services and the same payor. This would reduce the cost of IDR disputes as well as the time needed for providers to file them. For example, the current maximum cost for a physician to file a dispute in New York State is $395. In the State of California, hospital providers who file complaints for substantially similar emergency services are charged: $100 for one individual claim; $200 for two to 10 claims; $400 for 11 to 25 claims; and $600 for 26 to 50 claims.

New York ACEP strongly supports New York’s Surprise bill law and urges the New York State Legislature to ensure that it continues to protect our emergency services safety network and the patients that we serve.
(1) When a health care plan receives a bill for emergency services from a non-participating physician or hospital, including a bill for inpatient services which follow an emergency room visit, the health care plan shall pay an amount that it determines is reasonable for the emergency services, including inpatient services which follow an emergency room visit, rendered by the non-participating physician or hospital, in accordance with section three thousand two hundred twenty-four-a of the insurance law, except for the insured’s co-payment, coinsurance or deductible, if any, and shall ensure that the insured shall incur no greater out-of-pocket costs for the emergency services, including inpatient services which follow an emergency room visit, than the insured would have incurred with a participating physician or hospital [pursuant to subsection (c) of section three thousand two hundred forty-one of the insurance law]. If an insured assigns benefits to a non-participating physician or hospital in relation to emergency services, including inpatient services which follow an emergency room visit, provided by such non-participating physician or hospital, the non-participating physician or hospital may bill the health care plan for the [emergency] services rendered. Upon receipt of the bill, the health care plan shall pay the non-participating physician or hospital the amount prescribed by this section and any subsequent amount determined to be owed to the hospital in relation to the emergency services provided, including inpatient services which follow an emergency room visit.

(2) A non-participating physician or hospital or a health care plan may submit a dispute regarding a fee or payment for emergency services, including inpatient services which follow an emergency room visit, for review to an independent dispute resolution entity.
§ 15. Paragraph 1 of subsection (b) of section 605 of the financial services law, as amended by chapter 377 of the laws of 2019, is amended to read as follows:

(1) A patient that is not an insured or the patient's physician may submit a dispute regarding a fee for emergency services, including inpatient services which follow an emergency room visit, for review to an independent dispute resolution entity upon approval of the superintendent.

§ 16. Subsection (d) of section 605 of the financial services law is repealed and subsection (e) is relettered subsection (d).

§ 17. Section 606 of the financial services law, as added by section 26 of part H of chapter 60 of the laws of 2014, is amended to read as follows:

§ 606. Hold harmless and assignment of benefits [for surprise bills] for insureds. (a) When an insured assigns benefits for a surprise bill in writing to a non-participating physician that knows the insured is insured under a health care plan, the non-participating physician shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured utilized a participating physician.

(b) When an insured assigns benefits for emergency services, including inpatient services which follow an emergency room visit, to a non-participating physician or hospital that knows the insured is insured under a health care plan, the non-participating physician or hospital shall not bill the insured except for any applicable copayment, coinsurance or deductible that would be owed if the insured utilized a participating physician or hospital.
§ 18. The civil practice law and rules is amended by adding a new section 213-d to read as follows:

§ 213-d. Actions to be commenced within three years; medical debt. An action on a medical debt by a hospital licensed under article twenty-eight of the public health law or a health care professional authorized under title eight of the education law shall be commenced within three years of treatment.

§ 19. This act shall take effect immediately; provided, however, that sections one through eleven of this act shall apply to services performed on or after January 1, 2021; and provided further, however, that sections twelve and thirteen of this act shall apply to credentialing applications received on or after July 1, 2020.

PART K

Section 1. Paragraphs (n), (p) and (q) of subdivision 1 of section 2995-a of the public health law, as added by chapter 542 of the laws of 2000, are amended and three new paragraphs (r), (s) and (t) are added to read as follows:

(n) (i) the location of the licensee's primary practice setting identified as such; [and]

(ii) [the names of any licensed physicians with whom the licensee shares a group practice, as defined in subdivision five of section two hundred thirty-eight of this chapter] hours of operation of the licensee's primary practice setting;

(iii) availability of assistive technology at the licensee's primary practice setting; and

(iv) whether the licensee is accepting new patients;