

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

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BULLETIN 2019-012

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NEW MEXICO
SUPERINTENDENT
OF INSURANCE

**TO: ALL INSURANCE CARRIERS THAT OFFER HEALTH BENEFITS PLANS
SUBJECT TO THE SURPRISE BILLING PROTECTION ACT**

RE: S.B. 337, SURPRISE BILLING PROTECTION ACT

THE FOLLOWING BULLETIN is issued pursuant to Sections 59A-2-8 and 59A-2-10 NMSA 1978 and 13.1.2.1 to 13.1.2.10 NMAC.

On April 4, 2019, Governor Michelle Lujan Grisham signed Senate Bill 337, the Surprise Billing Protection Act (“the Act”), effective January 1, 2020. The Act may apply when a covered person receives out-of-network emergency care or receives non-emergent care from a nonparticipating provider at a participating facility. Under these circumstances, the Act provides that consumers are responsible only for the amount they would pay if they had received the services from a participating facility or provider. See S.B. 337, § 2(Y). The Act also establishes a reimbursement mechanism for the balance due to a provider from a carrier for the services rendered.

The Act sets a reimbursement rate for surprise medical bills where no contract exists between the provider of services and the covered person’s insurer. This reimbursement rate is defined as “the sixtieth percentile of the allowed commercial reimbursement rate for the particular health care service performed by a provider in the same or similar specialty in the same geographic area, as reported in a benchmarking database maintained by a nonprofit organization specified by the Superintendent of Insurance after consultation with health care stakeholders; provided that no surprise bill reimbursement rate shall be paid at less than 150% of the Medicare reimbursement

rate for the applicable health care service provided.” Laws 2019, Chapter 227, Section 13(C). The Act requires that the nonprofit organization be conflict-free and unaffiliated with any stakeholder in the health care sector.

On May 13, 2019, the Office of Superintendent of Insurance (OSI) posted a Request for Information (RFI) for data benchmarking firms that meet the specifications in the Surprise Billing Protection Act. OSI also distributed the RFI to stakeholders from the health care provider, carrier, consumer advocate, consulting, and agent and broker communities. OSI received only one response to this RFI; that response was from the data benchmarking non-profit firm Fair Health. Fair Health’s response to the RFI is available on the OSI website at this link or upon request.

Fair Health appears to be the only data-benchmarking firm that fits the criteria outlined in the Surprise Billing Protection Act. Additionally, Fair Health will not charge the agency for the requested data, nor will it charge health insurance carriers or providers to provide claims data to the firm. Accordingly, OSI has selected Fair Health to provide claims data for the “surprise bill reimbursement rate” established under the Surprise Billing Protection Act. This selection will remain in effect until further notice.

Any person aggrieved by a bulletin may request a hearing before the Superintendent in accordance with Section 59A-4-15 NMSA 1978.

If you have questions regarding this Bulletin, please contact the Life and Health Product Filing Bureau at (505) 827-4601 or LHRFF.osi@state.nm.us.

DONE AND ORDERED this 12th day of August 2019.



JOHN G. FRANCHINI
Superintendent of Insurance