

STATE OF NEW MEXICO  
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE  
Russell Toal



DEPUTY SUPERINTENDENT  
Robert E. Doucette, Jr.

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BULLETIN 2020-009

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NEW MEXICO  
OFFICE OF SUPERINTENDENT OF INSURANCE

**TO: ALL MAJOR MEDICAL HEALTH INSURANCE CARRIERS AND HEALTH CARE PROVIDERS AND FACILITIES SUBJECT TO THE JURISDICTION OF THIS STATE**

**RE: SURPRISE MEDICAL BILLING**

The New Mexico Office of Superintendent of Insurance (“OSI”) is working to ensure timely and affordable access to health care services for all New Mexicans. In Docket No. 20-00016, OSI promulgated emergency rules to expedite the testing, diagnosis, and treatment of individuals with COVID-19. In that Order, OSI recognized that a consumer’s decision to secure appropriate health care services may be limited by out-of-pocket costs. OSI therefore eliminated consumer out-of-pocket cost-sharing for testing and treatment of COVID-19 symptoms.

As this crisis continues, OSI has learned of additional access issues where hospitals may route those seeking care at in-network facilities to out-of-network facilities or providers. In these instances, OSI would like to remind carriers of the circumstances that trigger responsibilities to hold consumers harmless for the diagnosis, testing, and treatment of COVID-19. These responsibilities include the scenarios listed below.

- If a medically necessary service is unavailable in-network, a carrier is required to cover the service from an out-of-network provider as if the service was provided in-network, and the covered person shall only be liable for in-network cost-sharing. 13.10.22.8 (E) NMAC. OSI clarifies that this provision may be triggered due to lack of beds or providers to treat individuals presenting with non-COVID-19 conditions or other critical conditions at an in-network facility, or it may be the result of the care triage system put in place for the crisis. A patient’s specific consent to receiving out-of-network care shall not absolve a carrier of its responsibility to cover the service.


- If an in-network provider mistakenly refers a patient to an out-of-network provider, the covered person shall only be liable for in-network cost-sharing. 13.10.22.8(E) NMAC. This rule applies to all covered services. OSI specifically requests that carriers grant in-network providers flexibility to direct or refer patients to appropriate care, which may be out-of-network, as pressures on the healthcare system grow during the COVID-19 crisis. A patient's specific consent to receiving out-of-network care shall not absolve a carrier of its responsibility to cover out-of-network services in these circumstances.
- If an individual seeks testing or care for COVID-19 symptoms at an out-of-network provider, the testing and associated services, including evaluation and stabilization, are to be covered irrespective of whether the tests results are positive or negative. All out-of-network treatment for COVID-19 symptoms shall be treated as emergency care, including admission to a hospital while awaiting diagnosis.
- If a covered person at an in-network facility does not have the ability or opportunity to choose a participating provider who is available to provide the covered service, the carrier shall limit the covered person's cost-sharing to their plan's in-network rates. Section 59A-57A-4, NMSA 1978. OSI alerts carriers that this may include circumstances where covered persons are treated by contract providers at in-network hospitals.
- If a covered person is referred to one of the state-sanctioned or created COVID-19 emergency treatment centers, such centers shall be considered an in-network provider, and the carrier shall accept the billings from the center and pay at the carrier's in-network rate for the services provided. Covered persons treated at the centers shall not have any co-pay or cost-sharing obligations for services received.

With the exception of the emergency treatment centers mentioned immediately above, carriers shall reimburse out-of-network providers, including facilities, using the surprise billing rate described in Section 59A-57A-13, NMSA 1978. Where there is no data available in the Fair Health benchmarking database for a particular billing code, a health insurance carrier shall reimburse a provider at 150% of the 2017 Medicare reimbursement rate. Health care providers shall submit bills directly to the patient's insurance provider, regardless of whether the provider has a contract with the plan. No provider shall balance or surprise bill a patient. A health care provider that knowingly surprise bills a patient for out-of-network care may be subject to a fine pursuant to Section 59A-16-21.3, NMSA 1978.

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](mailto:LHRFF.osi@state.nm.us).

**ISSUED** this 20<sup>th</sup> day of April, 2020.



**RUSSELL TOAL**  
**Superintendent of Insurance**