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Bulletin 2017-009
July 31, 2017

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NM OFFICE OF
SUPERINTENDENT
OF INSURANCE

TO: ALL HEALTH CARE PLANS THAT OFFER COVERAGE OF EMERGENCY HEALTH CARE SERVICES OTHER THAN ON AN INDEMNITY BASIS

RE: OUT-OF-NETWORK EMERGENCY CARE AND COST-SHARING

THE FOLLOWING BULLETIN is issued pursuant to Sections 59A-2-8, 59A-2-10, 59A-4-3, 59A-22A-5 NMSA 1978, and 59A-57-4, and 13.1.2. *et seq.* and 13.10.21.8(D)(6) NMAC. This bulletin interprets New Mexico Insurance Code requirements for health insurance carriers offering emergency care coverage in New Mexico.

Federal regulation regarding coverage of emergency services permits an out-of-network provider to balance bill a covered person for services that exceed the amount the insurer is required to pay. *See* 45 C.F.R. Section 147.138(b)(3)(iii). However, these federal payment standards “do not apply where State law prohibits a participant, beneficiary, or enrollee from being required to pay, in addition to the in-network cost sharing, the excess of the amount the out-of-network provider charges over the amount the plan or issuer provides in benefits....” *Id.* Although federal regulation would permit a provider to balance bill a person covered by a managed health care plan for the outstanding balance for out-of-network emergency care, the federal government has chosen to defer when states provide additional protections.

The New Mexico Patient Protection Act (NMPPA) requires that managed health care plans provide “emergency care [that is] immediately available without prior authorization requirements, and appropriate out-of-network emergency care *is not subject to additional costs*” to the covered

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person. See Section 59A-57-4(B)(3)(d) NMSA 1978 (emphasis added). Additionally, New Mexico's Preferred Provider Arrangements Law (NMPPAL) requires health benefit plans with preferred provider arrangements to include a provision that "if a covered person receives emergency care for services specified in the preferred provider arrangement and cannot reasonably reach a preferred provider that emergency care rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider." See Section 59A-22A(A)(1) NMSA 1978. Both the NMPPA and the NMPPAL provide these protections with respect to out-of-network emergency services and therefore prohibit balance billing for out-of-network emergency care for persons covered by managed health care and preferred provider plans.

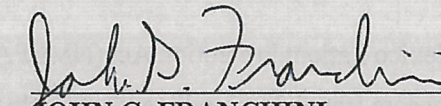
The same protection is extended by regulation to subscribers covered by HMO plans. These regulations require that "appropriate out-of-network emergency care shall be provided to a covered person *without additional cost.*" See 13.10.21.8(D)(6) NMAC (emphasis added).

Accordingly, the Office of Superintendent of Insurance interprets Sections 59A-57-4(B)(3)(d) and 59A-22A-5 NMSA 1978, and 13.10.21.8(D)(6) NMAC to require insurers to hold their covered persons harmless for balance bills for out-of-network emergency care services. Nothing in this bulletin shall be interpreted to require insurers to pay for non-emergent care provided to covered persons at out-of-network emergency facilities.

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 additional questions regarding this Bulletin, please contact Paige Duhamel at Paige.Duhamel@state.nm.us.

DONE AND ORDERED this 31st day of July, 2017.



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