

**Governor Cuomo's Proposed Out-of-Network Legislation**  
(Article VII Budget Bill, S.6357B Part U, A.8557 Part U)

**Summary – Limiting Surprise Out-of-Network (OON) Medical Bills**

The legislation protects consumers from surprise OON medical bills and establishes a fair process for providers and insurers to resolve coverage disputes. It ensures consumer choice for OON benefits; improves transparency on the part of hospitals, doctors and health care professionals, as well as insurers—so there are fewer surprises; imposes network protections—so there are fewer OON claims; and makes OON claim submissions easier, through e-filing and more user-friendly invoices.

**1. Protection of Consumer Liability from Surprise Bills.**

- **Hold Harmless.** In emergencies, disclosure is unhelpful; for non-emergency services, disclosure must be made and an in-network provider must be available. Thus, legislation requires insurers to hold consumers harmless from OON emergency (ER) bills and non-ER OON claims where an in-network provider is unavailable or disclosure is not made. *HMO consumer protections are therefore extended to non-HMOs.*
- **Assignment of Benefits.** For non-ER OON claims only, a consumer must assign benefits to the provider to receive protection from liability to the provider.

**2. Independent Dispute Resolution Using Baseball Arbitration Methodology.**

Establishes an independent dispute resolution (IDR) for all OON ER as well as non-ER services in a participating hospital or ambulatory surgical center where a participating physician is not available and the consumer has not elected to receive services from the non-participating physician.

- **Available** to providers, insurers and uninsured consumers.
- **Prompt Pay Law** timeframes apply to insurer payment.
- **IDR chooses** either the OON provider bill or the insurer payment for insured consumers.
- **IDR will consider** when choosing provider bill or insurer payment: (1) whether there is a gross disparity between provider charge and other similar OON providers and (2) the provider's training, experience, usual charge, complexity and circumstances of case, patient characteristics, and UCR.
- **Review is binding.** Parties can still sue, but review is admissible in suit.
- **Loser pays** cost of IDR.

**3. Make Available Minimum OON Coverage.**

Where a health plan offers OON, the plan must give consumers choice, by making available at least one option that: Covers a minimum of 70% coinsurance of UCR, defined as 80<sup>th</sup> percentile of FAIR Health. **BUT** no requirement that all plans have OON coverage; no prohibition on other OON reimbursement options.

**4. Improved Disclosure.**

- **Shopping.** When consumers are shopping for coverage, insurers must allow consumers to compare apples to apples by disclosing (1) insurer reimbursement methodology for OON services, (2) how that methodology compares to UCR, (3) the insurer payment for a particular service, (4) how that payment compares to UCR, and (5) any changes to the provider directory (web update w/in 15 days).
- **Using Services.** When seeking a service, consumers should know (within reason): which providers are OON, how much those providers expect to charge, and how much the insurer expects to cover. Specific disclosures are required for insurers, hospitals and doctors.

**5. Extended Network Adequacy Protections.**

Legislation protects consumers against inadequate provider networks. Limits ability of insurers to deny OON coverage because the provider is OON:

- **General Regulatory Review of Network.** Extends HMO minimum network adequacy requirements to non-HMO plans, to ensure that networks are adequate.
- **Specific Protection – Appropriate Provider.** Extends to non-HMOs the current HMO protections of the right to go to an OON provider if the plan does not have an appropriate in-network provider.
- **External Appeal.** Bill also expands external appeal rights for out-of-network referrals. Review limited to whether in-network provider is appropriate (not necessarily the consumer's first choice).

**6. Easier Consumer Claims Submissions.**

The bill makes it easier for consumers to submit e-claims for out-of-network services, and requires OON doctors to include an insurance claim form in their bills.