The New York State budget agreement, announced last week, signaled important changes for out-of-network healthcare providers in New York. The changes, which will not be implemented until at least next year, are aimed at increasing transparency and avoiding “surprise medical bills.” The budget incorporates numerous amendments and new provisions to the New York Insurance Law and Public Health Law, including requirements that out-of-network providers disclose their fee schedules prior to rendering medical services. However, the addition of Article Six of the Financial Services Law will likely be the most controversial.

The new Article Six, entitled “Emergency Medical Services and Surprise Bills,” calls for the implementation of a dispute resolution process between out-of-network providers and insurers in an effort to hold patients harmless. The New York Department of Financial Services will be responsible for establishing standards for the process, and for certifying and selecting “independent dispute resolution entities.” These entities will be comprised of licensed physicians in the same or similar specialties as the applicable provider.

“Surprise bills” include, in part, bills received by patients who received care from an out-of-network provider because: (i) a participating provider was unavailable; (ii) the services were rendered by a non-participating provider without the patient’s consent or knowledge; (iii) unforeseen medical services had to be rendered; (iv) the patient was referred to a non-participating provider without the patient’s explicit written consent; or (v) an uninsured patient did not receive timely required disclosures. Surprise bills do not include those received by patients who elected out-of-network care when a participating physician was available.

Under the new dispute resolution process, the provider, the health plan or an uninsured patient may submit a dispute regarding fees to the independent dispute resolution entity, with certain caveats. Notably, the health plan must issue at least some payment before submitting a dispute. The independent dispute resolution entity will then be charged with determining a “reasonable fee.” In doing so, the entity will look at a variety of factors, including, but not limited to: (i) whether there are gross disparities between the fees charged by the provider and those of similarly situated physicians; (ii) the level and training of the physician; (iii) the physician’s usual fees; (iv) the circumstances of the particular case; and (v) the usual and customary fee for the service.

The independent dispute resolution entity will (similar to “baseball arbitration”) choose between the fee charged by the provider versus the fee proposed by the health plan, based on which the entity believes is more “reasonable.” If settlement is possible or if both fees are “unreasonably extreme,” the entity will encourage negotiation. If a patient involved in a dispute is uninsured, then the entity may determine a reasonable fee. The entity’s determination will be binding on all of the parties. The losing party must bear the costs of the dispute process and if a settlement is reached, the parties will share the costs. The entire process is intended to last 30 days.

An excerpt of the NYS budget as it relates to out-of-network coverage can be found [here](#).
The amendments and new provisions of the NYS Insurance Law, Public Health Law and Financial Services Law are changing the out-of-network landscape. These upcoming changes may affect insurers' pricing of its products, and will likely have a considerable impact on the practices and reimbursements of out-of-network providers. Therefore, out-of-network providers should be aware of how these changes might affect their practices, and consider preparations for their implementation.

Weiss, Zarett, Brofman & Sonnenklar, P.C., is a boutique sized law firm located on Long Island, New York which represents physicians and other healthcare providers in their business, regulatory and professional affairs. In particular, we have assisted clients with issues relating to out-of-network coverage, health insurance audits and other business and regulatory matters.

“Attorney Advertising” - “Prior Results Do Not Guarantee Similar Outcome”

This message was sent to you by Weiss, Zarett, Brofman & Sonnenklar, P.C.

To unsubscribe from this newsletter please click here.