
A BILL FOR AN ACT

RELATING TO MEDICAL SERVICE BILLING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that unanticipated
2 medical billing can cause significant financial hardship to
3 patients. Unanticipated medical billing, also known as surprise
4 medical billing, arises when a patient receives unanticipated
5 out-of-network care from a non-participating provider for
6 emergency or other medical services. The medical services may
7 be from a health care provider or a health care facility that is
8 outside of the patient's insurer's network and, as such, the
9 patient's health care plan ends up paying less than the patient
10 expected for the medical services received.

11 The legislature also finds that in the case of surprise
12 medical billing for emergency services, patients often do not
13 have the ability to select the emergency room, treating
14 physician and other medical specialists, or ambulance provider.
15 Furthermore, when physician groups and insurers are unable to
16 resolve reimbursement disputes, patients are caught in the
17 middle and saddled with high medical bills, sometimes resulting



1 in significant financial hardship due to the higher
2 out-of-network charges and medical reimbursements.

3 The purposes of this Act are to:

4 (1) Protect patient access to health care by addressing
5 unanticipated medical coverage gaps for patients who
6 receive emergency services from non-participating
7 providers; and

8 (2) Require the insurance commissioner to refer certain
9 disputes between insurers and non-participating
10 providers to an independent dispute resolution entity
11 for binding arbitration.

12 SECTION 2. Chapter 432E, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§432E-A Emergency services; billing. (a) When an
16 enrollee in a managed care plan receives emergency services from
17 a non-participating provider, the non-participating provider
18 shall not be entitled to bill the enrollee any amount in excess
19 of any applicable charges the enrollee would be responsible for
20 if they had received the services from a participating provider.



1 This includes, but is not limited to, any copayment,
2 coinsurance, or deductible amount.

3 (b) When an enrollee receives emergency services from a
4 non-participating provider, a managed care plan shall be
5 responsible to fulfill its obligation to the enrollee and shall
6 enter into negotiation with the non-participating provider to
7 resolve any sums owed by the managed care plan. If the managed
8 care plan and the non-participating provider cannot come to an
9 agreement on a payment amount within forty-five days of a non-
10 participating provider notifying a managed care plan that they
11 disagree with the payment amount, either party may elect to
12 enter into an independent dispute resolution process, as
13 established in section 432E-B.

14 (c) Nothing in this section shall be construed to require
15 a managed care plan to cover services not required by law or by
16 the terms and conditions of the managed care plan. Nothing in
17 this section shall be construed to prohibit non-participating
18 providers from seeking the uncovered cost of services rendered
19 from enrollees who have consented to receive the health care
20 services provided by the non-participating provider.



1 (d) For the purposes of this section, "non-participating
2 provider" means a facility, health care provider, or health care
3 professional that is not subject to a written agreement with the
4 enrollee's health carrier governing the provision of emergency
5 services.

6 §432E-B Dispute resolution. (a) If an insurer and a non-
7 participating provider are unable to reach an agreement as to
8 the amount to be billed for emergency services provided by a
9 non-participating provider within forty-five days of a non-
10 participating provider notifying an insurer that they disagree
11 with the payment amount, the matter may be submitted to the
12 commissioner, who will refer the matter to an independent
13 dispute resolution entity for binding arbitration.

14 (b) In determining the appropriate amount to pay a
15 nonparticipating provider for an emergency service, an
16 arbitrator shall consider all relevant factors, including:

17 (1) Whether there is a gross disparity between the fee
18 charged by the health care provider or hospital for
19 services rendered as compared to:

20 (A) The fees paid to the involved health care
21 provider or hospital for the same services



1 rendered by the health care provider or hospital
2 to other patients in plans in which the health
3 care provider or hospital is not participating;
4 and

5 (B) In the case of a dispute involving a managed care
6 plan, fees paid by the managed care plan to
7 reimburse similarly qualified health care
8 providers or hospitals for the same services in
9 the same region who are not participating with
10 the managed care plan;

11 (2) The level of training, education, and experience of
12 the provider, and in the case of a hospital, the
13 teaching staff, scope of services, and case mix;

14 (3) The provider's usual billed charge for comparable
15 services with regard to patients in plans in which the
16 health care provider or hospital is not participating;

17 (4) The circumstances and complexity of the particular
18 case, including time and place service; and

19 (5) Individual patient characteristics.

20 (c) A provider may bundle multiple claims in a single
21 mediation if the disputed charges involve:



- 1 (1) The identical managed care plan or insurer and
2 provider;
- 3 (2) Claims with the same or related current procedural
4 codes; and
- 5 (3) Claims that occur within one hundred eighty days of
6 each other.
- 7 (d) For disputes involving an enrollee, when the dispute
8 resolution entity determines the managed care plan's payment is
9 reasonable, payment for the dispute resolution process shall be
10 the responsibility of the non-participating provider. When the
11 dispute resolution entity determines the non-participating
12 provider's fee is reasonable, payment for the dispute resolution
13 process shall be the responsibility of the managed care plan.
14 When a good faith negotiation directed by the dispute resolution
15 entity results in a settlement between the managed care plan and
16 non-participating provider, the plan and the non-participating
17 provider shall evenly divide and share the prorated cost for
18 dispute resolution.
- 19 (e) The arbitrator shall issue a decision on a submitted
20 case no later than forty-five days from the commencement of
21 binding arbitration.



1 (f) The commissioner may adopt rules pursuant to
2 chapter 91 necessary to carry out the purposes of this section."

3 SECTION 3. Section 432E-8, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~§~~432E-8] **Enforcement.** All remedies, penalties, and
6 proceedings in articles 2 and 13 of chapter 431 made applicable
7 hereby to managed care plans and non-participating providers
8 under section 432E-A shall be invoked and enforced solely and
9 exclusively by the commissioner."

10 SECTION 4. In codifying the new sections added by
11 section 2 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 5. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect on January 1, 2021.



Report Title:

Emergency Services; Medical Necessity; Billing; Non-Participating Providers; Managed Care Plans; Binding Arbitration; Insurance Commissioner

Description:

Establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers. Requires the Insurance Commissioner to refer certain disputes between insurers and non-participating providers to an independent dispute resolution entity for binding arbitration. Effective 1/1/2021. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

