



## **The Protections and Transparency Act of 2019**

### **An Act**

*Be it enacted by the People of the State of \_\_\_\_\_*

**Section 1. Title.** This act shall be known as and may be cited as “The Patient Protections and Transparency Act of 2019.”

**Section 2. Purpose.** The Legislature hereby finds and declares that:

- A. Health Insurance Plans are increasingly offering narrow network plans, regularly reducing the number of Clinicians available to beneficiaries in these plans.
- B. Patients should be able to access In-Network primary care Clinicians and specialists in a timely manner, including Facility-Based Clinicians;
- C. Patients must be supplied with full knowledge of the facts to make informed decisions concerning the health insurance coverage they purchase and where and from which Clinicians they seek health care services;
- D. Clinicians shall give fee information to Patients and discuss their Out-Of-Network (OON) fees in advance of services, whenever possible, except for Emergency Services or in Unanticipated OON Care situations;
- E. A Health Insurance Plan (The Plan) shall provide a Clinician directory online and in print. The Plan shall annually audit at least a reasonable sample size of its directories for accuracy; The online directory shall be updated at least monthly, the Plan shall ensure the public can view all current In-Network Clinicians, and the directory shall have a searchable format; the Health Insurance Company shall disclose that the directory was accurate at the time of printing and that an Enrollee should consult the electronic Clinician directory to ensure that information is current;
- F. A Health Insurance Plan shall clearly disclose the scope and limitations of any OON benefit they purport to provide, in language that is meaningful to the consumer; and the methodology for reimbursement for OON services shall be transparent to Enrollees, consumers, Clinicians, hospitals and regulatory authorities via an on-line non-profit benchmarking database that is not affiliated or financially connected to a Health Insurance Plan or its affiliates;
- G. Patients shall be assured that any higher premiums paid for affordable access to OON Clinicians reasonably reflects the actuarial value of the OON benefit provided;
- H. Patients shall be protected from the financial impact that can result from narrow networks, retroactive denials and cost-shifting trends within Health Insurance Plans; and,
- I. Solutions to OON issues for unanticipated care including Emergency Services and EMTALA mandated care shall ensure universal access to high quality emergency care.

### Section 3. Definitions.

- A. **Balance Bill:** After the provision of health care services, a bill from a Clinician to a Patient that reflects the difference (if any) between the Clinician's charge and the Health Insurance Plan's First Offer of Reimbursement.
- B. **Clinician:** See Facility-Based Health Care Professional or Health Care Professional.
- C. **Clinical Network:** all the Clinicians contracted to provide services to a specified group of Enrollees under a Health Insurance Plan.
- D. **Commissioner:** The insurance commissioner of this state.
- E. **Cost-Sharing:** Any expenditure required by or on behalf of an Enrollee with respect to health benefits, including co-insurance, deductibles, and/or co-pays. Cost-Sharing does not include premiums, balance billing amounts for OON Clinicians and spending for non-covered services.
- F. **Days:** Days shall mean calendar days unless otherwise specified.
- G. **Emergency Medical Condition:** "Emergency Medical Condition" means a physical, mental or behavioral health condition that manifests itself by acute symptoms of sufficient severity, including severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that immediate medical care is required, which may include, but shall not be limited to:
  - 1. Placing the Patient's mental or behavioral health or, with respect to a pregnant woman, the woman's or her fetus' health in serious jeopardy;
  - 2. Serious impairment to a bodily function;
  - 3. Serious impairment of any bodily organ or part; or
  - 4. With respect to a pregnant woman who is having contractions: (a) That there is inadequate time to affect a safe transfer to another hospital before delivery; or (b) That transfer to another hospital may pose a threat to the health or safety of the woman or fetus; or a threat to the individual's safety or the safety of others.
- H. **Emergency Services:** A physical, mental or behavioral health screening examination that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to determine the presence of and evaluate the Emergency Medical Condition; and (2) any further physical, mental or behavioral health examination and treatment to the extent they are within the capabilities of the staff and facilities available at the hospital to stabilize the Patient, and as required by the federal Emergency Medical Treatment Active Labor Act (EMTALA).
- I. **Enrollee:** A Patient eligible for services covered by a specific Health Insurance Plan.
- J. **Facility-Based Health Care Professional or Clinician:** a health care professional who provides services to Patients in a Facility, and typically includes anesthesiologists, radiologists, pathologists, emergency physicians, and hospitalists, but may also include other specialists such as those that provide on-call services, as well as non-physician health care professionals such as nurses, nurse practitioners, physician assistants, anesthesia assistants, advanced practice providers (APPs), physical therapists, and nutritionists.
- K. **First Offer of Reimbursement:** The initial offer of reimbursement by the Health Insurance Plan to the Clinician for the services provided to the Patient.
- L. **Health Care Facility or Facility:** institutions, including mobile facilities which offer diagnosis, treatment, inpatient or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. "Health Care Facility" includes hospitals, chronic disease facilities, birthing centers, psychiatric facilities, nursing homes, free standing emergency centers, home health agencies, outpatient or independent surgical, diagnostic or therapeutic centers or facilities, including, but not limited to, kidney disease treatment centers, mental health agencies or centers, diagnostic imaging facilities, independent diagnostic laboratories

(including independent imaging facilities), cardiac catheterization laboratories and radiation therapy facilities.

- M. **Health Care Professional or Clinician:** a health care professional, a physician, APP, anesthesia assistant, surgical assistant or other health care practitioner licensed, accredited or certified to perform specified physical, mental or behavioral health care services consistent with their scope of practice under state law.
- N. **Health Care Services or Services:** services for the diagnosis, prevention, treatment or cure of a health condition, illness, injury or disease.
- O. **Health Insurance Company or Company:** a company that sells and/or provides a Health Insurance Plan.
- P. **Health Insurance Plan or Plan:** any hospital and medical expense incurred policy, non-profit health care service plan contract, health maintenance organization subscriber contract or any other health care plan or arrangement that pays for or furnishes medical or health care services, whether by insurance or otherwise.
- Q. **In-Network Clinician:** a health care provider who/that, through a contract with the Plan, has agreed to provide health care services to Enrollees with an expectation of receiving reimbursement, including coinsurance, copayments or deductibles, directly or indirectly from the health insurance company.
- R. **In-Network Level of Coverage:** the portion of the cost for a health care service a Plan agrees to reimburse to a health care provider who/that participates in the Plan's network. An Enrollee is generally responsible for the In-Network Cost-Sharing.
- S. **Minimum Benefit Standard (MBS):** The MBS is the usual and customary rate defined as the eightieth (80th) percentile of all clinician charges for the particular health care service performed by a health care professional in the same or similar specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the commissioner ("The Charges Standard"). The nonprofit organization shall not be affiliated with or receive funding from a health insurance company.
- T. **Out-Of-Network (OON) Care:** care provided to a Patient by a Clinician or in a Facility who/that does not participate in the Patient's Plan's network.
- U. **Out-Of-Network (OON) Clinician:** a Health Care Professional or Clinician who does not have a contract with a Plan to provide care to Enrollees of that Plan.
- V. **Out-Of-Network (OON) Level of Coverage:** the portion of the cost for a Health Care Service a Plan is obligated to reimburse a Clinician who does not participate in the Plan's network for Health Care Services provided to an Enrollee under an Enrollee's Plan. An Enrollee is generally responsible for the difference between the Clinician's charges and the OON allowable, and OON Cost-Sharing as determined by the Plan.
- W. **Patient:** participant, beneficiary, Enrollee, guarantor or authorized representative (collectively "the Patient").
- X. **Unanticipated Out-Of-Network (OON) Care:** Services received by a Patient in a Facility from an OON Health Care Professional or Clinician when the Patient did not have the ability or control to select such services from an In-Network Clinician, or when Emergency Services are provided to a Patient by an OON Clinician. Unanticipated OON care does not include non-emergency services received by a Patient when the Patient *voluntarily selects in writing* an OON Clinician prior to the provision of the care.

**Section 4. Applicability and Scope.** This Act applies to all Health Insurance Companies that are doing business in a state.

**Section 5. Reimbursement for Unanticipated Out-of-Network Care (OON).**

- A. OON Facility-Based Clinicians shall not send, transmit, communicate or mail a demand for payment to balance bill a Patient for Unanticipated OON care and services delivered after the effective date of this law and subject to the terms and conditions herein;
- B. A Facility-Based Clinician shall send a bill for his or her charges for Unanticipated OON Care at a Facility to the Patient's Health Insurance Company. The Health Insurance Company shall reimburse the Clinician directly pursuant to Section 5 of this Act and such reimbursement shall be at least the Minimum Benefit Standard (MBS) and the entire amount of the Patient Cost-Sharing for professional services received by the Patient at the Facility. Reimbursement shall be according to the time required by the state under Prompt Payment Laws and as specified by the Commissioner, if any. The Company shall provide the Clinician with an explanation of benefits (EOB) describing the charges, reimbursements and other relevant information from the claim adjudication, in similar form and fashion as the Company would if the Clinician was In-Network.
- C. When Unanticipated OON care is provided at a Facility, and the MBS and Patient Cost-Sharing is received, the Clinician shall provide the Patient with information regarding the adjudication of his/her claim to demonstrate the charges filed and reimbursements received by the Health Plan on behalf of the Patient. The Patient's Cost-Sharing obligation to the Plan shall be for no more than the Cost-Sharing requirements that would have been applicable if the care had been provided by a Health Care Professional at In-Network rates applicable to the Patient's Plan.
- D. Cost-Sharing reimbursements to the OON Clinician shall be treated as though they were paid to an In-Network Clinician for purposes related to the Enrollee's deductibles and out-of-pocket maximums. The Plans shall apply the OON charges to the Patient's In-Network deductibles and out-of-pocket maximums.
- E. The Health Plan shall remit all reimbursements directly to the Clinician and the Plan shall be barred from remitting reimbursements directly to the Patient, regardless of whether the Clinician is OON.
- F. The Health Plan shall bill the Patient for the Cost-Sharing but shall not delay reimbursements to the Clinician in accordance with State prompt payment laws based on delayed or non-payment of the Cost-Sharing from the Patient.

## **Section 6. Transparency of Network Directories.**

- A. The Plans shall provide a Clinician directory on both the Plan's website and in print format.
  - a. The Plan shall annually audit at least a reasonable sample size of its clinical directories for accuracy and retain documentation of such an audit to be made available to the Commissioner upon request.
  - b. The directory on the Plan's website and in print format shall contain the following general information in plain language for each network plan:
    - i. a description of the criteria the Plan has used to build its network;
    - ii. if applicable, a description of the criteria the Plan has used to tier providers;
    - iii. if applicable, how the Plan designates the different provider tiers or levels in the network and identifies for each specific provider, hospital or other type of Facility in the network which tier each is placed, for example by name, symbols or grouping, for a covered person or a prospective covered person to be able to identify the provider tier;
    - iv. if applicable, a statement that authorization or referral may be required to access certain Clinicians;

- v. what Clinician directory applies to which network plan, such as including the specific name of the network plan as marketed and issued in this state;
  - vi. a customer service email address and telephone number or electronic link that Enrollees or the public may use to notify the Plan of inaccurate provider directory information.
- B. Regarding the directory posted online, the Plan shall:
- a. update the Clinician directory at least monthly;
  - b. ensure that the public may view all the current Clinicians for a plan through a clearly identifiable link or tab and without creating or accessing an account or entering a policy or contract number;
  - c. make available in a searchable format the following information for each network plan:
    - i. For health care professionals: name; gender; participating office location(s); specialty, if applicable; medical group affiliations, if applicable; Facility affiliations; if applicable; participating Facility affiliations, if applicable; languages spoken other than English, if applicable; and whether the provider is accepting new Patients.
    - ii. For hospitals: hospital name; hospital type (i.e., acute, rehabilitation, children's, cancer); participating hospital location; and hospital accreditation status; and,
    - iii. For Facilities, other than hospitals, by type: Facility name; Facility type; types of services performed; and participating Facility location(s).
  - d. make available the following information in addition to the information available under Subsection B 3:
    - i. for Health Care Professionals: contact information; board certification(s); and languages spoken other than English by clinical staff, if applicable;
    - ii. for Hospitals: telephone number; and
    - iii. for Facilities other than Hospitals: telephone number.
- C. Regarding the clinical directory in print format, the Plan shall include a disclosure that the directory is accurate as of the date of printing and that Enrollees and prospective Enrollees should consult the Plan's electronic provider directory on its website or call [insert appropriate customer service phone number] to obtain current Clinician directory information.
- D. Upon request of an Enrollee or a prospective Enrollee, the Plan shall make available in print format, the following Clinician directory information for the applicable network plan:
- a. for Health Care Professionals: name; contact information; participating office location(s); specialty, if applicable; languages spoken other than English, if applicable; and whether the provider is accepting new Patients;
  - b. for Hospitals: hospital name; hospital type (i.e., acute, rehabilitation, children's, cancer); and participating hospital location and telephone number; and
  - c. for Facilities, other than Hospitals, by type: Facility name; Facility type; types of services performed; and participating Facility.

**Section 7. Effective.** This Act shall become effective six months from the date of enactment.

**Section 8. Severability.** If any provision of this Act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of this Act are hereby declared severable.

**Section 9. Nullification.** Any contract provision violating this Act shall be considered null and void.