State Legislative Wrap-Up: Out-of-Network Legislation
State legislatures considered several bills during their 2021 legislative sessions to modify out-of-network provisions. Five of the bills were enacted and the New Jersey and North Carolina senates passed related bills.

Enacted

Georgia Gov. Brian Kemp signed House Bill (HB) 454 into law. The law, which takes effect Jan. 1, will require insurers who advertise a provider as a participating provider in their directory when an enrollee selects their health benefit plan, to cover the provider charges at in-network rates for 180 days after the contract has ended for that enrollee, regardless of whether the provider continues to participate in the insurer's network. In the event of a public health emergency or immediately after its expiration, a carrier will:

- Be prohibited from terminating a provider from the insurer's network.
- Reimburse a provider at its most recent contracted in-network rates.

Indiana Gov. Eric Holcomb signed HB 1447 into law. The law, which took effect June 30, postpones the effective date of the requirement that a practitioner provides a good faith estimate (GFE) of the amount it intends to charge for a healthcare service until Jan. 1. The GFE does not need to be included if the elective health service is scheduled to be performed within five business days of the date of the patient's request. Additionally, the provider or facility is required to submit a written explanation if the charge for a healthcare service exceeds their GFE by the greater of $100 or 5%. The law's changes in wording and requirement standards in complying with the GFE theoretically aligns it more closely with the requirements of the federal No Surprises Act, which takes effect in 2022.

Furthermore, an out-of-network provider who provides healthcare services at an in-network facility to a covered individual is required to submit a notice to the enrollee at least five business days before the service, disclosing that the provider is out of network and will not be allowed to bill the enrollee the difference between the price charged by the provider and the carrier reimbursement rate for the healthcare service.

Maine Gov. Janet Mills signed emergency measure Legislative Document 46 into law. Unless a carrier and out-of-network provider agree otherwise (and excluding ambulance services), the carrier will reimburse the out-of-network provider or enrollee (as applicable) for healthcare services rendered at the greater of:

- The carrier's median network rate paid for that healthcare service by a similar provider in the geographic area where the service was provided, or
- The median network rate paid by all carriers for that healthcare service by a similar provider in the geographic area where the service was provided as determined by the all-payer claims database maintained by the Maine Health Data Organization. If Maine Health Data Organization claims data is insufficient or otherwise inapplicable, another independent medical claims database specified by the superintendent will be used.

Following a determination by an independent dispute resolution entity of a reasonable fee for a particular healthcare service, an out-of-network provider may not initiate the dispute resolution process under this subsection for that same healthcare service for a period of 90 days.

Oklahoma Gov. Kevin Stitt signed HB 2323 into law. The law, which takes effect Nov. 1, will prohibit carriers and preferred provider organizations from unilaterally removing a provider from the network

solely because the provider informs an enrollee of the full range of physicians and providers available to the enrollee, including out-of-network providers. Provider agreements may not prohibit, penalize, terminate or otherwise restrict a preferred provider from referring to an out-of-network provider, provided the enrollee signs an acknowledgement of referral that he or she may incur certain charges, deductibles and higher coinsurance.

The Oklahoma chapter monitored the bill.

Utah Gov. Cox signed HB 54 into law. The law, which took effect May 5, requires carriers to cover emergency healthcare services at the in-network rate.

Passed Senate chamber

In New Jersey, Senate Bill (SB) 3458 passed the Senate and is being considered in the Assembly. The bill would modify out-of-network provisions by permitting an arbitrator to determine a usual, reasonable and customary fee that would be one of the two amounts submitted by the parties in arbitration. To determine the fee, the out-of-network provider would submit the provider's usual and customary fee by means of explanations of benefits from enrollees showing the provider's billed and paid fee. The arbitrator would determine the reasonableness of the provider's fee by comparison of the provider's experience to providers in the area. When using a database as evidence of the reasonableness of a fee, the provider and carrier would both identify the database used, the edition date, the geo-zip, and the percentile. The arbitrator also would consider prior arbitration awards submitted by either party as evidence of reasonableness.

The New Jersey chapter is monitoring the bill.

In North Carolina, SB 505 passed the Senate and is being considered in the House. The bill would require an in-network health services facility to give at least 72 hours advance written notification to an enrollee with a scheduled an appointment at that facility of any out-of-network provider who will providing a healthcare service to that enrollee. The notice would include all the out-of-network providers rendering services to the enrollee and the estimated cost of their services.

The North Carolina chapter opposes the bill.

For more information, please contact Tina Getachew or Eugenia Brandt.

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