HOUSE OF REPRESENTATIVES
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

H.B. NO. 2504 H.D. 2

A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE.

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

SECTION 1. The legislature finds that the patients with health insurance who receive treatment from an out-of-network provider may be subject to the practice known as "balance billing" or "surprise billing", where the provider bills the patient for the difference between what the patient's health insurance chooses to reimburse and what the provider chooses to charge. These bills occur most often when patients inadvertently receive medical services from out-of-network providers, such as when a patient is undergoing surgery and is not informed that a member of the medical team is not a participating provider in the patient's health care plan, or when a patient is in need of emergency services and is taken to the nearest medical facility, regardless of the facility's or its providers' network status. Out-of-network providers may not have a contracted rate with a health insurer for services; therefore, the prices these providers may charge may be much

greater than the price charged by in-network providers for similar services.

The legislature further finds that balance bills or surprise bills can be an unwelcome shock to patients who may have unknowingly received health care services outside of their provider network. These unexpected medical bills are a major concern for Americans. According to a September 2018 Kaiser Family Foundation poll, two-thirds of respondents said they were "very worried" or "somewhat worried" that they or a family member would receive a surprise bill. In fact, these bills are the most-cited concern related to health care costs and other household expenses. Furthermore, out-of-network bills sent to health insurers or carriers from physicians can be more than thirty times the average in-network rate for those same services.

Currently, there is no comprehensive protection from surprise bills or balance bills at the federal level and, while there is a growing trend toward state action to protect patients from surprise bills or balance bills, most state laws do not provide comprehensive protections. However, the trend is changing. At least nine states including California, Oregon,

Maryland, Connecticut, Illinois, New York, New Hampshire, New Jersey, and Florida have enacted comprehensive approaches to end balance billing and surprise bills. Similarly, New Mexico, Texas, Washington, and Colorado passed new comprehensive laws in 2019. Hawaii patients continue to be at risk of being caught in the middle of balance billing disputes between health insurers and providers or being hit with significant surprise bills.

The purpose of this Act is to specify:

(1) Disclosure and consent requirements for health care providers, health care facilities, and hospitals that are nonparticipating providers in a patient's health care plan;

(2) The circumstances in which a patient shall not be liable to a health care provider for any sums owed by an insurer, mutual benefit society, or health maintenance organization; and

(3) That insurers, mutual benefit societies, and health maintenance organizations shall enter into independent dispute resolutions with nonparticipating providers to resolve their outstanding obligations for emergency services.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§321- Disclosure and consent required.** (a) A health care provider, health care facility, or hospital shall disclose the following information in writing to patients or prospective patients prior to the provision of non-emergency services that are not authorized by the patients' health care plan:

(1) That certain health care facility-based health care providers may be called upon to render care to a covered person during the course of treatment;

(2) That those health care facility-based health care providers may not have contracts with the covered person's health care plan and are therefore considered to be out-of-network providers;

(3) That the services provided will be on an out-of-network basis and the cost may be substantially higher than if the services were provided in-network;

(4) A notification that the covered person may either agree to accept and pay the charges for the out-of-network services or rely on any other rights and

remedies that may be available under state or federal law; and

(5) A statement indicating that the covered person may obtain from the covered person's health care plan a list of health care facility-based health care providers who are participating providers and the covered person may request those participating facility-based health care providers.

(b) If a health care provider, health care facility, or hospital is not a participating provider in a patient's or prospective patient's health care plan network, and the patient is receiving non-emergency health care services, the health care provider, health care facility, or hospital shall:

(1) At least twenty-four hours prior to the provision of non-emergency services, disclose to the patient or prospective patient in writing and in compliance with subsection (c), the amount or estimated amount that the health care provider, health care facility, or hospital will bill the patient or prospective patient for non-emergency health care services provided or anticipated to be provided to the patient or

prospective patient, not including unforeseen medical circumstances that may arise when the health care services are provided; and

(2) At least twenty-four hours prior to the provision of non-emergency services, obtain the written consent of the patient or prospective patient for provision of services by the nonparticipating health care provider, health care facility, or hospital in writing separate from the document used to obtain the consent for any other part of the care or procedure; provided that the consent shall not be obtained at the time of admission or at any time when the patient or prospective patient is being prepared for surgery or any other procedure.

(c) Any communication from the nonparticipating health care provider, health care facility, or hospital to the patient or prospective patient shall include notice in a twelve-point bold type stating that the communication is not a bill and informing the patient or prospective patient that the patient or prospective patient shall not pay any amount or estimated amount until the patient's or prospective patient's health care plan

informs the patient or prospective patient of any applicable cost-sharing.

(d) A nonparticipating health care provider, health care facility, or hospital that fails to comply with this section shall not bill or collect any amount from the patient or prospective patient in excess of the in-network cost-sharing owed by the patient or prospective patient that would be billed or collected for the same services rendered by a participating health care provider, health care facility, or hospital.

(e) For purposes of this section:

"Health care facility" means any institution, place, building, or agency, or portion thereof, licensed or otherwise authorized by the State, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, or rehabilitative or preventive care to any person or persons.

"Health care plan" means a policy, contract, plan, or agreement delivered or issued for delivery by a health insurance company governed by article 10A of chapter 431, mutual benefit society governed by article 1 of chapter 432, health maintenance organization governed by chapter 432D, or any other entity

delivering or issuing for delivery in the State accident and health or sickness insurance as defined in section 431:1-205, other than disability insurance that replaces lost income.

"Health care provider" means an individual who is licensed or otherwise authorized by the State to provide health care services.

"Hospital" means:

(1) An institution with an organized medical staff, regulated under section 321-11(10), that admits patients for inpatient care, diagnosis, observation, and treatment; and

(2) A health facility under chapter 323F.

"In-network cost-sharing" means the amount owed by a covered person to a health care provider, health care facility, or hospital that is a participating member of the covered person's health care plan's network."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding two new sections to article 10A to be appropriately designated and to read as follows:

"**§431:10A-A Balance billing; hold harmless; emergency services.** (a) Every contract between an insurer and a

participating provider of health care services shall be in writing and shall set forth that in the event the insurer fails to pay for health care services as set forth in the contract, the insured shall not be liable to the provider for any sums owed by the insurer.

(b) When an insured receives emergency services from a provider who is not a participating provider in the provider network of the insured, the insured shall not incur greater out-of-pocket costs for emergency services than the insured would have incurred with a participating provider of health care services.

(c) When the insured received emergency services from a provider who is not a participating provider in the provider network of the insured, an insurer shall be responsible to fulfill its obligation to the insured and shall enter into negotiation with the provider who is not a participating provider in the provider network of the insured to resolve any sums owed by the insurer.

(d) For purposes of this section:

"Emergency condition" means a medical or behavioral condition that manifests itself by acute symptoms of sufficient

severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in:

(1) Placing the health of the person afflicted with the condition in serious jeopardy;

(2) Serious impairment to the person's bodily functions;

(3) Serious dysfunction of any bodily organ or part of the person; or

(4) Serious disfigurement of the person.

"Emergency services" shall have the same meaning as that term is defined in section 432E-1.

§431:10A-B Balance billing; hold harmless; non-emergency services. (a) No nonparticipating health care provider, health care facility, or hospital, or agent, trustee, or assignee thereof, may maintain any claim against an insured to collect sums in excess of the amount owed by the insured as a copayment, coinsurance, or deductible for similar services provided by a participating provider under the insured's policy of accident and health or sickness insurance.

(b) When the insured receives non-emergency services from a provider who is not a participating provider in the provider network of the insured, an insurer shall be responsible to fulfill its obligation to the insured and shall enter into negotiation with the provider who is not a participating provider in the provider network of the insured to resolve any sums owed by the insurer."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 14G to be appropriately designated and to read as follows:

"**§431:14G- Out-of-network or nonparticipating provider reimbursement; dispute resolution.** (a) A managed care plan shall be responsible to fulfill its obligation to the enrollee and enter into negotiation with the nonparticipating provider. The managed care plan and nonparticipating provider shall come to an agreement through an independent dispute resolution process, as established by the commissioner. If no resolution is met, the managed care plan shall pay the nonparticipating provider the amount billed by the nonparticipating provider. The commissioner shall adopt rules pursuant to chapter 91 to establish an independent dispute resolution process.

(b) Nothing in this section shall be construed to require a managed care plan to cover services not required by law or by the terms and conditions of the managed care plan. Nothing in this section shall be construed to prohibit nonparticipating providers from seeking the uncovered cost of services rendered from enrollees who have consented to receive the health care services provided by the nonparticipating provider in accordance with section 321- ."

SECTION 5. Chapter 432, Hawaii Revised Statutes, is amended by adding three new sections to article 1 to be appropriately designated and to read as follows:

"**§432:1- Balance billing; hold harmless; emergency services.** (a) Every contract between a mutual benefit society and a participating provider of health care services shall be in writing and shall set forth that in the event the mutual benefit society fails to pay for health care services as set forth in the contract, the subscriber or member shall not be liable to the provider for any sums owed by the mutual benefit society.

(b) When a subscriber or member receives emergency services from a provider who is not a participating provider in the provider network of the subscriber or member, the subscriber

or member shall not incur greater out-of-pocket costs for emergency services than the subscriber or member would have incurred with a participating provider of health care services.

(c) When a subscriber or member receives emergency services from a provider who is not a participating provider in the provider network of the subscriber or member, the mutual benefit society shall be responsible to fulfill its obligation to the subscriber or member and shall enter into negotiation with the provider who is not a participating provider in the provider network of the subscriber or member, to resolve any sums owed by the mutual benefit society.

(d) For purposes of this section:

"Emergency condition" means a medical or behavioral condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in:

(1) Placing the health of the person afflicted with the condition in serious jeopardy;

(2) Serious impairment to the person's bodily functions;

(3) Serious dysfunction of any bodily organ or part of the person; or

(4) Serious disfigurement of the person.

"Emergency services" shall have the same meaning as that term is defined in 432E-1.

§432:1- Balance billing; hold harmless; non-emergency services. (a) No nonparticipating health care provider, health care facility, or hospital, or agent, trustee, or assignee thereof, may maintain any claim against a subscriber or member to collect sums in excess of the amount owed by the subscriber or member as a copayment, coinsurance, or deductible for similar services provided by a participating provider under the subscriber's or member's plan contract.

(b) When a subscriber or member receives non-emergency services from a provider who is not a participating provider in the provider network of the subscriber or member, the mutual benefit society shall be responsible to fulfill its obligation to the subscriber or member and shall enter into negotiation with the provider who is not a participating provider in the provider network of the subscriber or member, to resolve any sums owed by the mutual benefit society.

§432:1- Out-of-network or nonparticipating provider reimbursement; dispute resolution. (a) A health care plan shall be responsible for fulfilling its obligation to the subscriber or member and shall enter into negotiation with the nonparticipating provider. If no resolution is met within thirty days, the mutual benefit society shall pay the nonparticipating provider the amount billed by the nonparticipating provider.

(b) If there are disputes regarding the out of network charges or reimbursement for emergency services, either the health care plan or the nonparticipating provider may institute mediation pursuant to the dispute resolution process."

SECTION 6. Chapter 432D, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"**§432D- Balance billing; hold harmless; emergency services.** (a) Every contract between a health maintenance organization and a participating provider of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the contract, the

subscriber or enrollee shall not be liable to the provider for any sums owed by the health maintenance organization.

(b) When a subscriber or enrollee receives emergency services from a provider who is not a participating provider in the provider network of the subscriber or enrollee, the subscriber or enrollee shall not incur greater out-of-pocket costs for emergency services than the subscriber or enrollee would have incurred with a participating provider of health care services.

(c) When a subscriber or enrollee receives emergency services from a provider who is not a participating provider in the provider network of the subscriber or enrollee, the health maintenance organization shall be responsible to fulfill their obligation to the subscriber or enrollee and shall enter into negotiation with the provider who is not a participating provider in the provider network of the subscriber or enrollee, to resolve any sums owed by the health maintenance organization.

(d) For purposes of this section:

"Emergency condition" means a medical or behavioral condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson,

possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in:

(1) Placing the health of the person afflicted with the condition in serious jeopardy;

(2) Serious impairment to the person's bodily functions;

(3) Serious dysfunction of any bodily organ or part of the person; or

(4) Serious disfigurement of the person.

"Emergency services" shall have the same meaning as that term is defined in section 432E-1.

§432D- Balance billing; hold harmless; non-emergency services. No nonparticipating health care provider, health care facility, or hospital, or agent, trustee, or assignee thereof, may maintain any claim against a subscriber or enrollee to collect sums in excess of the amount owed by the subscriber or enrollee as a copayment, coinsurance, or deductible for similar services provided by a participating provider under the subscriber's or enrollee's policy, contract, plan, or agreement.

§432D- Out-of-network or nonparticipating provider reimbursement; dispute resolution. (a) A health maintenance

organization shall be responsible to fulfill its obligation to the subscriber or enrollee and enter into negotiation with the nonparticipating provider. The health maintenance organization and nonparticipating provider shall come to an agreement through an independent dispute resolution process, as established by the commissioner. If no resolution is met, the health maintenance organization shall pay the nonparticipating provider the amount billed by the nonparticipating provider. The commissioner shall adopt rules pursuant to chapter 91 to establish an independent dispute resolution process.

(b) Nothing in this section shall be construed to require a health maintenance organization to cover services not required by law or by the terms and conditions of the policy, contract, plan, or agreement. Nothing in this section shall be construed to prohibit nonparticipating providers from seeking the uncovered cost of services rendered from subscribers or enrollees who have consented to receive the health care services provided by the nonparticipating provider in accordance with section 321- ."

SECTION 7. Chapter 432E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§432E- Dispute resolution.** (a) When the nonparticipating health care provider and the managed care plan are unable to reach an agreement as to the amount to be paid for the services provided by the nonparticipating provider of emergency services, the matter shall be submitted to the commissioner for binding arbitration or mediation.

(b) The commissioner shall establish a dispute resolution process by which a dispute for a bill for emergency services by a nonparticipating provider may be resolved. The commissioner shall adopt rules pursuant to chapter 91 to establish an independent dispute resolution process.

(c) In determining the appropriate amount to pay a nonparticipating provider for an emergency service, a mediator shall consider all relevant factors, including:

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

(A) The fees paid to the involved health care provider or hospital for the same services rendered by the health care provider or hospital to other patients in managed care plans in which the health care provider or hospital is not participating; and

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

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

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

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

(5) Individual patient characteristics;

(6) The eightieth percentile of billed charges for similar services in the same geozip area determined by an independent, third party benchmarking database; and

(7) The fiftieth percentile of rates for the service or supply paid to participating providers in the same or similar specialty and provided in the same geozip area by an independent, third-party benchmarking database.

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

(1) The identical managed care plan or issuer and provider;

(2) Claims with the same or related current procedural codes; and

(3) Claims that occur within one hundred eighty days of each other.

(e) A patient that is not insured or the patient's provider may submit a dispute regarding a fee for emergency services for binding arbitration or mediation upon approval of the commissioner.

(f) For disputes involving an enrollee, when the dispute resolution entity determines the managed care plan's payment is reasonable, payment for the dispute resolution process shall be the responsibility of the nonparticipating provider. When the dispute resolution entity determines the nonparticipating provider's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the managed care plan. When a good faith negotiation directed by the dispute resolution entity results in a settlement between the managed care plan and nonparticipating provider, the managed care plan and the nonparticipating provider shall evenly divide and share the prorated cost for dispute resolution.

(g) For disputes involving a patient that is not an enrollee, when the dispute resolution entity determines the provider's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the patient unless payment for the dispute resolution process would pose a hardship to the patient. The commissioner shall adopt rules pursuant to chapter 91 to determine payment for the dispute resolution process in cases of hardship. When the dispute resolution entity determines the health care provider's fee is

unreasonable, payment for the dispute resolution process shall be the responsibility of the provider.

(h) The mediator shall issue a decision on a submitted case with thirty days of commencement of binding arbitration or mediation process."

SECTION 8. Section 431:10-109, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§431:10-109**[~~]~~] **Disclosure of** [~~**health care coverage and benefits.**~~] **information.** (a) In order to ensure that all individuals understand their health care options and are able to make informed decisions, all insurers shall provide current and prospective insureds with written disclosure of [~~coverages and benefits, including information on coverage principles and any exclusions or restrictions on coverage.~~] the following information:

(1) Coverages and benefits, including information on coverage principles and any exclusions or restrictions on coverage;

(2) With regard to out-of-network coverage examples of anticipated out-of-pocket costs for frequently billed out-of-network health care services; and

(3) Information in writing and through an internet website that reasonably permits an insured or prospective insured to estimate the anticipated out-of-pocket cost for out-of-network health care services in a geographical area based upon the difference between what the insurer will reimburse for out-of-network health care services.

(b) The information provided shall be current, understandable, and available prior to the issuance of a policy, and upon request after the policy has been issued[~~.~~]; provided that nothing in this section shall prevent an insurer from changing or updating the materials that are made available to insureds.

(c) For purposes of this section:

"Emergency condition" means a medical or behavioral condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in:

(1) Placing the health of the person afflicted with the condition in serious jeopardy;

(2) Serious impairment to the person's bodily functions;

(3) Serious dysfunction of any bodily organ or part of such person; or

(4) Serious disfigurement of the person.

"Emergency services" shall have the same meaning as that term is defined in section 432E-1."

SECTION 9. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2050.

H.B. NO. 2504 H.D. 2

Report Title:
Balance Billing; Surprise Billing; Prohibitions; Health Insurance; Nonparticipating Providers; Dispute Resolution

Description:
Establishes disclosure and consent requirements for nonparticipating health care providers. Prohibits nonparticipating health care providers from balance billing patients in specific circumstances. Requires the use of dispute solution when a dispute exists as to the reimbursement of a nonparticipating provider. Effective 7/1/2050. (HD2)

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