

Self-Funded ERISA Health Plans May Opt Into New Law Regarding Out-of-Network Service Providers

July 19, 2018

New Jersey recently enacted a law that is intended to address the issue of “surprise out-of-network charges” to patients who obtain healthcare from healthcare providers in New Jersey. The law, entitled the “Out-Of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act” (the “**NJ Act**”), applies with respect to patients who have insured health coverage, but may also apply to patients who participate in employer-sponsored, self-funded health plans subject to ERISA (each, a “**Self-Funded Health Plan**”) if such plans voluntarily “opt in” to the NJ Act. The NJ Act imposes numerous new disclosure obligations on healthcare providers in New Jersey regarding information to be posted on their websites or delivered directly to patients who will receive their services. Such information includes (i) the provider’s network status with respect to the patient’s health benefit plan, (ii) a listing of the standard charges for items and services provided by a healthcare facility and contact information for the hospital-based physician groups with which the facility has contracted to provide services (e.g., anesthesiologists and pathologists), and (iii) upon request by the patient, a written statement by the healthcare professional of the amount or estimated amount that such professional will bill the patient for its or his services (absent unforeseen medical circumstances) and the Current Procedural Terminology codes associated with such services. The NJ Act also provides for the following:

- A limitation on payments by a patient who receives emergency/urgent care services, or inadvertent out-of-network services, to the in-network cost-sharing for such services (whereby the remaining provider fees may be billed to the health benefit plan)
- Certain binding arbitration procedures in the event of disputes regarding reimbursements for a healthcare provider’s services
- Automatic assignment to the healthcare provider of any benefits payable by the patient’s health benefit plan for emergency/urgent care services or inadvertent out-of-network services
- A prohibition on the waiver or rebate by an out-of-network healthcare provider of any deductible, copayment, or coinsurance owed by the patient under the terms of his health benefit plan as an inducement for such patient to seek healthcare services from that provider

A Self-Funded Health Plan that elects to opt into the NJ Act must provide an annual notice to the New Jersey Department of Banking and Insurance in the department’s prescribed form. This notice attests to the Self-Funded Health Plan’s participation in, and agreement to be bound by, the applicable provisions of the NJ Act, which must be incorporated into the terms of the Self-Funded Health Plan via an amendment. The NJ Act becomes effective 90 days after its enactment (i.e., on or about August 30, 2018). [View the NJ Act.](#)