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New Jersey Statute Requires Certain Insurance Plans to Make Prompt Payment Directly to Out-Of-Network Providers When Patients Assign Benefits

Out-of-network health care providers such as hospitals, ambulatory surgery centers, physician practices and dental practices have historically been disadvantaged by getting delayed payments for their services from health insurance carriers and, in some cases, having to collect the insurance-covered portion of their service fees directly from the patient.[1] A recent New Jersey Assignment of Benefits Law, which became effective on January 16, 2011, may make the choice to become an out-of-network provider somewhat easier. This new law now requires certain health care insurance carriers to honor the assignment of benefits by covered members, whether assignment is made to an in-network or out-of-network provider, and ensures that out-of-network health care providers receive more timely reimbursements when providing services to patients.

Historically in New Jersey, health plan members have been allowed to assign the benefits under their health insurance plan to a health care provider, directing the health insurance carrier to make payment to the provider for the insurance-covered portion of the services. However, to encourage in-network provider participation, many insurance carriers have included anti-assignment clauses in their health benefit plan contracts. The effect of these anti-assignment clauses has been to prohibit a health plan member from assigning the member's right to receive health insurance benefits to an out-of network provider who treats the member/patient. When an out-of network provider is involved in the care of the member, the insurance carrier makes the entire payment to the member/patient, who then must either endorse the reimbursement check to the provider or deposit the reimbursement check and write a separate check to the provider. Many patients failed to make these payments timely or at all.

[1] The key difference between in-network and out-of-network health care providers is their relationship with the health care insurer. In-network providers have contracts with insurers to accept certain discounted rates, subject to collecting a fixed co-pay from the patient at the time of the visit. Out-of-network providers do not have such contracts, leaving the patient responsible for the entire balance over and above what the health insurance carrier deems to be "usual and customary" charges. It is hardly a surprise that in-network providers see their invoices get paid faster and more fully. Yet, in-network providers often must contend with low reimbursement rates from insurers. Thus, the difficult choice facing many New Jersey providers is whether to accept the low in-network rate or risk non-payment or underpayment as an out-of-network provider.

The new Assignment of Benefits Law provides that a carrier that offers a managed care plan with both in-network and out-of-network benefits must reimburse the health care provider directly if the covered plan member signs an assignment of benefits form for medically necessary health care services rendered by that provider. The carrier may do this in one of two ways. The carrier must send a check directly to the provider that is either (1) payable to the provider, or (2) payable to both the provider and the patient as joint payees, with a signature line for each payee. For the joint payment option, the patient must either sign the check or execute a limited power of attorney allowing the provider to endorse the check on the patient's behalf.

Any payment remitted to the patient rather than the out-of-network provider under these circumstances would be considered unpaid under the New Jersey Prompt Payment Law. The Prompt Payment Law requires that most undisputed claims be paid by the health insurance carrier within thirty (30) to forty (40) days (depending on the mode of claim transmission) of submission by the health care providers. Failure to make payment within the time limit imposed by the Prompt Payment Law will result in the accrual of a penalty interest, typically at ten percent (10) % per annum.

The New Jersey Assignment of Benefits Law is a welcome development for health care providers who have elected not to participate in the often restrictive networks of insurance carriers. It requires insurers in New Jersey to honor assignments of benefits, and subjects insurers who fail to do so to the penalties of the Prompt Payment Law. Most importantly, it provides some relief for out-of-network providers who have historically experienced difficulty in receiving timely and adequate payments for their services to patients.