

## **Laws/Executive Orders Related to Balance Billing in Response to COVID-19**

**Connecticut:** On April 21, Governor Ned Lamont (D) signed [Executive Order 7CC](#) that rescinded an earlier executive order changing reimburse for out-of-network bills. The repeal is retroactive to the effective date of the initial order. Specifically, the latest order repealed [Executive Order 7U](#) signed on April 5. EO 7U replaced the state's greatest of 3 law with the following:

Section 38a-477aa(b)(3)(A) of the Connecticut General Statutes is modified to provide: "If emergency services were rendered to an insured by an out-of-network health care provider, such health care provider may bill the health carrier directly and the health carrier shall reimburse such health care provider the amount the insured's health care plan would pay for such services if rendered by an in-network health care provider as payment in full."

**Kentucky:** On March 9, Governor Andy Beshear (D) signed [Executive Order 2020-220](#) requiring insurers to waive all cost-sharing for screening and testing of COVID-19 and respond to any requests for treatment for COVID-19 on a timely basis. All insurers shall ensure that provider networks are adequate to handle the increased need, including offering access to out-of-network services where appropriate.

**Duration:** The order was effective immediately and shall remain in effect for the duration of the State of Emergency or until the Executive Order is rescinded by further order or by operation of the law.

**Massachusetts:** On April 9, Governor Charlie Baker (R) signed [COVID-19 Order 25](#) that mandates that insurers must cover all medically required costs of COVID-19 treatment in out-of-network hospitals or other medical facilities with no charge to the patient, including co-pays, deductibles or co-insurance payments. The order prohibits balance billing. Health care providers and medical facility insurers must accept the following rates for out-of-plan treatment:

- If insurers have a contract with a provider or facility: contracted rate even if the patient is not in a network that covers the provider or facility
- If insurer has no contract with a provider or facility: 135 percent of the applicable Medicare rate

**Duration:** The order is effective immediately and shall remain in effect until it is rescinded or the emergency is terminated, whichever comes first.

**New Mexico:** On April 20, the New Mexico Office of Superintendent of Insurance issued [Bulletin 2020-009](#), which addresses OON payments. OSI eliminated consumer out-of-pocket cost-sharing for testing and treatment of COVID-19 symptoms. For OON services provided at emergency treatment centers, carriers shall pay the in-network rate for the services provided. For other services performed by OON providers, carriers shall reimburse providers, including facilities, using the surprise billing rate described in Section 59A-57A-13, NMSA 1978. Where there is no data available in the Fair Health benchmarking database for a particular billing code, a carrier shall reimburse a provider at 150 percent of the 2017 Medicare reimbursement rate. Health care providers shall submit bills directly to the patient's insurance provider, regardless of whether the provider has a contract with the plan. No provider shall balance or surprise bill a

patient. A health care provider that knowingly surprise bills a patient for out-of-network care may be subject to a fine pursuant to Section 59A-16-21.3, NMSA 1978.

Duration: The bulletin is effective immediately. The duration is not specified.

**North Dakota:** The North Dakota Insurance Department issued [Bulletin 2020-01](#) which asks health carriers to verify their provider networks are adequate to handle a potential increase in the need for health care services in the event COVID-19 cases are diagnosed in North Dakota. If a health carrier does not have a health care provider in its network with the appropriate training and experience to meet the particular health care needs of an insured, health carriers are asked to make exceptions to provide access to an out-of-network provider at the in-network cost-sharing. The Department is requesting out-of-network providers and facilities accept the highest of the health carrier's in-network reimbursement as full and final payment and to hold harmless insureds who receive surprise medical bills for health care services as it relates to testing and treatment of COVID-19. In order to protect consumers from unexpected out of pocket costs, the North Dakota Insurance Department encourages providers to use the insured's in-network laboratory facilities.

**Ohio:** The Ohio Department of Insurance issued two bulletins dealing with out-of-network care. The bulletins do not specify end dates.

- [Bulletin 2020-02](#) (effective March 11, 2020) states that emergency care must be covered without preauthorization and must be covered at the same cost sharing level as if provided in-network. Health insuring corporations providing coverage in Ohio must also cover out-of-network emergency services without balance billing. Additionally, issuers should be advised that when applying the prudent layperson standard to services for emergency care, COVID-19 and the associated symptoms must be considered. Issuers should ensure that provider networks are adequate to handle testing and care for COVID-19. In certain instances, if the issuer does not have providers in its network to meet these needs, the issuer must provide access to out-of-network providers at in-network cost sharing.
- [Bulletin 2020-05](#) (effective March 20, 2020) directs that:
  1. Emergency medical conditions under Ohio law include testing and treatment related to the COVID-19 virus. These emergency services must be covered without preauthorization and must be covered at the same cost sharing level as if provided in-network. COVID-19 testing and treatment are necessarily emergency services because symptoms of COVID-19 would result in a prudent layperson with an average knowledge of health and medicine to reasonably expect the lack of medical attention to result in serious harm.
  2. Insurers must cover emergency medical conditions in accordance with applicable law. Insurers must provide benefits with respect to an emergency service in an amount at least equal to the greatest of the amount negotiated with in-network providers, the amount calculated using the same method the plan generally uses to determine payments for out-of-network services, or the amount that would be paid under Medicare. Additionally, health insuring corporations providing coverage in Ohio must ensure coverage for out-of-network emergency services without balance billing.

**Vermont:** The Vermont Department of Financial Regulation issued [Emergency Rule H-2020-03-E](#) which orders commercial insurers to waive cost-sharing requirements, such as co-payments and deductible requirements for the diagnosis and treatment of COVID-19. This applies retroactively from March 13, the rule does not discuss the end date.

**Wisconsin:** On April 15, [Assembly Bill 1038](#) was enacted. The measure outlines the state's response to the COVID-19 pandemic. During the public health emergency, a defined network plan, including a health maintenance organization, or preferred provider plan is prohibited from requiring an enrollee of the plan to pay more for a service, treatment, or supply provided by an out-of-network provider than if the service, treatment, or supply is provided by a provider that is participating in the plan's network. This prohibition applies to any service, treatment, or supply that is related to diagnosis or treatment for COVID-19 and any service, treatment, or supply that is provided by a provider that is not a participating provider because a participating provider is unavailable due to the public health emergency. The plan shall reimburse the out-of-network provider at 225 percent of the federal Medicare program rate. The provider or facility may not charge the enrollee an amount that exceeds the amount the provider or facility is reimbursed by the plan.

Duration: These provisions are effective during the state of emergency related to public health declared under s. 323.10 on March 12, 2020, by executive order 72, and for the 60 days following the date that the state of emergency terminates.

Source: Physicians for Fair Coverage