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New York and Connecticut Increase Regulation Over Hospital and Health System Facility Fees

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Since the federal No Surprises Act took effect in January 2022, many pieces of legislation have been, and continue to be, geared toward promoting price transparency in health care. One such example is seen in the momentum of state legislative activity surrounding the billing of facility fees. These fees are typically charged to cover the overhead costs associated with the operation of a health care facility, such as payment of staff, maintenance of the facilities, and administrative costs. Patients, however, are often unaware that such costs will be factored into their medical bills.

In response, New York and Connecticut, among other states, have recently enacted and expanded laws regulating facility fee billing. In New York, Public Health Law § 2830 took effect on June 21, 2023, which adopted patient notice requirements and, uniquely, made New York the first state to place an outright ban on facility fees related to preventative care. Less than a week later, in Connecticut, Public Act No. 23-171, An Act Protecting Patients and Prohibiting Unnecessary Health Care Costs, was signed into law on June 27, 2023, expanding Connecticut's existing oversight of facility fee billing. In this blog post, we discuss both laws and how each is representative of different approaches that are being taken by state legislatures to curtail these fees.

New York

Most notably, as identified above, the new law prohibits charging facility fees related to the provision of preventative care. This law also sets certain notification requirements for the billing of facility fees. Specifically, under the new law, no hospital, health system, or provider can bill or seek payment from a patient for a facility fee that is not covered by the patient's health insurance without prior notification at least seven days in advance of the patient's date of service. Under Public Health Law § 2801, a "facility fee" is defined as any fee charged or billed by a hospital or by a health care professional that is (a) intended to compensate for operational expenses and (b) is distinct from a professional fee.

In instances where seven days advance notice is not feasible, such as when an appointment is made less than seven days beforehand, the written notice must be provided to the patient on the date the health care service is rendered. The notice must be written in plain language, in conspicuous twelve-

point boldface type font, and be available in the top six languages spoken in the hospital's service area. The law also prescribes what information should be included in the notice. The notice must indicate the amount of the fee, the purpose of the fee, whether the patient's insurance plan covers the fee, and, for uninsured patients, how the patient can apply for financial assistance.

Connecticut

The Connecticut legislature has regulated facility fees since its No Surprises Act took effect in July 2016. Under the Connecticut No Surprises Act, Connecticut requires hospitals and health systems that charge facility fees separate from provider fees to provide patients with advance written notice in certain circumstances. The notice requirements prescribed by Connecticut law differ depending on whether the hospital or health system bills using an evaluation and management (CPT E/M) or an assessment and management (CPT A/M) code or whether the services are provided at a hospital-based facility located off-campus. In the first instance, the law requires hospitals and health systems to provide patients with information on the amount of the anticipated financial liability of any facility fee to be charged. In contrast, the latter requires a more general notice of the patient's potential financial liability depending on the medical services rendered.

Since the federal No Surprises Act took effect in January 2022, Connecticut has enacted additional laws to regulate the billing of facility fees. Under Connecticut's telehealth services statute, for instance, effective May 24, 2022, telehealth providers and hospitals are prohibited from charging a facility fee for telehealth services. Furthermore, Public Act 23-171, An Act Protecting Patients and Prohibiting Unnecessary Health Care Costs, revises Connecticut's current facility fee regulations to, among other things, prohibit hospitals and health systems from collecting facility fees for outpatient health care services provided on a hospital campus and that use a CPT E/M or CPT A/M code. This change will take effect on July 1, 2024. This law will not apply where services are provided in a hospital campus emergency department or where the CPT E/M code or CPT A/M code are billed for "observation" stays on a hospital's campus for wound care, orthopedics, anticoagulation, oncology, obstetrics, or solid organ transplant services. The law defines "observation" to mean services that are furnished on a hospital's campus, regardless of the length of stay, including the use of a bed and periodic monitoring to evaluate an outpatient's condition or determine whether inpatient admission is needed. Notably, under the revised law, if on July 1, 2024, the hospital or health system has an insurance contract in effect that reimburses CPT E/M or CPT A/M code facility fees, reimbursement can continue until the contract's date of expiration, renewal, or amendment, whichever date falls the earliest.

Finally, the amended law grants the Connecticut Office of Health Strategy (OHS) the ability to enforce this law. On or after July 1, 2024, if OHS has a reasonable belief, based upon information it receives, that any hospital, health system, or hospital-based facility charged a facility fee (outside of those charged due to isolated instances of clerical or electronic billing errors) in violation of the law, OHS could impose a civil penalty of up to one thousand dollars. Hospitals and health systems must also submit a report to OHS detailing certain facility fees that were charged or billed during the previous calendar year.

The Future of Facility Fee Regulation

With the rising cost of health care, scrutiny over unexpected patient bills continues to be a focus of state legislatures across the United States. The New York and Connecticut laws provide illustrations of three key methods that have been undertaken to regulate facility fees: (i) setting notice requirements; (ii) limiting the health care services that facility fees can be billed for; and (iii) limiting

facility fees that can be charged based on the location where the health care services are provided. As more states propose and enact regulations targeting price transparency and affordability of health care services, we expect to see interested stakeholders proposing a variety of alternatives to mitigate the impact of facility fee regulation on patients and health care providers.

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