

November 12, 2020

VIA ELECTRONIC SUBMISSION

Gregg Conley
Administrative Procedure Division
704 West Tower, Floyd Building
2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334

Re: Comments on surprise billing regulations 120-2-106

Dear Mr. Conley:

Thank you for the opportunity to provide input on the rules and regulations governing Georgia's new surprise billing protection law. The undersigned organizations appreciate the attention that the Georgia General Assembly, Governor Kemp, and the Office of Insurance and Safety Fire Commissioner ("DOI") has given to this issue.

Collectively our organizations believe that cost should not stand in the way of access to health care for Georgians. That is why we worked with state leaders to pass the Surprise Billing Consumer Protection Act to protect Georgia families from unfair and costly surprise out-of-network medical bills.

Our primary purpose in offering comments is to guarantee that the intent of the law—to protect consumers to the fullest extent possible from surprise out-of-network medical bills—is upheld. To that end, we offer these recommendations to your agency in an effort to strengthen and add further detail to the proposed rules and regulations on behalf of Georgia consumers.

33-20E-7

This section allows consumers to waive their lawful protections against being balance billed by an out of network (OON) provider, but only if they are fully informed that they are making such a selection. We believe that this section of the law must be tightly regulated and strictly enforced to ensure that the letter and spirit of the law are retained and to avoid the creation a consequential loophole to be exploited by health care providers and facilities.

In order for a consumer's consent to be meaningful, it must be solicited in a way that is understandable, transparent, and provides the consumer with enough information and time to facilitate an informed decision. Without a consent process that meets these standards, the law will fail to protect consumers' access to care and financial wellbeing. Because this process is so important for consumers, we urge DOI to consider the consent process in these ways:

The content and design of the notice/consent process

We urge DOI to develop a uniform written consent form and verbal process for use by health care providers across the state. Texas adopted a similar approach after the state's initial notice and consent rules were found to be insufficient, and consumers were being taken advantage of.

The consent process must be designed in a way that takes into account the diversity of Georgia's population and their health care needs. Many Georgia consumers have reading skills below a 6th grade level, low health literacy skills (written and verbal), do not speak English as a first language, or have cognitive differences that are not readily apparent even to health care providers. In order to ensure that all Georgians are provided a truly informed choice about whether to seek care OON, it is imperative that both the written consent forms and verbal consent prompt:

- Make clear the full estimated costs of the OON care episode
- Abide by best practices of health literacy and universal design (e.g. lots of white space, short sentences, everyday language/terms, among other guidelines);
- Be available in the patient's preferred language;
- Be made available in formats that meet the Americans with Disability Act standards (e.g. screen readable pdfs, Braille); and
- Include prominent notice that consumers do not have to waive their rights and may be offered other options for care if they so choose.

While Texas did not require verbal consent from consumers, their written materials provide a good example of what Georgia's could look like, as they follow many readability, usability, and accessibility best practices. DOI can find the [Texas consumer consent form](#) here along with [the form's instructions for providers](#). The Michigan Department of Health and Human Services published [these content and design standards](#) for the state's public assistance application following a two-year study period; these standards may also be useful for DOI's purposes.

The staff at Georgians for a Healthy Future (one of the undersigned organizations) maintain expertise in the areas of health literacy, accessibility, and readability for health forms. We would be pleased to help DOI in its efforts to provide consumers with a clear and understandable consent process.

The timing of the consumer consent process

The law mentions two time periods related to consumer consent to go OON for their care. The first stipulates that in nonemergency medical situations, consumers can only make an informed choice after they are provided with an estimate of potential charges. Georgia consumers will be best able to make an informed decision about their care if:

1. They receive this cost estimate as far ahead of any scheduled health services as possible; and
2. The cost estimate is detailed and understandable to lay people.

Informed decisions by consumers can only take place if they have the time and space needed to review the cost estimate provided by an OON provider, call their health insurer to explore

their IN options, and consider all of the available information on their own or in consultation with other decision makers in their households. To that end, GHF urges DOI to require that health care providers:

- Provide a written estimate that includes the date of service; service code and name for all expected services/supplies; the amount the provider bills for each item; and the amount that the consumer may need to pay for each item and in total. The Texas consent form builds in an easy-to-understand cost estimate structure that we believe would provide Georgia consumers with the information needed to check with their insurer about IN provider options and/or comparison shop with other providers.
- Provide the estimate of OON services at the time that the appointment is made; or as soon as possible ahead of the appointment. Almost as a rule, health care providers collect consumers' health insurance information at the time that a health appointment is made. This allows the provider to check their network status with the consumers' plan immediately or very soon afterwards. Providers should be required to check their network status while booking appointments, or within two business days following the booking of the appointment. Upon finding that they are OON for a consumers' plan, providers should be required to notify the consumer and provide a written cost estimate of services within one business day. If the booked appointment would occur within the three-business day window, the network determination and written cost estimate should be provided to consumers at least 24 hours ahead of their appointment.

The second time period detailed by this section of the law refers to situations in which a provider is asked by a patient who needs more or different care from another provider for a referral with a short-enough turnaround time that it would make the above process unworkable. GHF urges that DOI define the time period referred to as "immediate" in 33-20E-7(c) as shorter than two business days. For referrals taking place more than two business days in the future, health care providers should be able to reasonably notify consumers of their network status and the estimated costs of care.

The notice provided to the consumer in these same-day, next-day, or otherwise short-turnaround referrals are especially consequential as consumers will feel as though they have less time to check with their insurer about in-network provider options and/or comparison shop with other providers. The written and verbal notice provided to consumers in this situation should mirror as much as possible the notice provisions described in the above *Content and design of the notice/consent process* section. Because this part of the law does not require that consumers are provided with a cost estimate, the referring provider should be required to at least provide the consumer with the contact information of the referred provider so that the consumer can easily request an estimate.

Documentation of the consumer consent process

So that consumers have complete records and files with which to document their health care and out of pocket costs, providers should be required to provide copies of all written OON consent forms and other documentation of all verbal consents to consumers during the consumer's health appointment or in a reasonably timely manner following the appointment. This will maintain transparency for consumers and accountability on the part of providers.

33-20E-8

We look forward to engaging with the Georgia All Payer Claims Database Advisory Committee on the establishment of the APCD, upon appropriations.

33-20E-17

We encourage the DOI to be proactive in referring providers and facilities to the appropriate governing bodies following a pattern of behavior that violates this law. We further urge DOI to make these referrals public in an annual report. This report could be coordinated with the annual publication of the arbitration results report to the House and Senate Insurance Committees.

The Surprise Billing Consumer Protection Act is incredibly significant for Georgia consumers. If proactively implemented and meaningfully enforced, it could protect the financial security and access to care for thousands of Georgians each year. We look forward to working with DOI to promote this law and protect Georgia consumers from surprise out of network medical bills.

Thank you for the consideration of our comments. If you have any questions, please contact Laura Colbert, Executive Director of Georgians for a Healthy Future, at 404-890-5804 or lcolbert@healthyfuturega.org.

Sincerely,

Laura Colbert
Executive Director
Georgians for a Healthy Future

Kelly Barta
State Advocacy Project Manager
Allergy & Asthma Network

Kristen Crawford
Advocacy Director
Arthritis Foundation

Carole Maddux
Executive Director
Georgia Interfaith Public Policy Center

Liz Coyle
Executive Director
Georgia Watch

Edith A. Rosato R.Ph., IOM
CEO
Hemophilia of Georgia

Sarah Balog
Regional Director of Government Affairs
The Leukemia & Lymphoma Society

Heather Breeden
Senior Manager of Advocacy
National Multiple Sclerosis Society

Kristen Stiffler, J.D.
State Government Relations Manager
National Psoriasis Foundation

Dr. Marissa Lapedis & Dr. Angeline Ti
Georgia Cluster Co-leaders
Reproductive Health Access Project

Dorothy Leone Glasser
Executive Director
Rx within Reach & Advocates for
Responsible Care

Stacey Ramirez
State Director
The Arc Georgia