

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 207

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO HEALTH COVERAGE; ENACTING THE SURPRISE BILLING
PROTECTION ACT; PROVIDING FOR PROTECTION OF COVERED PERSONS
FROM UNEXPECTED BILLING FROM PROVIDERS THAT DO NOT PARTICIPATE
IN THE COVERED PERSON'S HEALTH BENEFITS PLAN; PROHIBITING
SURPRISE BILLING AS AN UNFAIR PRACTICE; ESTABLISHING PENALTIES;
PROVIDING FOR A CONTINGENT REPEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Insurance Code
is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of
this act may be cited as the "Surprise Billing Protection
Act".

SECTION 2. A new section of the New Mexico Insurance Code
is enacted to read:

.214309.1

underscored material = new
[bracketed material] = delete

1 "[NEW MATERIAL]" DEFINITIONS.--As used in the Surprise
2 Billing Protection Act:

3 A. "allowed amount" means the maximum portion of a
4 billed charge that a health insurance carrier will pay,
5 including any applicable covered person cost-sharing
6 responsibility, for a covered health care service or item
7 rendered by a participating provider or by a nonparticipating
8 provider;

9 B. "balance billing" means a nonparticipating
10 provider's practice of issuing a bill to a covered person for
11 the difference between the nonparticipating provider's billed
12 charges on a claim and any amount paid by the health insurance
13 carrier as reimbursement for that claim, excluding any cost-
14 sharing amount due from the covered person;

15 C. "claim" means a request from a provider for
16 payment for health care services rendered;

17 D. "co-insurance" means a cost-sharing method that
18 requires a covered person to pay a stated percentage of medical
19 expenses after any deductible amount is paid; provided that co-
20 insurance rates may differ for different types of services
21 under the same health benefits plan;

22 E. "copayment" means a cost-sharing method that
23 requires a covered person to pay a fixed dollar amount when
24 health care services are received, with the health insurance
25 carrier paying the balance allowable amount; provided that

1 there may be different copayment requirements for different
2 types of services under the same health benefits plan;

3 F. "cost sharing" means a copayment, co-insurance,
4 deductible or any other form of financial obligation of a
5 covered person other than premium or share of premium, or any
6 combination of any of these financial obligations as defined by
7 the terms of a health benefits plan;

8 G. "covered benefits" means those health care
9 services to which a covered person is entitled under the terms
10 of a health benefits plan;

11 H. "covered person" means:

12 (1) an enrollee, policyholder or subscriber;

13 (2) the enrolled dependent of an enrollee,
14 policyholder or subscriber; or

15 (3) another individual participating in a
16 health benefits plan;

17 I. "deductible" means a fixed dollar amount that a
18 covered person may be required to pay during the benefit period
19 before the health insurance carrier begins payment for covered
20 benefits; provided that a health benefits plan may have both
21 individual and family deductibles and separate deductibles for
22 specific services;

23 J. "emergency care" means a health care procedure,
24 treatment or service, excluding ambulance transportation
25 service, which procedure, treatment or service is delivered to

.214309.1

1 a covered person after the sudden onset of what reasonably
2 appears to be a medical or behavioral health condition that
3 manifests itself by symptoms of sufficient severity, including
4 severe pain, that the absence of immediate medical attention,
5 regardless of eventual diagnosis, could be expected by a
6 reasonable layperson to result in jeopardy to a person's
7 physical or mental health or to the health or safety of a fetus
8 or pregnant person, serious impairment of bodily function,
9 serious dysfunction of a bodily organ or part or disfigurement
10 to a person;

11 K. "facility" means an entity providing a health
12 care service, including:

- 13 (1) a general, special, psychiatric or
14 rehabilitation hospital;
- 15 (2) an ambulatory surgical center;
- 16 (3) a cancer treatment center;
- 17 (4) a birth center;
- 18 (5) an inpatient, outpatient or residential
19 drug and alcohol treatment center;
- 20 (6) a laboratory, diagnostic or other
21 outpatient medical service or testing center;
- 22 (7) a health care provider's office or clinic;
- 23 (8) an urgent care center;
- 24 (9) a freestanding emergency room; or
- 25 (10) any other therapeutic health care

1 setting;

2 L. "freestanding emergency room" means a facility
3 licensed by the department of health that is separate from an
4 acute care hospital and that provides twenty-four-hour
5 emergency care to patients at the same level of care that a
6 hospital-based emergency room delivers;

7 M. "health benefits plan" means a policy or
8 agreement entered into or offered or issued by a health
9 insurance carrier to provide, deliver, arrange for, pay for or
10 reimburse any of the costs of health care services; provided
11 that "health benefits plan" does not include any of the
12 following:

- 13 (1) an accident-only policy;
14 (2) a credit-only policy;
15 (3) a long- or short-term care or disability
16 income policy;
17 (4) a specified disease policy;
18 (5) coverage provided pursuant to Title 18 of
19 the federal Social Security Act, as amended;
20 (6) coverage provided pursuant to Title 19 of
21 the federal Social Security Act and the Public Assistance Act;
22 (7) a federal TRICARE policy, including a
23 federal civilian health and medical program of the uniformed
24 services supplement;
25 (8) a fixed indemnity policy;

.214309.1

1 (9) a dental-only policy;
2 (10) a vision-only policy;
3 (11) a workers' compensation policy;
4 (12) an automobile medical payment policy; or
5 (13) any other policy specified in rules of
6 the superintendent;

7 N. "health care services":

8 (1) means any service, supply or procedure for
9 the diagnosis, prevention, treatment, cure or relief of a
10 health condition, illness, injury or other disease, including
11 physical or behavioral health services, to the extent offered
12 by a health benefits plan; and

13 (2) does not mean ambulance transportation
14 services;

15 O. "health insurance carrier" means an entity
16 subject to state insurance laws, including a health insurance
17 company, a health maintenance organization, a hospital and
18 health service corporation, a provider service network, a
19 nonprofit health care plan or any other entity that contracts
20 or offers to contract, or enters into agreements to provide,
21 deliver, arrange for, pay for or reimburse any costs of health
22 care services or that provides, offers or administers a health
23 benefit policy or managed health care plan in the state;

24 P. "hospital" means a facility offering inpatient
25 health care services, nursing care and overnight care for three

1 or more individuals on a twenty-four-hours-per-day, seven-days-
2 per-week basis for the diagnosis and treatment of physical,
3 behavioral or rehabilitative health conditions;

4 Q. "inducement" means the act or process of
5 enticing or persuading another person to take a certain course
6 of action;

7 R. "network" means the group or groups of
8 participating providers that have been contracted to provide
9 health care services under a network plan;

10 S. "network plan" means a health benefits plan that
11 either requires a covered person to use or creates incentives,
12 including financial incentives, for a covered person to use
13 providers and facilities managed, owned, under contract with or
14 employed by the health insurance carrier offering the health
15 benefits plan;

16 T. "nonparticipating provider" means a provider who
17 is not a participating provider;

18 U. "participating provider" means a provider or
19 facility that, under express contract with a health insurance
20 carrier or with a health insurance carrier's contractor or
21 subcontractor, has agreed to provide health care services to
22 covered persons, with an expectation of receiving payment
23 directly or indirectly from the health insurance carrier,
24 subject to cost sharing;

25 V. "prior authorization" means a pre-service

1 determination made by a health insurance carrier regarding a
2 covered person's eligibility for services, medical necessity,
3 benefit coverage and the location or appropriateness of
4 services, pursuant to the terms of a health benefits plan that
5 the health insurance carrier offers;

6 W. "provider" means a health care professional,
7 hospital or other facility licensed to furnish health care
8 services;

9 X. "stabilize" means to provide emergency care to a
10 patient as may be necessary to ensure, within reasonable
11 medical probability, that no material deterioration of the
12 condition is likely to result from or occur during the transfer
13 of the patient to a facility or, with respect to emergency
14 labor, to deliver, including the delivery of a placenta; and

15 Y. "surprise bill":

16 (1) means a bill that a nonparticipating
17 provider issues to a covered person for health care services
18 rendered in the following circumstances, in an amount that
19 exceeds the covered person's cost-sharing obligation that would
20 apply for the same health care services if these services had
21 been provided by a participating provider:

22 (a) emergency care provided by the
23 nonparticipating provider; or

24 (b) health care services, that are not
25 emergency care, rendered by a nonparticipating provider at a

1 participating facility where: 1) a participating provider is
2 unavailable; 2) a nonparticipating provider renders unforeseen
3 services; or 3) a nonparticipating provider renders services
4 for which the covered person has not given specific consent for
5 that nonparticipating provider to render the particular
6 services rendered; and

7 (2) does not mean a bill:

8 (a) for health care services received by
9 a covered person when a participating provider was available to
10 render the health care services and the covered person
11 knowingly elected to obtain the services from a
12 nonparticipating provider without prior authorization; or

13 (b) received for health care services
14 rendered by a nonparticipating provider to a covered person
15 whose coverage is provided pursuant to a preferred provider
16 plan; provided that the health care services are not provided
17 as emergency care."

18 **SECTION 3.** A new section of the New Mexico Insurance Code
19 is enacted to read:

20 "[NEW MATERIAL] EMERGENCY CARE--REIMBURSEMENT--LIMITATION
21 ON CHARGES.--

22 A. A health insurance carrier shall reimburse a
23 nonparticipating provider for emergency care necessary to
24 evaluate and stabilize a covered person if a prudent layperson
25 would reasonably believe that emergency care is necessary,

.214309.1

1 regardless of eventual diagnosis.

2 B. A health insurance carrier shall not require
3 that prior authorization for emergency care be obtained by, or
4 on behalf of, a covered person prior to the point of
5 stabilization of that covered person if a prudent layperson
6 would reasonably believe that the covered person requires
7 emergency care.

8 C. A health insurance carrier may impose a cost-
9 sharing or limitation of benefits requirement for emergency
10 care performed by a nonparticipating provider only to the same
11 extent that the copayment, co-insurance or limitation of
12 benefits requirement applies for participating providers and is
13 documented in the policy.

14 D. A health insurance carrier may require an
15 emergency care provider to notify a health insurance carrier of
16 a covered person's admission to the hospital within a
17 reasonable time period after the covered person has been
18 stabilized."

19 SECTION 4. A new section of the New Mexico Insurance Code
20 is enacted to read:

21 "[NEW MATERIAL] NON-EMERGENCY CARE--LIMITATION ON
22 CHARGES.--

23 A. Other than applicable cost sharing that would
24 apply if a participating provider had rendered the same
25 services, a health insurance carrier shall provide

.214309.1

1 reimbursement for and a covered person shall not be liable for
2 charges and fees for covered non-emergency care rendered by a
3 nonparticipating provider that are delivered when:

4 (1) the covered person at an in-network
5 facility does not have the ability or opportunity to choose a
6 participating provider who is available to provide the covered
7 services; or

8 (2) medically necessary care is unavailable
9 within a health benefits plan's network; provided that "medical
10 necessity" shall be determined by a covered person's provider
11 in conjunction with the covered person's health benefits plan
12 and health insurance carrier.

13 B. Except as set forth in Subsection A of this
14 section, nothing in this section shall preclude a
15 nonparticipating provider from balance billing for
16 non-emergency care provided by a nonparticipating provider to
17 an individual who has knowingly chosen to receive services from
18 that nonparticipating provider."

19 SECTION 5. A new section of the New Mexico Insurance Code
20 is enacted to read:

21 "[NEW MATERIAL] CREDIT AGAINST MAXIMUM OUT-OF-POCKET COST-
22 SHARING AMOUNT--COMMUNICATION BY HOSPITALS--ADVANCE
23 NOTIFICATION OF CHARGES FOR HEALTH CARE SERVICES.--

24 A. A nonparticipating provider shall not knowingly
25 submit a surprise bill to a covered person.

.214309.1

1 B. In accordance with the hearing procedures
2 established pursuant to the Patient Protection Act, a covered
3 person may appeal a health insurance carrier's determination
4 made regarding a surprise bill.

5 C. By July 1, 2020, the department of health shall
6 require each health facility licensed pursuant to the Public
7 Health Act to post the following on the health facility's
8 website in a publicly accessible manner:

9 (1) the names and hyperlinks for direct access
10 to the websites of all health benefits plans for which the
11 hospital has a contract for services;

12 (2) a statement that sets forth the following:

13 (a) services may be performed in the
14 hospital by participating providers as well as nonparticipating
15 providers who may separately bill the patient;

16 (b) providers that perform health care
17 services in the hospital may or may not participate in the same
18 health benefits plans as the hospital; and

19 (c) prospective patients should contact
20 their health insurance carriers in advance of receiving
21 services at that hospital to determine whether the scheduled
22 health care services provided in that hospital will be covered
23 at in-network rates;

24 (3) the rights of covered persons under the
25 Surprise Billing Protection Act; and

1 (4) instructions for contacting the
2 superintendent.

3 D. Any communication from a provider, bill
4 collector or health insurance carrier pertaining to services
5 provided under circumstances giving rise to a surprise bill
6 shall clearly state that the covered person is responsible only
7 for payment of applicable in-network cost-sharing amounts under
8 the covered person's health benefits plan.

9 E. When a nonparticipating provider under
10 nonemergency circumstances has advance knowledge that the
11 nonparticipating provider is not contracted with the covered
12 person's health insurance carrier, the nonparticipating
13 provider shall inform the covered person of the
14 nonparticipating provider's nonparticipating status and advise
15 the covered person to contact the covered person's health
16 insurance carrier to discuss the covered person's options."

17 SECTION 6. A new section of the New Mexico Insurance Code
18 is enacted to read:

19 "[NEW MATERIAL] COVERED PERSONS--PROVIDERS--OVERPAYMENT.--

20 A. If a covered person pays a nonparticipating
21 provider more than the in-network cost-sharing amount for
22 services provided under circumstances giving rise to a surprise
23 bill, the nonparticipating provider shall refund to the covered
24 person within forty-five calendar days of receipt of payment
25 from the health insurance carrier any amount paid in excess of

.214309.1

1 the in-network cost-sharing amount.

2 B. If a nonparticipating provider has not made a
3 full refund to the covered person of any amount paid in excess
4 of the in-network cost-sharing amount to the covered person
5 within forty-five calendar days of receipt, interest shall
6 accrue at the rate of ten percent per year beginning with the
7 first calendar day following the forty-five-calendar-day
8 period.

9 C. A covered person may seek recovery of the refund
10 of the amount the covered person has paid in excess of the in-
11 network cost-sharing amount that a nonparticipating provider
12 owes, plus interest, pursuant to Subsection B of this section
13 by bringing an action in district court to recover that
14 overpayment amount and interest owed and reasonable costs and
15 attorney fees, if approved by the court."

16 SECTION 7. A new section of the New Mexico Insurance Code
17 is enacted to read:

18 "[NEW MATERIAL] NONPARTICIPATING PROVIDERS--REBATES AND
19 INDUCEMENTS--PROHIBITION.--A nonparticipating provider shall
20 not, either directly or indirectly, knowingly waive, rebate,
21 give, pay or offer to waive, rebate, give or pay all or part of
22 a cost-sharing amount owed by a covered person pursuant to the
23 terms of the covered person's health benefits plan as an
24 inducement for the covered person to seek a health care service
25 from that nonparticipating provider. The superintendent may

.214309.1

1 impose fines on providers for unlawful rebates and inducements;
2 provided that a provider on which the superintendent intends to
3 impose a fine shall be entitled to a hearing in accordance with
4 the provisions of Section 59A-4-15 NMSA 1978."

5 SECTION 8. A new section of the New Mexico Insurance Code
6 is enacted to read:

7 "[NEW MATERIAL] HEALTH CARE PROVIDER REIMBURSEMENT RATES--
8 SURPRISE BILLING.--

9 A. The superintendent shall convene appropriate
10 stakeholders and review the reimbursement rate for surprise
11 bills biannually to ensure fairness to providers and to
12 evaluate the impact on health insurance premiums and health
13 benefits plan networks.

14 B. Calculation of the date of health insurance
15 carrier receipt of a claim shall align with requirements for
16 prompt payment established pursuant to Section 59A-16-21.1 NMSA
17 1978.

18 C. A health insurance carrier shall make available
19 to providers access to claims status information."

20 SECTION 9. A new section of the New Mexico Insurance Code
21 is enacted to read:

22 "[NEW MATERIAL] REASONABLE HEALTH CARE COST MANAGEMENT
23 PERMITTED.--Nothing in the Surprise Billing Protection Act
24 shall be construed to prohibit a health insurance carrier from
25 appropriately using reasonable health care cost management

.214309.1

1 techniques."

2 SECTION 10. A new section of the New Mexico Insurance
3 Code is enacted to read:

4 "[NEW MATERIAL] PRIVATE CAUSE OF ACTION.--Except as
5 provided in Subsection C of Section 6 of the Surprise Billing
6 Protection Act, nothing in that act shall be construed to
7 create or imply a private cause of action for a violation of
8 that act."

9 SECTION 11. A new section of the New Mexico Insurance
10 Code is enacted to read:

11 "[NEW MATERIAL] RULEMAKING.--The superintendent:

12 A. shall promulgate rules as may be necessary to
13 appropriately implement the provisions of the Surprise Billing
14 Protection Act; and

15 B. may require by rule that health insurance
16 carriers report the annual percentage of claims and
17 expenditures paid to nonparticipating providers for health care
18 services."

19 SECTION 12. A new section of the New Mexico Insurance
20 Code is enacted to read:

21 "[NEW MATERIAL] APPLICABILITY.--The provisions of the
22 Surprise Billing Protection Act apply to the following types of
23 health coverage delivered or issued for delivery in this state:

24 A. group health coverage governed by the provisions
25 of the Health Care Purchasing Act;

.214309.1

1 B. individual health insurance policies, health
2 benefits plans and certificates of insurance governed by the
3 provisions of Chapter 59A, Article 22 NMSA 1978;

4 C. multiple-employer welfare arrangements governed
5 by the provisions of Section 59A-15-20 NMSA 1978;

6 D. group and blanket health insurance policies,
7 health benefits plans and certificates of insurance governed by
8 the provisions of Chapter 59A, Article 23 NMSA 1978;

9 E. individual and group health maintenance
10 organization contracts governed by the provisions of the Health
11 Maintenance Organization Law; and

12 F. individual and group nonprofit health benefits
13 plans governed by the provisions of the Nonprofit Health Care
14 Plan Law."

15 **SECTION 13.** A new section of the New Mexico Insurance
16 Code is enacted to read:

17 "[NEW MATERIAL] PROVIDERS--REIMBURSEMENT FOR A SURPRISE
18 BILL.--

19 A. For services provided under circumstances giving
20 rise to a surprise bill, a health insurance carrier shall
21 directly reimburse a nonparticipating provider for care
22 rendered the usual, customary and reasonable reimbursement rate
23 for services.

24 B. The usual, customary and reasonable
25 reimbursement rate shall be calculated using claims data

.214309.1

1 reflecting the allowed amounts paid for claims paid in the 2017
2 plan year.

3 C. As used in this section, "usual, customary and
4 reasonable reimbursement rate" means the sixtieth percentile of
5 the allowed reimbursement rate for the particular health care
6 service performed by a provider in the same or similar
7 specialty in the same geographic area, as reported in a
8 benchmarking database maintained by a nonprofit organization
9 specified by the superintendent.

10 D. The nonprofit organization shall be conflict-
11 free and unaffiliated with any stakeholder in the health care
12 sector."

13 SECTION 14. A new section of Chapter 59A, Article 16 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] HEALTH CARE PROVIDERS--SURPRISE BILLING
16 PROHIBITED.--

17 A. A provider shall not knowingly submit to a
18 covered person a surprise bill for health care services, which
19 surprise bill demands payment for any amount in excess of the
20 cost-sharing amounts that would have been imposed by the
21 covered person's health benefits plan if the health care
22 service from which the surprise bill arises had been rendered
23 by a participating provider.

24 B. It shall be an unfair practice for a health care
25 provider to submit a surprise bill to a collection agency.

.214309.1

1 C. As used in this section:

2 (1) "covered person" means:

3 (a) an enrollee, policyholder or
4 subscriber;

5 (b) the enrolled dependent of an
6 enrollee, policyholder or subscriber; or

7 (c) another individual participating in
8 a health benefits plan;

9 (2) "emergency care" means a health care
10 procedure, treatment or service, excluding ambulance
11 transportation service, which procedure, treatment or service
12 is delivered to a covered person after the sudden onset of what
13 reasonably appears to be a medical or behavioral health
14 condition that manifests itself by symptoms of sufficient
15 severity, including severe pain, that the absence of immediate
16 medical attention, regardless of eventual diagnosis, could be
17 expected by a reasonable layperson to result in jeopardy to a
18 person's physical or mental health or to the health or safety
19 of a fetus or pregnant person, serious impairment of bodily
20 function, serious dysfunction of a bodily organ or part or
21 disfigurement to a person;

22 (3) "facility" means an entity providing a
23 health care service, including:

24 (a) a general, special, psychiatric or
25 rehabilitation hospital;

.214309.1

- 1 (b) an ambulatory surgical center;
- 2 (c) a cancer treatment center;
- 3 (d) a birth center;
- 4 (e) an inpatient, outpatient or
- 5 residential drug and alcohol treatment center;
- 6 (f) a laboratory, diagnostic or other
- 7 outpatient medical service or testing center;
- 8 (g) a health care provider's office or
- 9 clinic;
- 10 (h) an urgent care center;
- 11 (i) a freestanding emergency room; or
- 12 (j) any other therapeutic health care
- 13 setting;

14 (4) "freestanding emergency room" means a
15 facility licensed by the department of health that is separate
16 from an acute care hospital and that provides twenty-four-hour
17 emergency care to patients at the same level of care that a
18 hospital-based emergency room delivers;

19 (5) "health benefits plan" means a policy or
20 agreement entered into, offered or issued by a health insurance
21 carrier to provide, deliver, arrange for, pay for or reimburse
22 any of the costs of health care services; provided that "health
23 benefits plan" does not include any of the following:

- 24 (a) an accident-only policy;
- 25 (b) a credit-only policy;

1 (c) a long- or short-term care or
2 disability income policy;
3 (d) a specified disease policy;
4 (e) coverage provided pursuant to Title
5 18 of the federal Social Security Act, as amended;
6 (f) coverage provided pursuant to Title
7 19 of the federal Social Security Act and the Public Assistance
8 Act;
9 (g) a federal TRICARE policy, including
10 a federal civilian health and medical program of the uniformed
11 services supplement;
12 (h) a fixed indemnity policy;
13 (i) a dental-only policy;
14 (j) a vision-only policy;
15 (k) a workers' compensation policy;
16 (l) an automobile medical payment
17 policy; or
18 (m) any other policy specified in rules
19 of the superintendent;
20 (6) "health care services":
21 (a) means any service, supply or
22 procedure for the diagnosis, prevention, treatment, cure or
23 relief of a health condition, illness, injury or other disease,
24 including physical or behavioral health services, to the extent
25 offered by a health benefits plan; and

.214309.1

1 (b) does not mean ambulance
2 transportation services;

3 (7) "health insurance carrier" means an entity
4 subject to state insurance laws, including a health insurance
5 company, a health maintenance organization, a hospital and
6 health service corporation, a provider service network, a
7 nonprofit health care plan or any other entity that contracts
8 or offers to contract, or enters into agreements to provide,
9 deliver, arrange for, pay for or reimburse any costs of health
10 care services or that provides, offers or administers a health
11 benefit policy or managed health care plan in the state;

12 (8) "hospital" means a facility offering
13 inpatient health care services, nursing care and overnight care
14 for three or more individuals on a twenty-four-hours-per-day,
15 seven-days-per-week basis for the diagnosis and treatment of
16 physical, behavioral or rehabilitative health conditions;

17 (9) "nonparticipating provider" means a
18 provider who is not a participating provider;

19 (10) "participating provider" means a provider
20 or facility that, under express contract with a health
21 insurance carrier or with a health insurance carrier's
22 contractor or subcontractor, has agreed to provide health care
23 services to covered persons, with an expectation of receiving
24 payment directly or indirectly from the health insurance
25 carrier, subject to cost sharing;

.214309.1

1 (11) "prior authorization" means a pre-service
2 determination made by a health insurance carrier regarding a
3 covered person's eligibility for health care services, medical
4 necessity, benefit coverage and the location or appropriateness
5 of services, pursuant to the terms of a health benefits plan
6 that the health insurance carrier offers;

7 (12) "provider" means a health care
8 professional, hospital or other facility licensed to furnish
9 health care services; and

10 (13) "surprise bill":

11 (a) means a bill that a nonparticipating
12 provider issues to a covered person for health care services
13 rendered in the following circumstances, in an amount that
14 exceeds the covered person's cost-sharing obligation that would
15 apply for the same health care services if these services had
16 been provided by a participating provider: 1) emergency care
17 provided by the nonparticipating provider; or 2) health care
18 services, that are not emergency care, rendered by a
19 nonparticipating provider at a participating facility where a:
20 participating provider is unavailable; a nonparticipating
21 provider renders unforeseen services; or a nonparticipating
22 provider renders services for which the covered person has not
23 given specific consent for that nonparticipating provider to
24 render the particular services rendered; and

25 (b) does not mean a bill: 1) for health

1 care services received by a covered person when a participating
2 provider was available to render the health care services and
3 the covered person knowingly elected to obtain the services
4 from a nonparticipating provider without prior authorization;
5 or 2) received for health care services rendered by a
6 nonparticipating provider to a covered person whose coverage is
7 provided pursuant to a preferred provider plan; provided that
8 the health care services are not provided as emergency care."

9 SECTION 15. A new section of Chapter 59A, Article 16 NMSA
10 1978 is enacted to read:

11 "[NEW MATERIAL] EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
12 1974 PLAN EXEMPT FROM STATE JURISDICTION--OPT-IN.--A large
13 group or self-insured health plan offered in accordance with
14 the provisions of the federal Employee Retirement Income
15 Security Act of 1974 that is exempt from regulation under the
16 New Mexico Insurance Code may adopt the provisions of the
17 Surprise Billing Protection Act. The office of superintendent
18 of insurance shall post on its website in a manner that is
19 accessible to the public, information on which exempt large
20 group and self-insurance health plans follow the provisions of
21 the Surprise Billing Protection Act."

22 SECTION 16. DELAYED REPEAL.--Section 13 of this act is
23 repealed effective July 1, 2023.

24 SECTION 17. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is January 1, 2020.