Out-of-Network Emergency Care

The Affordable Care Act (ACA), or federal health reform, provides new protections for insured consumers who receive out-of-network emergency care.¹

Which plans does the new ACA rule apply to?
This rule applies to health plan years starting on or after September 23, 2010, including self-insured, fully-insured, and individual market plans. It does not apply to grandfathered plans.

What protections does the rule offer a patient going to the emergency room?
A plan that covers care through a hospital emergency department may not:
- Require preauthorization for emergency services
- Add additional administrative requirements for out-of-network emergency services
- Charge higher copays or co-insurance for out-of-network emergency services
- Limit coverage for out-of-network emergency services more than it limits in-network emergency services.

The rule also applies to care provided by an out-of-network provider at an in-network facility.

How much does the plan pay out-of-network providers?
The plan must pay an out-of-network emergency department at least the greatest of:
1. The amount it pays in-network providers;
2. A payment based on the same methods the plan uses to pay for other out-of-network services (for example, a percentage of usual and customary fees in the region); or
3. The amount Medicare would pay for that service.

What does the patient have to pay?
If a patient goes to an in-network provider, they pay the co-pays and co-insurance the plan requires.

If they go to an out-of-network provider, they pay those co-pays and co-insurance, plus any other costs (like deductibles) that generally apply to out-of-network services under the plan. Unfortunately, the hospital is allowed to balance bill an out-of-network patient for the difference between what the plan pays (see above) and what the hospital charges.

What qualifies as emergency services?
Emergency services include a medical screening exam and treatment to stabilize a patient with an emergency medical condition. An emergency medical condition is “a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part.

Special New York State law protections for HMO enrollees:
Enrollees in HMOs regulated by the New York Department of Health cannot be balance billed for out-of-network emergency services.²

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¹ See 42 U.S.C 300gg-19(a); 26 CFR § 54.9815–2719AT(b); 29 CFR § 2590.715–2719A(b); and 45 CFR § 147.138 (b).