

TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 33 SURPRISE BILLING

13.10.33.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance (“OSI”).
[13.10.33.1 NMAC - N, 3/01/2021]

13.10.33.2 SCOPE: These rules apply to every health insurance carrier (“carrier”) that provides health coverage under a policy, arrangement, contract or plan described in Section 59A-57A-12 NMSA 1978.
[13.10.33.2 NMAC - N, 3/01/2021]

13.10.33.3 STATUTORY AUTHORITY: Section 59A-2-9 NMSA 1978, Sections 59A-57A-1 through 59A-57A-13 NMSA 1978 and Section 59A-16-21.3 NMSA 1978.
[13.10.33.3 NMAC - N, 3/01/2021]

13.10.33.4 DURATION: Permanent.
[13.10.33.4 NMAC - N, 3/01/2021]

13.10.33.5 EFFECTIVE DATE: March 1, 2021, unless a later date is cited at the end of a section.
[13.10.33.5 NMAC - N, 3/01/2021]

13.10.33.6 OBJECTIVE: To implement consumer protection, reimbursement, refund, reporting and appeal requirements for the surprise billing protection act.
[13.10.33.6 NMAC - N, 3/01/2021]

13.10.33.7 DEFINITIONS: For definitions of terms contained in this rule, refer to Section 59A-57A-2 NMSA 1978 and 13.10.29 NMAC.
[13.10.33.7 NMAC - N, 3/01/2021]

13.10.33.8 REFUNDS FOR OVERPAYMENT:

A. Notice of payment and right to a refund. A carrier who reimburses a provider for a surprise bill shall provide the covered person an explanation of benefits (“EOB”) showing, at a minimum, the name of the provider, the date of service, the amount billed and the amount paid. As of June 1, 2021, the first page of the EOB shall provide a surprise billing explanation of benefits and rights and contain the following statement in bold and of at least 12 point type:

SURPRISE BILLING – YOU RECENTLY VISITED A PROVIDER WHO IS NOT IN YOUR PLAN’S NETWORK. IF YOU HAVE ALREADY PAID THE PROVIDER MORE THAN YOU OWE, THE PROVIDER OWES YOU A REFUND WITHIN 45 DAYS OF THE DATE THE PROVIDER RECEIVED OUR PAYMENT. IF YOU DO NOT RECEIVE A REFUND WITHIN THAT 45-DAY PERIOD, YOU MAY FILE AN APPEAL WITHIN 180 DAYS AFTER EXPIRATION OF THE 45-DAY PERIOD AT WWW.OSI.STATE.NM.US OR 1-855-427-5674.

B. Issuance of the EOB. A carrier shall issue the EOB within 15 days of the payment.

C. Payment notice to provider. A carrier who reimburses a surprise bill shall inform the out-of-network provider of the in-network cost-sharing amount owed by the covered person. Any notice of the covered person’s cost-sharing responsibility shall refer to New Mexico’s surprise billing protections act and the provider rights granted therein.

D. Appeal process. A covered person may appeal a provider’s failure to make a timely or complete refund of an excess payment using the surprise billing appeal form on OSI’s website.

(1) The appeal must be filed within 180 days after the expiration of the 45-day period in which the provider was required to refund the covered person’s excess payment.

(2) The provider shall have 30 days to respond to the appeal in writing.

(a) A provider’s failure to timely respond shall result in an order from the superintendent directing the provider to pay the full amount of the claimed refund.

(b) If a provider timely responds to a refund appeal, the superintendent shall resolve the appeal following the rules that govern informal hearings. If the superintendent determines that a provider owed a refund, the superintendent shall order the provider to pay the refund amount with interest pursuant to Section 59A-16-21.1 NMSA 1978.

E. EOB Alternative. A carrier may file with the superintendent, and request approval to use, an alternate form or style of surprise billing EOB. The superintendent shall approve the alternate EOB if it is at least as likely to convey a member's rights under the Surprise Billing Act as the EOB required by Subsection A of this rule. [13.10.33.8 NMAC - N, 3/01/2021]

13.10.33.9 COVERED PERSON RIGHTS: A carrier shall afford a covered person these rights:

A. Out of state care. A carrier shall reimburse a surprise medical bill as required by law regardless of the situs of delivery of the medical care, including medical care rendered out-of-state.

B. Specific consent. For purposes of Subparagraph (b) of Paragraph (1) of Subsection Y of Section 59A-57A-2 NMSA 1978, "specific consent" shall only be valid if the covered person has a meaningful choice between a participating provider and a nonparticipating provider; the covered person was not encouraged or coerced by a network provider or the carrier into selecting the out-of-network provider; and the covered person signs a notice and disclosure statement, at least five days before the service or supply is received, acknowledging that the covered person may be liable for a balance bill and chooses to receive the service or supply.

C. Notice of Rights. A carrier shall provide each covered person with notice of surprise billing protection act rights in the plan's evidence of coverage and as directed by the superintendent in a bulletin. [13.10.33.9 NMAC - N, 3/01/2021]

13.10.33.10 PROVIDER CLAIM SUBMISSION: An out-of-network provider shall not bill a covered person for a potential surprise bill without first submitting the bill to the covered person's designated carrier and obtaining a payment or denial.

[13.10.33.10 NMAC - N, 3/01/2021]

13.10.33.11 REPORTS REQUIRED: A carrier shall annually submit a surprise billing data report using a template provided by the superintendent. The template shall require a carrier to report changes to the percent of claims paid for emergency services. The report shall be filed annually by May 1st of each year and shall contain data from the full prior calendar year.

[13.10.33.11 NMAC - N, 3/01/2021]

13.10.33.12 PROVIDER COMPLAINTS: A provider may dispute the denial, or reimbursement amount, of a surprise bill pursuant to the applicable procedures in 13.10.16 NMAC.

[13.10.33.12 NMAC - N, 3/01/2021]

13.10.33.13 SEVERABILITY: If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected.

[13.10.33.13 NMAC - N, 3/01/2021]

History of 13.10.33 NMAC: [RESERVED]