

## NEW YORK

### Confidentiality and Insurance: Making sure people feel safe using their health insurance

Increasing the number of people with health insurance is a first step to improving health outcomes for New Yorkers. The real benefit of increasing the number of people with health insurance coverage is when health consumers are able to use their insurance to obtain the health services they need.

#### Confidentiality and Explanation of Benefits (EOBs)

The provider-patient relationship is subject to confidentiality protections under both state and federal laws including the Health Insurance Portability and Accountability Act (HIPAA). Some states have consent and confidentiality protections for minors. The confidential provider-patient relationship is a cornerstone of health services, especially services related to reproductive or sexual health, mental health or substance use.

Health insurers use an Explanation of Benefits (EOBs) to communicate with their policy holders. EOBs are one way for insurance companies to share information with policy holders and for policy holders to understand what their premiums cover. EOBs most often occur between the insurer and the primary policy holder.

#### *The Problem*

When a person is covered through a partner or parent who is the primary policy holder (the individual to whom the policy is issued and who bears the financial responsibility, i.e. premium), s/he may not feel comfortable using insurance to access confidential health services. Fear of disclosure through an EOB can result in people choosing not to get health services they need, even though they are insured.

#### *The Result*

Important health needs may go ignored or not treated until the conditions are much worse.



- Reproductive or sexual health services may be deferred, resulting in unintended pregnancies or untreated sexually transmitted diseases.
- Anxiety or depression may go untreated, resulting in serious and life threatening mental health crises.
- People in violent or emotionally dangerous relationships may forgo health services for fear it will place them at risk with a partner or parent.
- Insured individuals who are fearful of using their coverage will continue to strain the resources of safety net providers that provide services regardless of one's ability to pay or insurance status.

#### *Who is Affected?*

This potential confidentiality breach can affect anyone who consents to health services and is not a primary health insurance policy holder including:

- Minors who can, under New York State law, consent to certain health services including reproductive health care and sexual assault treatment.
- Young adults who are still covered on a parent's health insurance policy.
- Adults—including domestic partners, wives, and husbands—who are insured through their partner.

## Identifying Solutions

This is not a new challenge or concern and is not the result of the Affordable Care Act (ACA). However, with the implementation of the ACA, the number of people with insurance is growing. This is good. It is good for individuals, families and the health care delivery system. But it is also a good time to make sure that people feel safe using their insurance.

We need to strike a balance between preserving important consumer protections contained within EOBs and protecting the confidentiality of consumers who want to keep the health care services they obtain confidential.

## A National Snapshot

Protecting confidentiality is not only a challenge for New York State. Several states are examining ways to reconcile patient confidentiality protections and the unintended confidentiality breach EOBs can present. Several states have rules or regulations that can be a starting place to better protect confidentiality in New York. The tension is finding a solution that supports accountability and transparency between insurance companies while minimizing the burden on patients to protect their privacy.

Some states are farther along than others in identifying solutions. Minnesota prohibits Medicaid Managed Care Plans from sending EOBs for 'sensitive services' and several other states suppress EOBs for the provision of specific sensitive services, such as minors seeking care and treatment of sexually transmitted diseases (Florida, Connecticut and Delaware). There is some general agreement on what constitutes a 'sensitive service' but for some populations this may not be as clear cut. California recently passed a law that allows individuals who can consent to health services to provide an alternative means of contact for the EOB to be sent. The benefit of this law is it is universal in terms of the populations that can protect their confidentiality. It remains to be seen how onerous it will be for the

patient to receive this alternative form of communication. Washington has strong confidentiality protections in statute, but the process is not well known and can conflict with individual insurance companies' practices of issuing EOBs; a strong law may not be enough to achieve our desired outcomes.

Despite the progress that some states have made in protecting confidentiality, there remain challenges in aligning laws with insurance companies' policies and practices, patient confidentiality compliance, and assuring that any patient can protect confidentiality if needed.

## Recommendations

Solutions should enable New York insurance companies to communicate that a health service was provided and paid for without divulging information to the policy holder that would jeopardize the confidentiality of the person receiving the health care services. Possible solutions may include:

1. Develop standard EOB language that does not disclose the type of visit or service provider.
2. Allow patients to suppress EOBs and other confidential information about their health care visit from being disclosed to the policy holder.
3. Allow any policy member who can consent to a health service to either provide an alternative contact for the EOB or confirm that an EOB may go to the policy holder.
4. Have insurance companies not issue an EOB for any service that does not require a co-pay or deductible.

The objective is a healthy, insured population that feels safe using their coverage to get the care they need.

## Next Steps

Providers, health insurance companies and advocates can work together to develop solutions that will work best in New York State.

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