

## SUMMARY OF SENATE BILL 17-065, TRANSPARENCY IN HEALTH CARE PRICES ACT

On April 6, 2017, Governor Hickenlooper signed into law Senate Bill 17-065, which created the Transparency in Health Care Prices Act ("Act"). The legislation passed with bipartisan support from members of the Colorado Legislature. The law will take effect on January 1, 2018, imposing pricing transparency requirements on health care providers and facilities.

The Act is not the first law passed in Colorado demanding transparency for the cost of health care services. In 2003, the Colorado legislature passed a law that required facilities to disclose their average facility charges for frequent treatments prior to admission for such treatments. In 2008, the Colorado legislature passed another law that required the commissioner of the Division of Insurance to develop a website that disclosed health care pricing information for health insurance plans. Following a now-national trend, Colorado is 1 of 28 states that have passed health care cost and pricing transparency laws in their jurisdictions. According to one study, Colorado ranks at the top of the list of states that have passed such laws thanks to the improved quality of websites and reported information.

Under the Act, health care providers must post on their website, make available electronically, or post in patient waiting areas, the health care price for the 15 most common health care services they deliver. Services are those included in, or incidental to furnishing, medical, mental, dental, or optometric care or hospitalization or other services for the purpose of preventing, curing or healing a physical or mental illness or injury.

The Act defines "health care price" as the price before negotiating any discounts that a health care provider or a facility will charge a recipient for the health care services that will be rendered. The health care price may be determined from: (i) the price charged most frequently for the health care service in the previous twelve months; (ii) the highest charge from the lowest half of all charges for the health care service in the previous 12 months; or (iii) a range that includes the middle 50 percent of all charges for the service during the last 12 months. For purposes of the Act, a health care "provider" is defined as "a person who is licensed, certified, or registered in Colorado to provide health care services or a medical group, independent practice association, or a professional corporation providing health care services." The Act explicitly states that health care price "does not mean the amount charged if a public or private third party will be paying or reimbursing the provider for the services rendered." Health care providers who deliver fewer than 15 health care services must disclose all these services. Solo practitioners, practitioners in a medical group, independent associations, or professional corporations with six or less health care providers with the same category of license can comply with this Act by making prices available in patient waiting areas and rooms instead of publishing them on a website or making them available electronically.

Providers who are members of professional organizations that contract with health maintenance organizations ("HMOs") must ensure that the HMO or professional organization make available to the public the prices the HMO would charge individuals who are not members of the HMO. Importantly, the Act does not require hospital-based health care providers who are not employees of the hospital where services are rendered to publish health care prices for provider services by any of the methods previously described.

Under the Act, health care facilities must publicly disclose the 50 most used diagnosis-related codes or other codes for inpatient health care services used by the health care facility along with the 25 most used outpatient current procedural terminology ("CPT") codes as defined by the American Medical Association. If a facility did not use 50 codes for inpatient health care services or 25 for outpatient services at least 11 times in the previous 12 months, the facility must make available those CPT codes used most commonly at least 11 times in the previous 12 months. For purposes of the Act, a health care "facility" is defined as "a facility licensed or certified by the Department of Public Health and Environment." The term does not include a nursing care facility, assisted living residence or home care agency.

Both health care providers and facilities must also include with the pricing information a disclosure to patients that the posted prices are estimates and that patients are encouraged to consult with their insurance carrier for more accurate information regarding their individual financial responsibility. If a patient is uninsured, the disclosure statement must include the name and contact information of a billing specialist to discuss payment options prior to services being rendered. Although the Act imposes a new disclosure duty, it explicitly states no state administrative agency is tasked with monitoring pricing or requesting changes to pricing. Interestingly, the Act also states the Colorado Department of Public Health and Environment ("CDPHE"), which licenses health care facilities in Colorado, has no authority to take any

actions pursuant to the new disclosure requirements.

## **PRACTICAL TAKEAWAYS**

Once signed into law, health care providers and facilities will have new pricing disclosure requirements they will need to meet on January 1, 2018 and thereafter. Prior to that date, they should be well informed of and take action to fulfill these obligations. Failure to comply with the Act and these obligations may result in potential monetary penalties and fines.

If you have any questions, please contact **Thomas M. Donohoe** at (720) 308-5450 or [tdonohoe@hallrender.com](mailto:tdonohoe@hallrender.com) or your regular Hall Render attorney.

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