STATE OF NEW YORK

6544--A

2019-2020 Regular Sessions

IN SENATE

June 15, 2019

Introduced by Sens. KRUEGER, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the financial services law, the public health law and the insurance law, in relation to establishing protections from excess hospital charges; and to amend a chapter of the laws of 2019, amending the financial services law relating to establishing protections from excess hospital charges, as proposed in legislative bills numbers S. 3171-A and A. 264-B, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 605 of the financial services law, as amended by a chapter of the laws of 2019, amending the financial services law relating to establishing protections from excess hospital charges, as proposed in legislative bills numbers S. 3171-A and A. 264-B, is amended to read as follows:

§ 605. Dispute resolution for emergency services. (a) Emergency services for an insured. (1) When a health care plan receives a bill for emergency services from a non-participating physician or hospital, including a bill for inpatient services which follow an emergency room visit, the health care plan shall pay an amount that it determines is reasonable for the emergency services rendered by the non-participating physician or hospital, in accordance with section three thousand two hundred twenty-four-a of the insurance law, except for the insured's co-payment, coinsurance or deductible, if any, and shall ensure that the insured shall incur no greater out-of-pocket costs for the emergency services than the insured would have incurred with a participating physician or hospital pursuant to subsection (c) of section three thousand two hundred forty-one of the insurance law. **If an insured assigns benefits to a non-participating hospital in relation to emergency**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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services provided by such non-participating hospital, the non-participating hospital may bill the health care plan for the emergency services rendered. Upon receipt of the bill, the health care plan shall pay the non-participating hospital the amount prescribed by this section and any subsequent amount determined to be owed to the hospital in relation to the emergency services provided.

(2) A non-participating physician or hospital or a health care plan may submit a dispute regarding a fee or payment for emergency services for review to an independent dispute resolution entity. [~~**In cases where a health care plan submits a dispute regarding a fee for payment of a non-participating hospital's emergency services, the health care plan shall, after the initial payment, pay any additional amounts it determines is reasonable directly to the non-participating hospital.**~~]

(3) The independent dispute resolution entity shall make a determination within thirty days of receipt of the dispute for review.

(4) In determining a reasonable fee for the services rendered, an independent dispute resolution entity shall select either the health care plan's payment or the non-participating physician's or hospital's fee. The independent dispute resolution entity shall determine which amount to select based upon the conditions and factors set forth in section six hundred four of this article. If an independent dispute resolution entity determines, based on the health care plan's payment and the non-participating physician's or hospital's fee, that a settlement between the health care plan and non-participating physician or hospital is reasonably likely, or that both the health care plan's payment and the non-participating physician's or hospital's fee represent unreasonable extremes, then the independent dispute resolution entity may direct both parties to attempt a good faith negotiation for settlement. The health care plan and non-participating physician or hospital may be granted up to ten business days for this negotiation, which shall run concurrently with the thirty day period for dispute resolution.

(b) Emergency services for a patient that is not an insured. (1) A patient that is not an insured or the patient's physician may submit a dispute regarding a fee for emergency services for review to an independent dispute resolution entity upon approval of the superintendent.

(2) An independent dispute resolution entity shall determine a reasonable fee for the services based upon the same conditions and factors set forth in section six hundred four of this article.

(3) A patient that is not an insured shall not be required to pay the physician's or hospital's fee in order to be eligible to submit the dispute for review to an independent dispute resolution entity.

(c) The determination of an independent dispute resolution entity shall be binding on the health care plan, physician or hospital and patient, and shall be admissible in any court proceeding between the health care plan, physician or hospital or patient, or in any administrative proceeding between this state and the physician or hospital.

(d) The provisions of this section shall not apply to hospitals that had at least sixty percent of inpatient discharges annually which consisted of medicaid, uninsured, and dual eligible individuals as determined by the department of health in its determination of safety net hospitals.

(e) For purposes of the hospital payment pursuant to subsection (a) of this section, the amount the health care plan shall pay to the hospital shall be at least twenty-five percent greater than the amount the health care plan would have paid for the claim had the hospital been in

network, based on the most recent contract between the health care plan and the hospital. Provided however, the amount paid by the health care plan pursuant to this subsection shall not prejudice either party or preclude either party from submitting a dispute to the dispute resolution entity relating to the payment to the hospital or preclude the hospital from seeking additional payment from the health care plan prior to a decision by the dispute resolution entity. To the extent the prior contract between the hospital and health care plan expired greater than twelve months prior to the payment of the disputed claim, the payment amount shall be adjusted based upon the medical consumer price index. The provisions of this subsection shall only apply to the extent the health care plan and hospital had previously entered into a participating provider agreement.

§ 2. Section 604 of the financial services law, as amended by a chapter of the laws of 2019, amending the financial services law relating to establishing protections from excess hospital charges, as proposed in legislative bills numbers S. 3171-A and A. 264-B, is amended to read as follows:

§ 604. Criteria for determining a reasonable fee. In determining the appropriate amount to pay for a health care service, an independent dispute resolution entity shall consider all relevant factors, including:

(a) whether there is a gross disparity between the fee charged by the [~~health care provider~~] physician or hospital for services rendered as compared to:

(1) fees paid to the involved [~~health care provider~~] physician or hospital for the same services rendered by the [~~health care provider~~] physician or hospital to other patients in health care plans in which the [~~health care provider~~] physician or hospital is not participating, and

(2) in the case of a dispute involving a health care plan, fees paid by the health care plan to reimburse similarly qualified [~~health care providers~~] physicians or hospitals for the same services in the same region who are not participating with the health care plan;

(b) the level of training, education and experience of the [~~health care provider~~] physician, and in the case of a hospital, the teaching staff, scope of services and case mix;

(c) the [~~health care provider's~~] physician's and hospital's usual charge for comparable services with regard to patients in health care plans in which the [~~health care provider~~] physician or hospital is not participating;

(d) the circumstances and complexity of the particular case, including time and place of the service;

(e) individual patient characteristics; and, with regard to physician services,

(f) the usual and customary cost of the service.

§ 3. Section 4406-c of the public health law is amended by adding a new subdivision 5-e to read as follows:

5-e. At least sixty days prior to the termination of a contract between a hospital and a health care plan, the parties shall utilize a mutually agreed upon mediator to assist in resolving any outstanding contractual issues. The results of the mediation shall not be binding on the parties.

§ 4. Section 3217-b of the insurance law is amended by adding a new subsection (l) to read as follows:

(l) At least sixty days prior to the termination of a contract between a hospital and an insurer, the parties shall utilize a mutually agreed upon mediator to assist in resolving any outstanding contractual issues. The results of the mediation shall not be binding on the parties.

§ 5. Section 4325 of the insurance law is amended by adding a new subsection (m) to read as follows:

(m) At least sixty days prior to the termination of a contract between a hospital and an organization, the parties shall utilize a mutually agreed upon mediator to assist in resolving any outstanding contractual issues. The results of the mediation shall not be binding on the parties.

§ 6. Section 4 of a chapter of the laws of 2019, amending the financial services law relating to establishing protections from excess hospital charges, as proposed in legislative bills numbers S. 3171-A and A. 264-B, is amended to read as follows:

§ 4. This act shall take effect [~~**immediately**~~] **January 1, 2020**.

§ 7. This act shall take effect immediately; provided, however, that sections one, two, three, four, and five of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2019, amending the financial services law relating to establishing protections from excess hospital charges, as proposed in legislative bills numbers S. 3171-A and A. 264-B, takes effect.