

# STATE OF NEW YORK

4241--A

Cal. No. 1078

2017-2018 Regular Sessions

## IN SENATE

February 6, 2017

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the financial services law, in relation to establishing protections from excessive hospital emergency charges

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

1 Section 1. Section 605 of the financial services law, as added by  
2 section 26 of part H of chapter 60 of the laws of 2014, is amended to  
3 read as follows:

4 § 605. Dispute resolution for emergency services. (a) Emergency  
5 services for an insured. (1) When a health care plan receives a bill for  
6 emergency services from a non-participating physician or hospital, the  
7 health care plan shall pay an amount that it determines is reasonable  
8 for the emergency services rendered by the non-participating physician  
9 or hospital, in accordance with section three thousand two hundred twen-  
10 ty-four-a of the insurance law, except for the insured's co-payment,  
11 coinsurance or deductible, if any, and shall ensure that the insured  
12 shall incur no greater out-of-pocket costs for the emergency services  
13 than the insured would have incurred with a participating physician or  
14 hospital pursuant to subsection (c) of section three thousand two  
15 hundred forty-one of the insurance law.

16 (2) A non-participating physician or hospital or a health care plan  
17 may submit a dispute regarding a fee or payment for emergency services  
18 for review to an independent dispute resolution entity. In cases where  
19 a health care plan submits a dispute regarding a fee for payment of a  
20 non-participating physician or hospital's emergency services, the health  
21 care plan shall, after the initial payment, pay any additional amounts

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

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1 it determines is reasonable directly to the non-participating physician  
2 or hospital, respectively.

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

5 (4) In determining a reasonable fee for the services rendered, an  
6 independent dispute resolution entity shall select either the health  
7 care plan's payment or the non-participating physician's or hospital's  
8 fee. The independent dispute resolution entity shall determine which  
9 amount to select based upon the conditions and factors set forth in  
10 section six hundred four of this article. If an independent dispute  
11 resolution entity determines, based on the health care plan's payment  
12 and the non-participating physician's or hospital's fee, that a settle-  
13 ment between the health care plan and non-participating physician or  
14 hospital is reasonably likely, or that both the health care plan's  
15 payment and the non-participating physician's or hospital's fee repre-  
16 sent unreasonable extremes, then the independent dispute resolution  
17 entity may direct both parties to attempt a good faith negotiation for  
18 settlement. The health care plan and non-participating physician or  
19 hospital may be granted up to ten business days for this negotiation,  
20 which shall run concurrently with the thirty day period for dispute  
21 resolution.

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

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

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

32 (c) The determination of an independent dispute resolution entity  
33 shall be binding on the health care plan, physician or hospital and  
34 patient, and shall be admissible in any court proceeding between the  
35 health care plan, physician or hospital or patient, or in any adminis-  
36 trative proceeding between this state and the physician or hospital.

37 § 2. Subdivision (a) of section 608 of the financial services law, as  
38 added by section 26 of part H of chapter 60 of the laws of 2014, is  
39 amended to read as follows:

40 (a) For disputes involving an insured, when the independent dispute  
41 resolution entity determines the health care plan's payment is reason-  
42 able, payment for the dispute resolution process shall be the responsi-  
43 bility of the non-participating physician or hospital. When the inde-  
44 pendent dispute resolution entity determines the non-participating  
45 physician's or hospital's fee is reasonable, payment for the dispute  
46 resolution process shall be the responsibility of the health care plan.  
47 When a good faith negotiation directed by the independent dispute resol-  
48 ution entity pursuant to paragraph four of subsection (a) of section six  
49 hundred five of this article, or paragraph six of subsection (a) of  
50 section six hundred seven of this article results in a settlement  
51 between the health care plan and non-participating physician, the health  
52 care plan and the non-participating physician or hospital shall evenly  
53 divide and share the prorated cost for dispute resolution.

54 § 3. Section 604 of the financial services law, as added by section 26  
55 of part H of chapter 60 of the laws of 2014, is amended to read as  
56 follows:

1 § 604. Criteria for determining a reasonable fee. In determining the  
2 appropriate amount to pay for a health care service, an independent  
3 dispute resolution entity shall consider all relevant factors, includ-  
4 ing:

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

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

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

15 (b) the level of training, education and experience of the [~~physician~~]  
16 health care provider;

17 (c) the [~~physician's~~] health care provider's usual charge for compara-  
18 ble services with regard to patients in health care plans in which the  
19 [~~physician~~] health care provider is not participating;

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

22 (e) individual patient characteristics; and, where applicable,

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

24 § 4. This act shall take effect immediately.