

# STATE OF NEW YORK

3171--A

2019-2020 Regular Sessions

## IN SENATE

February 4, 2019

Introduced by Sens. KRUEGER, SEWARD, THOMAS, AMEDORE, BOYLE, GOUNARDES, HARCKHAM, LIU, MARTINEZ, SALAZAR, SEPULVEDA, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the financial services law, in relation to establishing protections from excess hospital 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,  
7 including a bill for inpatient services which follow an emergency room  
8 visit, the health care plan shall pay an amount that it determines is  
9 reasonable for the emergency services rendered by the non-participating  
10 physician or hospital, in accordance with section three thousand two  
11 hundred twenty-four-a of the insurance law, except for the insured's  
12 co-payment, coinsurance or deductible, if any, and shall ensure that the  
13 insured shall incur no greater out-of-pocket costs for the emergency  
14 services than the insured would have incurred with a participating  
15 physician or hospital pursuant to subsection (c) of section three thou-  
16 sand two hundred forty-one of the insurance law.  
17 (2) A non-participating physician or hospital or a health care plan  
18 may submit a dispute regarding a fee or payment for emergency services  
19 for review to an independent dispute resolution entity. In cases where  
20 a health care plan submits a dispute regarding a fee for payment of a  
21 non-participating hospital's emergency services, the health care plan

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

LBD03101-04-9

1 shall, after the initial payment, pay any additional amounts it deter-  
2 mines is reasonable directly to the non-participating hospital.

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

42 § 2. Subsection (a) of section 608 of the financial services law, as  
43 added by section 26 of part H of chapter 60 of the laws of 2014, is  
44 amended to read as follows:

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

1 hospital, the health care plan and the non-participating physician or  
2 hospital shall evenly divide and share the prorated cost for dispute  
3 resolution.

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

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

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

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

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

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

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

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

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

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

31 § 4. This act shall take effect immediately.