

# STATE OF NEW YORK

6544

2019-2020 Regular Sessions

## IN SENATE

June 15, 2019

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

6 § 605. Dispute resolution for emergency services. (a) Emergency  
7 services for an insured. (1) When a health care plan receives a bill for  
8 emergency services from a non-participating physician or hospital,  
9 including a bill for inpatient services which follow an emergency room  
10 visit, the health care plan shall pay an amount that it determines is  
11 reasonable for the emergency services rendered by the non-participating  
12 physician or hospital, in accordance with section three thousand two  
13 hundred twenty-four-a of the insurance law, except for the insured's  
14 co-payment, coinsurance or deductible, if any, and shall ensure that the  
15 insured shall incur no greater out-of-pocket costs for the emergency  
16 services than the insured would have incurred with a participating  
17 physician or hospital pursuant to subsection (c) of section three thou-  
18 sand two hundred forty-one of the insurance law. If an insured assigns  
19 benefits to a non-participating hospital in relation to emergency  
20 services provided by such non-participating hospital, the non-partici-  
21 pating hospital may bill the health care plan for the emergency services

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

LBD03101-09-9

1 rendered. Upon receipt of the bill, the health care plan shall pay the  
2 non-participating hospital the amount prescribed by this section and any  
3 subsequent amount determined to be owed to the hospital in relation to  
4 the emergency services provided. To the extent that a non-participating  
5 hospital opts to send the bill to a patient in addition to or in lieu of  
6 the health care plan, such bill must state in bold, large conspicuous  
7 print on the top of the bill a notation that the patient is not respon-  
8 sible for the payment of the bill, other than the deductible, copayments  
9 or other cost sharing obligations of the patient.

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

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

19 (4) In determining a reasonable fee for the services rendered, an  
20 independent dispute resolution entity shall select either the health  
21 care plan's payment or the non-participating physician's or hospital's  
22 fee. The independent dispute resolution entity shall determine which  
23 amount to select based upon the conditions and factors set forth in  
24 section six hundred four of this article. If an independent dispute  
25 resolution entity determines, based on the health care plan's payment  
26 and the non-participating physician's or hospital's fee, that a settle-  
27 ment between the health care plan and non-participating physician or  
28 hospital is reasonably likely, or that both the health care plan's  
29 payment and the non-participating physician's or hospital's fee repre-  
30 sent unreasonable extremes, then the independent dispute resolution  
31 entity may direct both parties to attempt a good faith negotiation for  
32 settlement. The health care plan and non-participating physician or  
33 hospital may be granted up to ten business days for this negotiation,  
34 which shall run concurrently with the thirty day period for dispute  
35 resolution.

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

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

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

46 (c) The determination of an independent dispute resolution entity  
47 shall be binding on the health care plan, physician or hospital and  
48 patient, and shall be admissible in any court proceeding between the  
49 health care plan, physician or hospital or patient, or in any adminis-  
50 trative proceeding between this state and the physician or hospital.

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

1 (e) For purposes of the hospital payment pursuant to subsection (a) of  
2 this section, the amount the health care plan shall pay to the hospital  
3 shall be at least twenty-five percent greater than the amount the health  
4 care plan would have paid for the claim had the hospital been in  
5 network, based on the most recent contract between the health care plan  
6 and the hospital. Provided however, the amount paid by the health care  
7 plan pursuant to this subsection shall not prejudice either party or  
8 preclude either party from submitting a dispute to the dispute resol-  
9 ution entity relating to the payment to the hospital or preclude the  
10 hospital from seeking additional payment from the health care plan prior  
11 to a decision by the dispute resolution entity. To the extent the prior  
12 contract between the hospital and health care plan expired greater than  
13 twelve months prior to the payment of the disputed claim, the payment  
14 amount shall be adjusted based upon the medical consumer price index.  
15 The provisions of this subsection shall only apply to the extent the  
16 health care plan and hospital had previously entered into a participat-  
17 ing provider agreement.

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

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

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

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

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

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

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

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

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

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

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

53 5-e. At least sixty days prior to the termination of a contract  
54 between a hospital and a health care plan, the parties shall utilize a  
55 mutually agreed upon mediator to assist in resolving any outstanding

1 contractual issues. The results of the mediation shall not be binding on  
2 the parties.

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

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

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

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

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

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

21 § 7. This act shall take effect immediately; provided, however, that  
22 sections one, two, three, four, and five of this act shall take effect  
23 on the same date and in the same manner as a chapter of the laws of  
24 2019, amending the financial services law relating to establishing  
25 protections from excess hospital charges, as proposed in legislative  
26 bills numbers S. 3171-A and A. 264-B, takes effect.