STATE OF NEW YORK

264--A

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL, COLTON, ARROYO, JEAN-PIERRE, TAYLOR, McDONOUGH -- Multi-Sponsored by -- M. of A. EPSTEIN -- read once and referred 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 patient protections from excess hospital charges

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 added by section 26 of part H of chapter 60 of the laws of 2014, 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.

(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**

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

LBD03101-02-9

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.

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

(a) For disputes involving an insured, when the independent dispute resolution entity determines the health care plan's payment is reasonable, payment for the dispute resolution process shall be the responsibility of the non-participating physician **or hospital**. When the independent dispute resolution entity determines the non-participating physician's **or hospital's** fee is reasonable, payment for the dispute resolution process shall be the responsibility of the health care plan. When a good faith negotiation directed by the independent dispute resolution entity pursuant to paragraph four of subsection (a) of section six hundred five of this article, or paragraph six of subsection (a) of section six hundred seven of this article results in a settlement between the health care plan and non-participating physician, the health

care plan and the non-participating physician **or hospital** shall evenly divide and share the prorated cost for dispute resolution.

§ 3. Section 604 of the financial services law, as added by section 26 of part H of chapter 60 of the laws of 2014, 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 [~~physician~~] **health care provider** for services rendered as compared to:

(1) fees paid to the involved [~~physician~~] **health care provider** for the same services rendered by the [~~physician~~] **health care provider** to other patients in health care plans in which the [~~physician~~] **health care provider** 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 [~~physicians~~] **health care providers** 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 [~~physician~~] **health care provider**;

(c) the [~~physician's~~] **health care provider's** usual charge for comparable services with regard to patients in health care plans in which the [~~physician~~] **health care provider** 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.

§ 4. This act shall take effect immediately.