

Assessment of Public Comments for the revised proposed new Part 400 to 23 NYCRR.

The Department of Financial Services (“Department”) received comments from two interested parties in response to its revised proposed rule. The Department had received most of the public comments on this rulemaking in response to its initial proposed rule, published in the State Register on December 31, 2014. The Department addressed those comments in the assessment of public comments that were published with the revised proposed rule in the State Register on April 1, 2015. New comments on the revised proposed rule and the Department’s responses thereto are discussed below.

Comment:

A commenter requested that Section 400.2(u)(2) be revised to clarify that a referral to a non-participating referred health care provider occurs without the insured’s written consent.

Response:

Section 400.2(u)(2) tracks the definition of surprise bill set forth in Financial Services Law Section 603(h). A surprise bill is defined as “a bill for health care services, other than emergency services, received by an insured for services rendered by a non-participating referred health care provider, where the services were referred by a participating physician to a non-participating referred health care provider without explicit written consent of the insured acknowledging that the participating physician is referring the insured to a non-participating referred health care provider and that the referral may result in costs not covered by the health care plan.” The requested language is unnecessary because the definition states that the referral is without the explicit written consent of the insured.

Comment:

A commenter requested revisions to Section 400.5(2) to clarify that a health plan is not obligated to provide notice of the independent dispute resolution (“IDR”) process to a non-participating physician, or a non-

participating referred health care provider when a claim for out-of-network services is paid by the health plan and the health plan subsequently receives an assignment of benefits form.

Response:

The requested change to clarify the notice requirements to providers was not made. It is clear in Section 400.5(e) that a health plan is not obligated to provide notice of the IDR process to a non-participating physician or a non-participating referred health care provider when a claim for out-of-network services is paid by the health plan and the health plan subsequently receives an assignment of benefits form. Section 400.5(e) requires a health plan that receives and pays a claim for the services of a non-participating physician or a non-participating referred health care provider that is not submitted with an assignment of benefits form to, upon receipt of an assignment of benefits form, determine whether the health plan will negotiate additional reimbursement with the provider. If the health plan attempts to negotiate additional reimbursement and the attempts do not result in resolution, or if the health plan does not attempt to negotiate additional reimbursement, the health plan shall pay the non-participating physician or a non-participating referred health care provider any additional amount that the health plan determines is reasonable. The health plan is required to provide notice to the insured that explains the insured's out-of-pocket costs and advises the insured to contact the health plan if the insured receives additional bills. A health plan is not obligated to provide any additional notice to the non-participating physician or non-participating referred health care provider.

Comment:

A commenter requested the revised proposed rule clarify that the IDR process for emergency services applies only to physician charges for emergency services and not to hospital services.

Response:

The Department previously received this comment and made a change in the revised proposed rule. Section 400.7(a)(1) was amended to clarify that a health care plan, a non-participating physician, or a patient

who is not an insured may submit a dispute regarding emergency services rendered by a physician to the superintendent for review by an independent dispute resolution entity (“IDRE”). No further changes are needed to clarify that the IDR process for emergency services applies only to physician charges for emergency services.