

Revised Summary of New Part 400 to 23 NYCRR.

Section 400.0 is the preamble.

Section 400.1 describes the applicability of the regulation and states that the regulation is applicable to health care services provided in New York State.

Section 400.2 provides definitions.

Section 400.3 establishes the independent dispute resolution entity (IDRE) certification requirements. IDREs apply for certification to the superintendent and must demonstrate that they are able to review disputes involving payment for emergency services and surprise bills. IDREs must ensure that reviews are completed in the required timeframes, and must have a network of reviewers, including physicians.

Section 400.4 details prohibited conflicts of interest. IDRE and IDRE reviewers may not have a prohibited affiliation with a health care plan, provider, facility, developer of a health care service or patient involved in the dispute.

Section 400.5 details the responsibilities of health care plans for disputes regarding emergency services and surprise bills. Health care plans must pay the claim and may attempt to negotiate the amount. Health care plans must provide the insured with notice that the insured shall incur no greater out-of-pocket costs for the services than the insured would have incurred with a participating physician or health care provider. Health care plans are also required to provide information on their websites about surprise bills.

Section 400.6 details the responsibilities of non-participating physicians and non-participating referred health care providers for disputes regarding emergency services and surprise bills. Non-participating physicians and non-participating referred health care providers must hold insured patients that complete an assignment of benefits form harmless for surprise bills. Non-participating physicians must also include a claim form and an assignment of benefits form with a bill to an insured.

Section 400.7 establishes the process to submit disputes regarding emergency services or surprise bills. Health care plans, non-participating physicians, non-participating referred health care providers and patients may submit disputes involving payment for emergency services and surprise bills to an IDRE. The parties must complete an application in the form and manner determined by the superintendent and the parties must provide information about the dispute.

Section 400.8 establishes the responsibilities of an IDRE. Within three business days of receipt of an application submitted by a health care plan, non-participating physician, non-participating referred health care provider or a patient, an IDRE shall screen the application for any conflicts of interest, eligibility and request any additional information. If the requested information is not received within five business days, the IDRE shall make a determination based on the information available to the IDRE. If the IDRE determines, in a case involving a health care plan, based on the health care plan's payment and the non-participating physician's or non-participating referred health care provider's fee, that a settlement between the health care plan and the non-participating physician or non-participating referred health care provider is reasonably likely, or that both the health care plan's payment and the non-participating physician's or non-participating referred health care provider's fee represent unreasonable extremes, the IDRE may direct both parties to attempt a good faith negotiation for settlement. The IDRE shall have the dispute reviewed by a neutral and impartial reviewer with training and experience in health care billing, reimbursement, and usual and customary charges. All determinations shall be made in consultation with a neutral and impartial licensed reviewing physician in active practice in the same or similar specialty as the physician providing the service that is subject to the dispute. To the extent practicable, the reviewing physician shall be licensed in this State. An IDRE shall make a determination within 30 days of receiving the request for the dispute resolution. For disputes involving a health care plan, the IDRE must choose as the reasonable fee either the health care plan's payment or the non-participating physician's or non-participating referred health care provider's fee. For disputes that do not

involve a health care plan, the IDRE must determine the reasonable fee. In determining a reasonable fee, the IDRE must use the conditions and factors set forth in Financial Services Law Section 604.

Section 400.9 establishes IDRE record retention and compliance requirements. An IDRE shall retain case records in accordance with 11 NYCRR 243 (Insurance Regulation 152) for audit and examination purposes for a period of six years from the date of the IDRE's determination. An IDRE shall provide any information as required or requested by the superintendent within two business days or such other period acceptable to the superintendent.

Section 400.10 establishes payment responsibility for the IDRE. If an IDRE 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 as applicable, non-participating referred health care provider. If an IDRE determines the non-participating physician's or non-participating referred health care provider's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the health care plan. If good faith negotiations directed by the IDRE results in a settlement between the health care plan and the non-participating physician or non-participating referred health care provider, the health care plan and the non-participating physician or non-participating referred health care provider shall evenly divide and share the prorated cost for dispute resolution. For disputes that are rejected as ineligible or due to the requesting non-participating physician, non-participating referred health care provider or health care plan's failure to submit information, an IDRE may charge an application processing fee, which shall be the responsibility of the requesting physician, health care provider or health care plan.