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**To:** Dept. of Professional & Financial Regulation, Bureau of Insurance  
VIA ELECTRONIC MAIL to [Karma.Y.Lombard@maine.gov](mailto:Karma.Y.Lombard@maine.gov)

**From:** Maine Medical Association  
VIA ELECTRONIC MAIL from [dmorin@mainemed.com](mailto:dmorin@mainemed.com)

**Date:** September 8, 2020

**Subject:** Proposed Adoption of Ch. 365, Standards for Independent Dispute Resolution of Emergency Medical Service Bills

The Maine Medical Association (MMA), the Maine Chapter of the American College of Emergency Physicians, and the Emergency Department Practice Management Association (collectively referred to herein as the "Associations") appreciate this opportunity to comment on the Maine Bureau of Insurance's (BOI) notice of rulemaking for Public Law 2019, Chapter 668 on the proposed Adoption of Ch. 365, Standards for Independent Dispute Resolution (IDR) of Emergency Medical Service Bills.

**Proposed 02-031 C.M.R. ch.365, § 2 (3) (C)**

The Associations request the BOI to clearly define the \$750 threshold. For example, is it \$750 in charges? Median allowed amounts?

**Proposed 02-031 C.M.R. ch.365, § 6 (1) (A)**

Section 6. Responsibilities of Carriers

1. Upon receipt of a claim for covered emergency services rendered by an out-of-network provider, a carrier shall:

A. pay the claim at the level set forth in paragraph B, unless the carrier and provider negotiate a different amount or the patient knowingly elected to obtain the services from an out-of-network provider. The carrier shall pay the provider or reimburse the enrollee (emphasis ours), as applicable, net of:

The Associations suggest amending the language requiring the carrier remit the initial payment to the clinician rather than the option of remitting to the enrollee. As deductibles and coinsurance amounts continue to increase, so too has uncollected patient financial responsibility, resulting in increased administrative collection and billing costs for physician practices.

**Proposed 02-031 C.M.R. ch.365, § 6 (B) (1 & 2)**

The section outlines a carrier's determination of median network rate, 80<sup>th</sup> percentile charges, and geographic rating area and the potential of "insufficient data" available. We are concerned carriers have unilateral authority under the proposed rule to determine if insufficient data is available.

A number of states refer to [FAIR Health](#), an independent nonprofit organization that collects data for and manages the nation's largest database of privately billed health insurance claims. We strongly recommend

including FAIR Health as a primary source for, “another independent medical claims database.” FAIR Health is under consideration in Georgia and Virginia, but more importantly is already being utilized successfully in Alaska, Connecticut, New Mexico, New York, and Texas.

In addition, there is the future possibility that some carriers could cancel or alter payment in several contracts simultaneously, resulting in lower rates for a service in particular region of the state (urban areas, portions of the state, etc). Perhaps including a provision in the proposed rule requiring carriers to report the percentage of cancelled clinician contracts statewide, and further detailed by area, is appropriate.

**Proposed 02-031 C.M.R. ch.365, § 6 (B) (4)**

4. If an IDRE directs a carrier to engage in negotiations with an out-of-network provider, the parties shall do so in good faith. If a settlement is reached, the carrier shall notify the IDRE within two business days of the settlement and shall make any additional payment to the provider within thirty days. If a settlement is not reached or the parties agree that a settlement is not attainable, the carrier shall promptly notify the IDRE within the period granted by the IDRE for negotiation.

We recommend adding a defined time period to this section.

**Proposed 02-031 C.M.R. ch.365, § 6 (B) (5)**

Section 6. Responsibilities of Carriers

(B) (5). If the IDRE issues a determination in favor of the provider, the carrier shall pay the provider any additional amount owed within 90 days after the date of the determination.

In our opinion, this time period is much too long. By reference, the Texas Department of Insurance [Independent Dispute Resolution process](#) requires a decision to be entered by day 51. Health benefit plans are then required to pay the out-of-network provider no later than the 30th day after the date of an arbitrator's decision under [Section 1467.088 \(d\)](#). We strongly encourage a similar requirement for Maine carriers.

**Proposed 02-031 C.M.R. ch.365, § 7 (1)**

Process to Submit and Resolve Disputes

1. The provider or eligible patient requesting IDR (the “applicant”) shall submit an application in a form and manner prescribed by the Superintendent

We encourage the BOI to review the [Texas Department of Insurance Independent Dispute Resolution web portal](#) as a procedural source to replicate. The cost of an IDR process was a frequent topic of discussion among legislators discussing LD 2105. Nevada, for example, did not have an electronic web portal, leaving everything to be done manually, thereby creating a barrier to affordable IDR.

**Proposed 02-031 C.M.R. ch.365, § 7 (2) ( C) (4)**

(4) the provider’s usual charge for comparable services rendered to uninsured patients, patients treated on an out-of-network basis, patients treated under contracts with other carriers or self-insured plans, and, if applicable, patients treated under recently-terminated contract with the carrier or plan involved in the dispute;

We recommend remaining consistent with statute. Specifically, P.L. 2019, Ch. 668, §4303-E ( C) (2) to avoid any potential inconsistency.

(2) The out-of-network provider's previously contracted rate with the carrier, if the provider had a contract with the carrier that was terminated or expired within one year prior to the dispute;

Once again, we thank you for the opportunity to provide these comments. If you have any questions, please do not hesitate to contact me for more information and answers to any questions from the Associations referenced in this letter.

Sincerely,

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