



CMS LETTER TO MARYLAND ON CAA ENFORCEMENT AND DISPUTE RESOLUTION

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CMS has entered into a Collaborative enforcement agreement with Maryland to enforce PHS Act as extended or added by CAA with respect to health issuers, providers, facilities, and providers of air ambulance services.

Since the CAA contains requirements for health issuers in the individual and group markets, health care providers and facilities, and providers of air ambulance services. CMS has an obligation to directly enforce applicable provisions in Parts A and D of Title XXVII of the PHS Act that a state fails to substantially enforce.

Based on CMS communications with MIA, CMS finds Maryland lacks authority to enforce certain PHS Act provisions. However, the Maryland State Department expressed interest in entering into a collaborative enforcement agreement with CMS to enforce certain sections with respect to health care providers, facilities, and providers of air ambulance services.

SUMMARY

Independent Dispute Resolution will apply for purposes of determining the out-of-network rate with respect to any items and services and nonparticipating providers, nonparticipating emergency facilities, and nonparticipating providers of air ambulance services to which Maryland's All-Payer Model Agreement or specified state laws do not apply. MIA will enforce the outcome of the federal IDR process for such cases in Maryland through a collaborative enforcement agreement.

MIA staff identified the patient-provider dispute resolution process under Maryland Code. However, this state process does not meet the minimum federal requirements. Therefore, the federal patient-provider dispute resolution process will apply in Maryland for purposes of determining the amount an uninsured (or self-pay) individual must pay a provider, facility, or provider of air ambulance services for an item or service for which the billed charges are substantially in excess of the good faith estimate of the expected charges that the applicable provider, facility, or provider of air ambulance services provided the individual prior to furnishing such item or service. The MIA will enforce the outcome of the federal patient-provider dispute resolution process in Maryland through a collaborative enforcement agreement.

ENFORCEMENT

Under what circumstances is this collaborative enforcement agreement enforceable?

- Under this collaborative enforcement agreement, Maryland will perform the compliance functions of policy form review, investigations, market conduct examinations, and consumer assistance, as applicable.

- Only in the event that Maryland is unable to obtain voluntary compliance will CMS consider undertaking formal enforcement action against a health care issuer, provider, facility or air ambulance, to the extent warranted. CMS will provide a copy of the collaborative enforcement agreement directly to the Maryland Insurance Administration for signature. Without such an agreement in place.
- If, in the future, Maryland should act to assume direct enforcement authority of any of the noted provisions, CMS will enter into discussions with Maryland on the process for an effective transition to state enforcement.
- The existing PHS Act enforcement structure is very much a partnership between states and the federal government.

INDEPENDENT DISPUTE RESOLUTION

PHS Act governs the out-of-network rate that plans, and issuers are generally required to pay nonparticipating providers and facilities for emergency services, and nonparticipating providers for non-emergency services performed at certain participating facilities.

How is the out-of-network rate determined?

The out-of-network rate may be determined by:

- an All-Payer Model Agreement under section 1115A of the Social Security Act, or
- if the state does not have an All-Payer Model Agreement, a “specified state law”.
- If neither an All-Payer Model Agreement nor specified state law apply, the out-of-network rate is an amount agreed upon between the plan or issuer and the provider, facility, or provider of air ambulance services. If the plan or issuer and the provider, facility, or provider of air ambulance services do not agree upon an amount and therefore enter into the federal independent dispute resolution process, the out-of-network rate is the amount determined by a certified independent dispute resolution entity.

In order to determine whether this federal independent dispute resolution process will apply in Maryland and in what circumstances, in its written survey, CMS solicited information regarding state All-Payer Model Agreements and state laws that may be consistent with the federal definition for a “specified state law.”

CMS understands that Maryland has an applicable All-Payer Model Agreement that would determine the out-of-network rate for hospital services in Maryland¹. CMS understands that § 19-710.1 of the Health General Article also applies as a specified state law for purposes of determining the out-of-network rate with respect to covered services furnished to individuals in HMOs in Maryland by health care providers who are not under contract with the HMO.

¹ codified at § 19-710.1(b)(2)(i) of Maryland’s Health-General Article for HMOs and in § 15-604 of Maryland’s Insurance Article for all other carriers)



CMS also understands that § 14-205.2 of the Maryland Insurance Article is a specified state law that will apply for purposes of determining the out-of-network rate with respect to covered services furnished to individuals in EPOs or PPOs in Maryland by nonpreferred on-call and hospital-based physicians who accept assignment of benefits.

Independent Dispute Resolution will apply for purposes of determining the out-of-network rate with respect to any items and services and nonparticipating providers, nonparticipating emergency facilities, and nonparticipating providers of air ambulance services to which Maryland's All-Payer Model Agreement or specified state laws do not apply. MIA will enforce the outcome of the federal IDR process for such cases in Maryland through a collaborative enforcement agreement.

PATIENT-PROVIDER DISPUTE RESOLUTION

PHS Act requires HHS to establish a patient-provider dispute resolution process through which uninsured (or self-pay) individuals who receive a good faith estimate of the cost of a scheduled service from a provider, facility, or provider of air ambulance services and are then billed charges substantially in excess of that estimate can seek a determination from a dispute resolution entity for the amount of charges to be paid.

Under the regulations implementing this statute, uninsured (or self-pay) individuals have 120 calendar days from receiving the initial bill containing charges for the item or service that is substantially in excess of the expected charges in the good faith estimate to initiate the patient-provider dispute resolution process and obtain a binding payment amount determination from a selected dispute resolution entity.

Maryland Insurance Administration staff identified the patient-provider dispute resolution process under Md. Code Ann., Com. Law § 13-4A-01, et seq. However, this state process does not meet the minimum federal requirements under 45 CFR 149.620(h) because it does not appear to include consideration of a good faith estimate or describe an established conflict-of-interest standard.

Therefore, the federal patient-provider dispute resolution process under section 2799B-7 of the PHS Act and 45 CFR 149.620 will apply in Maryland for purposes of determining the amount an uninsured (or self-pay) individual must pay a provider, facility, or provider of air ambulance services for an item or service for which the billed charges are substantially in excess of the good faith estimate of the expected charges that the applicable provider, facility, or provider of air ambulance services provided the individual prior to furnishing such item or service. The Maryland Insurance Administration will enforce the outcome of the federal patient-provider dispute resolution process in Maryland through a collaborative enforcement agreement.