

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
FIRST AMENDMENT TO 23 NYCRR 400**

**INDEPENDENT DISPUTE RESOLUTION FOR EMERGENCY SERVICES AND
SURPRISE BILLS**

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202, 301, 302, and Article 6 of the Financial Services Law, and Section 301 of the Insurance Law, do hereby promulgate the following First Amendment to Part 400 of Title 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York to take effect 30 days after publication of the Notice of Adoption in the State Register, to read as follows:

(NEW MATTER UNDERSCORED; DELETED MATTER IN BRACKETS)

Section 400.5(c) is amended to read as follows:

(c) Upon receipt of a claim for the services of a non-participating physician or a non-participating referred health care provider that could be a surprise bill that is not submitted with an assignment of benefits form, the health care plan shall provide the insured with notice, included on or in conjunction with an explanation of benefits, which shall:

(1) advise the insured that the claim could be a surprise bill and that the insured should contact the health care plan or visit the health care plan's website for additional information; and

(2) provide the information in paragraphs (1) – (5) of subdivision (f) of this section.

New subdivisions 400.5(l) and (m) are added to read as follows:

(l) If a health care plan determines that the services of a non-participating physician or a non-participating referred health care provider at a participating hospital are not emergency services and makes an adverse determination pursuant to Insurance Law or Public Health Law Article 49, the health care plan shall include in the initial adverse determination and the final adverse determination:

(1) a notice that the services may be a surprise bill and could be eligible for the dispute resolution process;

(2) the information in paragraphs (1) – (5) of subdivision (f) of this section; and

(3) a statement that the insured should not delay filing an internal appeal or external appeal even if the insured believes the services denied by the health care plan involve a surprise bill.

(m)(1) If a health care plan receives an assignment of benefits form for a surprise bill and determines that the services are not a surprise bill, the health care plan shall provide written notice of such determination. The notice shall include the procedures for filing a grievance under Insurance Law section 4802 or Public Health Law section 4408-a and information on how to file a complaint with the superintendent.

(2) If a health care plan makes a determination on a grievance disputing that a bill is a surprise bill, the health care plan shall provide written notice of such determination. The notice shall include the procedures for filing an appeal under Insurance Law section 4802 or Public Health Law section 4408-a, if applicable, and information on how to file a complaint with the superintendent.

Section 400.6(a) is amended to read as follows:

(a) If a non-participating physician bills a patient for emergency services or a surprise bill, the physician shall provide a claim form to the patient, [and] an assignment of benefits form in a form prescribed by the superintendent, and consumer disclosure information in a form prescribed by the superintendent.