

**REVISED PROPOSED REGULATION OF THE
DIRECTOR OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES**

LCB File No. R101-19

September 9, 2021

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-4, NRS 439B.754; § 5, NRS 439B.757; § 6, NRS 439B.760.

A REGULATION relating to health care; prescribing requirements concerning the arbitration of certain disputes over payment for medically necessary emergency services; prescribing the manner by which certain entities may become subject to provisions of law regarding the resolution of such disputes; requiring the reporting of certain information concerning payment for medically necessary emergency services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a third-party insurer and an out-of-network provider of health care that have a dispute regarding the payment for medically necessary emergency services rendered to a covered person to participate in arbitration to resolve the dispute. If such a dispute arises, existing law requires the out-of-network provider to request a list of five randomly selected arbitrators from an entity authorized by regulations of the Director of the Department of Health and Human Services to provide such arbitrators. (NRS 439B.754) For a dispute over a claim of less than \$5,000, **section 2** of this regulation requires the request to be submitted to the Department. **Section 2** also: (1) prescribes the required contents of the request; (2) provides for the review and approval of the request by the Department; and (3) requires the Department to provide the out-of-network provider and third party with a written list of five randomly selected employees of the State who are qualified to arbitrate the dispute and who are determined not to have a conflict of interest. **Section 3** of this regulation provides for the selection of an arbitrator and prescribes the procedure for the arbitration. For a dispute about a claim in the amount of \$5,000 or more, **section 4** of this regulation requires the out-of-network provider to request a list of five randomly selected arbitrators from the American Arbitration Association or JAMS.

Existing law authorizes an entity or organization not otherwise subject to provisions of law governing the resolution of disputes between a third-party insurer and an out-of-network provider of health care over payment for medically necessary emergency services to elect to have those provisions to apply to the entity or organization. Existing law requires the Director to adopt

regulations governing such an election. (NRS 439B.757) **Section 5** of this regulation prescribes the procedure for making and withdrawing such an election.

Existing law requires the Department to compile a report which consists of certain information concerning the resolution of disputes regarding the payment of medically necessary emergency services. Existing law requires a provider of health care or third party to provide to the Department any information requested by the Department to complete that report. (NRS 439B.760) **Section 6** of this regulation requires a third party that provides coverage to residents of this State and a provider of health care who provides medically necessary emergency medical services in this State to annually submit to the Department certain information for the purpose of compiling that report.

Section 1. Chapter 439B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *To request a list of randomly selected arbitrators pursuant to subsection 3 of NRS 439B.754 to arbitrate a dispute over a claim of less than \$5,000, an out-of-network provider must submit a request to the Department. If the out-of-network provider submits the request because the third party has refused or failed to pay the additional amount requested by the out-of-network-provider pursuant to subsection 2 of NRS 439B.754, the out-of-network provider must submit the request by:*

(a) If the third party refused to pay the additional amount, not later than 30 business days after the date on which the third party notifies the out-of-network provider of the refusal.

(b) If the third party failed to pay the additional amount for 30 business days after receiving a request for the additional amount, not later than 30 business days after that date.

2. *A request submitted pursuant to subsection 1 must be in the form prescribed by the Department and include, without limitation:*

(a) The date on which the medically necessary emergency services to which the complaint pertains were provided and the type of medically necessary emergency services provided;

(b) The contact information for and location of the out-of-network provider that provided the medically necessary emergency services;

(c) The type and specialty of each health care practitioner who provided the medically necessary emergency services;

(d) The type of third party that provides coverage for the covered person to whom the medically necessary emergency services were rendered and contact information for that third party; and

(e) Documentation of:

(1) The date on which the out-of-network provider received payment from the third party pursuant to subsection 2 of NRS 439B.748 or paragraph (c) of subsection 1 or subsection 2 of NRS 439B.751, as applicable, and the amount of payment received;

(2) The date on which the out-of-network provider requested additional payment from the third party pursuant to subsection 2 of NRS 439B.754, and the additional amount requested; and

(3) The date on which the third party refused to pay the additional amount, if applicable.

3. If the Department does not receive a request pursuant to subsection 1 within the prescribed time, the out-of-network provider shall be deemed to have accepted the payment received from the third party pursuant to subsection 2 of NRS 439B.748 or paragraph (c) of subsection 1 or subsection 2 of NRS 439B.751, as applicable, as payment in full for the medically necessary emergency services.

4. Not later than 10 business days after receiving a request pursuant to subsection 1, the Department shall notify the out-of-network provider in writing of the receipt of the request.

Not later than 20 business days after providing such notification, the Department shall:

(a) Review the request and verify the information contained therein; and

(b) Notify the out-of-network provider in writing of any additional information necessary to complete or clarify the request.

5. The Department will approve a request not later than 5 business days after determining that the request includes the documentation required by subsection 2 and is otherwise complete and clear. Not later than 5 business days after approving a request, the Department shall:

(a) Notify the out-of-network provider and the third party in writing of the approval.

(b) Randomly select five employees of the Office for Consumer Health Assistance of the Department who are qualified to arbitrate the dispute and ensure that those arbitrators do not have a conflict of interest that would prevent the arbitrator from impartially rendering a decision. For the purposes of this paragraph, a conflict of interest shall be deemed to exist if the arbitrator, or any person affiliated with the arbitrator:

(1) Has direct involvement in the licensing, certification or accreditation of a health care facility, insurer or provider of health care;

(2) Has a direct ownership interest or investment interest in a health care facility, insurer or provider of health care;

(3) Is employed by, or participating in, the management of a health care facility, insurer or provider of health care; or

(4) Receives or has the right to receive, directly or indirectly, remuneration pursuant to any arrangement for compensation with a health care facility, insurer or provider of health care.

(c) Provide to the out-of-network provider and the third party a written list of five arbitrators selected pursuant to paragraph (b) who have been determined not to have a conflict of interest.

Sec. 3. 1. *Not later than 10 business days after the Department provides a written list of arbitrators to an out-of-network provider and a third party pursuant to subsection 5 of section 2 of this regulation, the out-of-network provider and third party shall strike arbitrators from the list in the manner required by subsection 4 of NRS 439B.754 and provide the name or names of any remaining arbitrators on the list in writing to the Department.*

2. Not later than 10 business days after receiving the name of any remaining arbitrator on the list pursuant to subsection 1, the Department shall:

(a) If one arbitrator who does not have a conflict of interest remains, notify the out-of-network provider and the third party in writing of the name of that arbitrator.

(b) If more than one arbitrator who does not have a conflict of interest remains, randomly select an arbitrator from the remaining arbitrators as required by subsection 4 of NRS 439B.754 and notify the out-of-network provider and the third party in writing of the name of that arbitrator.

3. The out-of-network provider or third party may provide the arbitrator with any relevant information to assist the arbitrator in making a determination not later than 10 business days after the date on which the Department notifies the out-of-network provider and the third party in writing of the name of that arbitrator pursuant to subsection 2.

4. An arbitrator selected pursuant to subsection 2 may request from the third party and the out-of-network provider any information the arbitrator deems necessary to assist in making a determination. The out-of-network provider and third party shall provide such information to the arbitrator not later than 10 business days after the date of the request. If either party fails to provide information requested by the arbitrator within that time, the arbitrator may proceed and make a determination based on the evidence available to the arbitrator.

5. Not later than 45 business days after the expiration of the period for submission of the information pursuant to subsection 3 or 4, whichever is later, the arbitrator shall make a determination as provided in subsection 6 of NRS 439B.754 and notify the parties of that determination.

Sec. 4. An out-of-network provider that wishes to request a list of randomly selected arbitrators pursuant to subsection 3 of NRS 439B.754 to arbitrate a dispute over a claim of \$5,000 or more must request a list of five randomly selected arbitrators from:

- 1. The American Arbitration Association or its successor organization; or*
- 2. JAMS or its successor organization.*

Sec. 5. 1. To elect to have the provisions of NRS 439B.700 to 439B.760, inclusive, apply to an entity or organization that is not otherwise subject to those provisions as authorized pursuant to NRS 439B.757, the entity or organization must apply to the Department in the form prescribed by the Department. The application must include, without limitation:

- (a) The name of and contact information of the entity or organization; and*
 - (b) A description of the type of entity or organization, as applicable, that it is.*
- 2. If an application is received pursuant to subsection 1:*

(a) On or after the first day of any month and on or before the fourteenth day of that month, the election to have the provisions of NRS 439B.700 to 439B.760, inclusive, apply to the applicant becomes effective on the first day of the immediately following month.

(b) On or after the fifteenth day of any month and on or before the last day of that month, the election to have the provisions of NRS 439B.700 to 439B.760, inclusive, apply to the applicant becomes effective on the fifteenth day of the immediately following month.

3. Any entity or organization may withdraw its election to have the provisions of NRS 439B.700 to 439B.760, inclusive, apply to the entity or organization by submitting an application to the Department in the form prescribed by the Department not less than 120 business days before the date on which the withdrawal is requested to become effective. The application must include, without limitation:

(a) The name of and contact information for the entity or organization;

(b) A description of the type of entity or organization, as applicable, that it is;

(c) The date on which the entity or organization requests the withdrawal to become effective; and

(d) The reason for requesting to withdraw the election.

4. Any medically necessary emergency services to which an election pursuant to this section apply that are provided while the election is effective are subject to the provisions of NRS 439B.700 to 439B.760, inclusive.

Sec. 6. 1. *On or before December 31 of each year, each provider of health care who provides medically necessary emergency services in this State shall submit to the Department in the form prescribed by the Department:*

(a) The name of and contact information for the provider of health care;

(b) A description of the type of provider of health care that it is;

(c) Whether there was an increase or decrease in the number of contracts with third parties entered into by the provider of health care during the immediately preceding 12 months and the amount of the increase or decrease, stated as a percentage; and

(d) For each new contract with a third party entered into by the provider of health care during the immediately preceding 12 months, the type of the third party.

2. On or before December 31 of each year, each third party that provides coverage to residents of this State shall submit to the Department in the form prescribed by the Department:

(a) The name of and contact information for the third party;

(b) A description of the type of third party that it is;

(c) Whether there was an increase or decrease in the number of contracts with providers of health care who provide medically necessary emergency services entered into by the third party during the immediately preceding 12 months and the amount of the increase or decrease, stated as a percentage; and

(d) For each new contract with a provider of health care who provides medically necessary emergency services entered into by the third party during the immediately preceding 12 months, the type of the provider of health care.