

§ 149.30 Definitions.

The definitions in part 144 of this subchapter apply to this part, unless otherwise specified. In addition, for purposes of this part, the following definitions apply:

*Air ambulance service* means medical transport by a rotary wing air ambulance, as defined in 42 CFR 414.605, or fixed wing air ambulance, as defined in 42 CFR 414.605, for patients.

*Cost sharing* means the amount a participant, beneficiary, or enrollee is responsible for paying for a covered item or service under the terms of the group health plan or health insurance coverage. Cost sharing generally includes copayments, coinsurance, and amounts paid towards deductibles, but does not include amounts paid towards premiums, balance billing by out-of-network providers, or the cost of items or services that are not covered under a group health plan or health insurance coverage.

*Emergency department of a hospital* includes a hospital outpatient department that provides emergency services.

*Emergency medical condition* has the meaning given the term in § 149.110(c)(1).

*Emergency services* has the meaning given the term in § 149.110(c)(2).

*Health care facility*, with respect to a group health plan or group or individual health insurance coverage, in the context of non-emergency services, is each of the following:

- (1) A hospital (as defined in section 1861(e) of the Social Security Act);
- (2) A hospital outpatient department;
- (3) A critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act); and
- (4) An ambulatory surgical center described in section 1833(i)(1)(A) of the Social Security Act.

*Independent freestanding emergency department* means a health care facility (not limited to those described in the definition of health care facility with respect to non-emergency services) that—

- (1) Is geographically separate and distinct and licensed separately from a hospital under applicable State law; and
- (2) Provides any emergency services as described in § 149.110(c)(2)(i).

*Nonparticipating emergency facility* means an emergency department of a hospital, or an independent freestanding emergency department (or a hospital, with respect to services that pursuant to § 149.110(c)(2)(ii) are included as emergency services), that does not have a contractual relationship directly or indirectly with a group health plan or group or individual health insurance coverage offered by a health insurance issuer, with respect to the furnishing of an item or service under the plan or coverage, respectively.

*Nonparticipating provider* means any physician or other health care provider who does not have a contractual relationship directly or indirectly with a group health plan or group or individual health insurance coverage offered by a health insurance issuer, with respect to the furnishing of an item or service under the plan or coverage, respectively.

*Notice of denial of payment* means, with respect to an item or service for which benefits subject to the protections of §§ 149.110 through 149.130 are provided or covered, a written notice from the plan or issuer to the health care provider, facility, or provider of air ambulance services, as applicable, that payment for such item or service will not be made by the plan or coverage and which explains the reason for denial. The term notice of denial of payment does not include a notice of benefit denial due to an adverse benefit determination as defined in 29 CFR 2560.503-1.

*Out-of-network rate* means, with respect to an item or service furnished by a nonparticipating provider, nonparticipating emergency facility, or nonparticipating provider of air ambulance services—

(1) Subject to paragraph (3) of this definition, in a State that has in effect a specified State law, the amount determined in accordance with such law;

(2) Subject to paragraph (3) of this definition, in a State that does not have in effect a specified State law—

(i) Subject to paragraph (2)(ii) of this definition, if the nonparticipating provider or nonparticipating emergency facility and the plan or issuer agree on an amount of payment (including if the amount agreed upon is the initial payment sent by the plan or issuer under 26 CFR 54.9816-4T(b)(3)(iv)(A), 54.9816-5T(c)(3), or 54.9817-1T(b)(4)(i); 29 CFR 2590.716-4(b)(3)(iv)(A), 2590.716-5(c)(3), or 2590.717-1(b)(4)(i); or § 149.110(b)(3)(iv)(A), § 149.120(c)(3), or § 149.130(b)(4)(i), as applicable, or is agreed on through negotiations with respect to such item or service), such agreed on amount; or

(ii) If the nonparticipating provider or nonparticipating emergency facility and the plan or issuer enter into the independent dispute resolution (IDR) process under section 9816(c) or 9817(b) of the Internal Revenue Code, section 716(c) or 717(b) of ERISA, or section 2799A-1(c) or 2799A-2(b) of the PHS Act, as applicable, and do not agree before the date on which a certified IDR entity makes a determination with respect to such item or service under such subsection, the amount of such determination; or

(3) In a State that has an All-Payer Model Agreement under section 1115A of the Social Security Act that applies with respect to the plan or issuer; the nonparticipating provider or nonparticipating emergency facility; and the item or service, the amount that the State approves under the All-Payer Model Agreement for the item or service.

*Participating emergency facility* means any emergency department of a hospital, or an independent freestanding emergency department (or a hospital, with respect to services that pursuant to § 149.110(c)(2)(ii) are included as emergency services), that has a contractual relationship directly or indirectly with a group health plan or health insurance issuer offering group or individual health insurance coverage setting forth the terms and conditions on which a

relevant item or service is provided to a participant, beneficiary, or enrollee under the plan or coverage, respectively. A single case agreement between an emergency facility and a plan or issuer that is used to address unique situations in which a participant, beneficiary, or enrollee requires services that typically occur out-of-network constitutes a contractual relationship for purposes of this definition, and is limited to the parties to the agreement.

*Participating health care facility* means any health care facility described in this section that has a contractual relationship directly or indirectly with a group health plan or health insurance issuer offering group or individual health insurance coverage setting forth the terms and conditions on which a relevant item or service is provided to a participant, beneficiary, or enrollee under the plan or coverage, respectively. A single case agreement between a health care facility and a plan or issuer that is used to address unique situations in which a participant, beneficiary, or enrollee requires services that typically occur out-of-network constitutes a contractual relationship for purposes of this definition, and is limited to the parties to the agreement.

*Participating provider* means any physician or other health care provider who has a contractual relationship directly or indirectly with a group health plan or health insurance issuer offering group or individual health insurance coverage setting forth the terms and conditions on which a relevant item or service is provided to a participant, beneficiary, or enrollee under the plan or coverage, respectively.

*Physician or health care provider* means a physician or other health care provider who is acting within the scope of practice of that provider's license or certification under applicable State law, but does not include a provider of air ambulance services.

*Provider of air ambulance services* means an entity that is licensed under applicable State and Federal law to provide air ambulance services.

*Same or similar item or service* has the meaning given the term in § 149.140(a)(13).

*Service code* has the meaning given the term in § 149.140(a)(14).

*Qualifying payment amount* has the meaning given the term in § 149.140(a)(16).

*Recognized amount* means, with respect to an item or service furnished by a nonparticipating provider or nonparticipating emergency facility—

(1) Subject to paragraph (3) of this definition, in a State that has in effect a specified State law, the amount determined in accordance with such law.

(2) Subject to paragraph (3) of this definition, in a State that does not have in effect a specified State law, the lesser of—

(i) The amount that is the qualifying payment amount (as determined in accordance with § 149.140); or

(ii) The amount billed by the provider or facility.

(3) In a State that has an All-Payer Model Agreement under section 1115A of the Social Security Act that applies with respect to the plan or issuer; the nonparticipating provider or nonparticipating emergency facility; and the item or service, the amount that the State approves under the All-Payer Model Agreement for the item or service.

*Specified State law* means a State law that provides for a method for determining the total amount payable under a group health plan or group or individual health insurance coverage offered by a health insurance issuer to the extent such State law applies for an item or service furnished by a nonparticipating provider or nonparticipating emergency facility (including where it applies because the State has allowed a plan that is not otherwise subject to applicable State law an opportunity to opt in, subject to section 514 of the Employee Retirement Income Security Act of 1974). A group health plan that opts in to such a specified State law must do so for all items and services to which the specified State law applies and in a manner determined by the applicable State authority, and must prominently display in its plan materials describing the coverage of out-of-network services a statement that the plan has opted into the specified State law, identify the relevant State (or States), and include a general description of the items and services provided by nonparticipating facilities and providers that are covered by the specified State law.

*State* means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

*Treating provider* is a physician or health care provider who has evaluated the individual.

*Visit*, with respect to items and services furnished to an individual at a health care facility, includes, in addition to items and services furnished by a provider at the facility, equipment and devices, telemedicine services, imaging services, laboratory services, and preoperative and postoperative services, regardless of whether the provider furnishing such items or services is at the facility.