

6320--C

2009-2010 Regular Sessions

I N   S E N A T E

November 30, 2009

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Introduced by Sen. ESPADA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the insurance law, in relation to providing access to diagnostic laboratories by patients in health maintenance organizations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 4406 of the public health law is amended by adding  
2     a new subdivision 6 to read as follows:  
3     6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN ENROLLEE IS  
4     REFERRED BY AN IN-PLAN PROVIDER TO A PROVIDER OF CLINICAL LABORATORY  
5     SERVICES NOT PARTICIPATING IN THE PLAN (A "NON-PARTICIPATING PROVIDER"),  
6     ANY SERVICE PROVIDED BY A NON-PARTICIPATING PROVIDER THAT WOULD OTHER-  
7     WISE BE PAID FOR BY THE PLAN TO OTHER NON-PARTICIPATING PROVIDERS SHALL  
8     BE PAID FOR BY THE PLAN, AND THE PLAN SHALL BE RESPONSIBLE FOR PAYMENT  
9     DIRECTLY TO THE NON-PARTICIPATING PROVIDER FOR THAT SERVICE IN ACCORD-  
10    ANCE WITH THE TIME FRAME FOR SUCH PAYMENTS SET FORTH IN SECTION THREE  
11    THOUSAND TWO HUNDRED TWENTY-FOUR-A OF THE INSURANCE LAW; PROVIDED,  
12    HOWEVER, THAT THE ENROLLEE SHALL BE RESPONSIBLE FOR ANY APPLICABLE  
13    COPAY, COINSURANCE OR DEDUCTIBLE FOR SUCH SERVICES. CLINICAL LABORATO-  
14    RIES SEEKING REIMBURSEMENT PURSUANT TO THIS ARTICLE FOR SERVICES  
15    RENDERED SHALL DIRECTLY BILL THE PLAN WHOSE ENROLLEE RECEIVED THE  
16    SERVICES. ANY PAYMENT MADE BY A PLAN DIRECTLY TO THE ENROLLEE RATHER  
17    THAN TO THE CLINICAL LABORATORY SEEKING REIMBURSEMENT SHALL NOT SATISFY  
18    THE PLAN'S PAYMENT OBLIGATION TO THE CLINICAL LABORATORY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 2. Section 4406-c of the public health law is amended by adding two  
2 new subdivisions 4-a and 4-b to read as follows:

3 4-A. NO HEALTH CARE PLAN, NOT-FOR-PROFIT OR FOR-PROFIT HEALTH MAINTENANCE ORGANIZATION, PREFERRED PROVIDER ORGANIZATION, POINT OF SERVICE  
4 PLAN, GOVERNMENT SUBSIDIZED HEALTH CARE PLAN OR SELF INSURED PLAN  
5 (COLLECTIVELY, "PLAN") SHALL EXCLUDE FROM PARTICIPATING WITHIN ITS  
6 NETWORK ANY PROVIDER OF CLINICAL LABORATORY SERVICES THAT MEETS THE  
7 FOLLOWING REQUIREMENTS: (A) SUCH PROVIDER IS LICENSED AS A MEDICAID  
8 PROVIDER BY THE STATE DEPARTMENT OF HEALTH AND A MEDICARE PROVIDER BY  
9 THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; (B) SUCH  
10 PROVIDER IS ACCREDITED BY THE COLLEGE OF AMERICAN PATHOLOGISTS; AND (C)  
11 SUCH PROVIDER SUBMITS ELECTRONIC CLAIMS TO THE PLAN FOR THE PAYMENT OF  
12 CLINICAL LABORATORY SERVICES RENDERED TO ENROLLEES. EACH PLAN SHALL  
13 DIRECTLY PAY FOR CLINICAL LABORATORY SERVICES RENDERED TO ENROLLEES BY  
14 ANY PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING WITHIN ITS  
15 NETWORK IN ACCORDANCE WITH THE TIME FRAME FOR SUCH PAYMENTS SET FORTH IN  
16 SECTION THREE THOUSAND TWO HUNDRED TWENTY-FOUR-A OF THE INSURANCE LAW;  
17 PROVIDED, HOWEVER, THAT THE ENROLLEE SHALL BE RESPONSIBLE FOR ANY APPLICABLE  
18 COPAY, COINSURANCE OR DEDUCTIBLE FOR SUCH SERVICES.

19 4-B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN NO EVENT SHALL ANY  
20 PLAN: (A) REIMBURSE ANY IN-PLAN PROVIDER OF CLINICAL LABORATORY SERVICES  
21 FOR A PARTICULAR LABORATORY TEST BUT NOT REIMBURSE ANOTHER IN-PLAN  
22 PROVIDER OF CLINICAL LABORATORY SERVICES FOR THAT LABORATORY TEST; (B)  
23 ASSIGN PREFERENTIAL STATUS NOR PROVIDE PREFERENTIAL TREATMENT TO A  
24 PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING WITHIN ITS NETWORK.  
25 SUCH PROHIBITED PREFERENTIAL TREATMENT SHALL INCLUDE, BUT IS NOT LIMITED  
26 TO, MAINTAINING A SUBSTANTIALLY DIFFERENT RATE OF PAYMENT OR FEES FOR  
27 SIMILAR PRODUCTS AND SERVICES PROVIDED BY ONE IN-PLAN PROVIDER OVER  
28 THOSE OF OTHER IN-PLAN PROVIDERS, OR ESTABLISHING A PAYMENT PROCEDURE  
29 WITH ONE IN-PLAN PROVIDER AS OPPOSED TO OTHER IN-PLAN PROVIDERS KNOWN TO  
30 LIKELY RESULT IN THE LOSS OF PAYMENT FOR SUCH IN-PLAN PROVIDERS; (C)  
31 ESTABLISH DIFFERENT PERFORMANCE MEASURES OR REQUIREMENTS FOR ONE IN-PLAN  
32 PROVIDER OVER THOSE OF OTHER IN-PLAN PROVIDERS OF CLINICAL LABORATORY  
33 SERVICES, INCLUDING BUT NOT LIMITED TO, THE NUMBER OF PATIENT SERVICE  
34 CENTERS REQUIRED TO BE OPERATED IN A COVERED AREA OR FLUCTUATING REPORTING  
35 GUIDELINES AND REQUIREMENTS; (D) SUBCONTRACT THE MANAGEMENT OF THE  
36 NETWORK TO AN IN-PLAN LABORATORY THAT COLLECTS A MANAGEMENT FEE FOR SUCH  
37 MANAGEMENT SERVICES; OR (E) TREAT ANY ENROLLEE UTILIZING THE SERVICES OF  
38 ANY PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING WITHIN ITS  
39 NETWORK IN A MANNER WHICH IS NOT THE SAME AS OR SIMILAR IN ALL MATERIAL  
40 RESPECTS TO THE MANNER IN WHICH ALL OTHER ENROLLEES UTILIZING THE  
41 SERVICES OF ANY PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING  
42 WITHIN ITS NETWORK ARE TREATED.

43 S 3. Section 4804 of the insurance law is amended by adding a new  
44 subsection (g) to read as follows:

45 (G) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN INSURED IS  
46 REFERRED BY AN IN-PLAN PROVIDER TO A PROVIDER OF CLINICAL LABORATORY  
47 SERVICES NOT PARTICIPATING IN THE PLAN (A "NON-PARTICIPATING PROVIDER"),  
48 ANY SERVICE THAT WOULD OTHERWISE BE COVERED AS AN IN-PLAN SERVICE UNDER  
49 THE PLAN THAT IS PROVIDED BY THE NON-PARTICIPATING PROVIDER SHALL BE  
50 COVERED, AND THE ORGANIZATION SHALL BE RESPONSIBLE FOR PAYMENT DIRECTLY  
51 TO THE NON-PARTICIPATING PROVIDER FOR THOSE SERVICES IN ACCORDANCE WITH  
52 THE TIME FRAME FOR SUCH PAYMENTS SET FORTH IN SECTION THREE THOUSAND TWO  
53 HUNDRED TWENTY-FOUR-A OF THIS CHAPTER; PROVIDED, HOWEVER, THAT THE  
54 INSURED SHALL BE RESPONSIBLE FOR ANY APPLICABLE COPAY, COINSURANCE OR  
55 DEDUCTIBLE FOR SUCH SERVICES. CLINICAL LABORATORIES SEEKING REIMBURSE-  
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1 MENT PURSUANT TO THIS ARTICLE FOR SERVICES RENDERED SHALL DIRECTLY BILL  
2 THE ORGANIZATION WHOSE INSURED RECEIVED THE SERVICES. ANY PAYMENT MADE  
3 BY AN ORGANIZATION DIRECTLY TO THE INSURED RATHER THAN TO THE CLINICAL  
4 LABORATORY SEEKING REIMBURSEMENT SHALL NOT SATISFY THE ORGANIZATION'S  
5 PAYMENT OBLIGATION TO THE CLINICAL LABORATORY.  
6 S 4. This act shall take effect immediately.