

STATE OF NEW YORK

7730

2023-2024 Regular Sessions

IN ASSEMBLY

June 6, 2023

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Insurance

AN ACT to amend the public health law, the insurance law and the workers' compensation law, in relation to utilization review agents and independent medical examiners

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 206 of the public health law is amended by adding
2 two new subdivisions 32 and 33 to read as follows:

3 32. The commissioner is hereby directed to establish and periodically
4 update from available applicants an independent pool of physicians and
5 professional health service providers in each medical and professional
6 health service specialty to serve as independent utilization review
7 agents as defined by subdivision nine of section forty-nine hundred of
8 this chapter. Such applicant shall, upon submitting their name to the
9 commissioner, certify in writing that they will make all decisions on
10 cases before them in a fair and unbiased manner, based upon the facts
11 presented to them, and without any preconceived bias, pressure or influ-
12 ences asserted from outside elements or prior experiences or work. A
13 licensed physician shall presume to be eligible to apply for inclusion
14 in the pool, unless the commissioner finds extenuating circumstances
15 dictate their disqualification.

16 33. (a) The commissioner shall assign physicians or other professional
17 health service providers authorized to examine or evaluate injury or
18 illness from the pool in the appropriate medical or professional health
19 service specialty and who practices in the same area or region, to
20 conduct physical examinations and review medical records of covered
21 persons exclusively on a random, rotating basis to eliminate bias or
22 preference in the selection of independent utilization review agents, or
23 alternatively, the commissioner may select a not-for-profit organization
24 to assign providers from the pool on the same basis. Such assignment may

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

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1 be done through a process whereby a list of randomly selected, appropri-
2 ate medical or professional health service providers is compiled by
3 geographic region throughout the state and provided to the insurance
4 carrier and the claimant for the purposes of providing both parties
5 equal opportunity to reject no more than two names off such list before
6 the next available utilization review agent on the list is selected to
7 conduct the medical examination or review of medical records. Where a
8 person is rejected by either party such name shall however retain its
9 place in the rotation for purposes of future assignments.

10 (b) When a utilization review agent is selected from the pool of qual-
11 ified utilization review agents maintained by the department, the
12 commissioner shall remove such assignee from its then current place in
13 the rotation and place such agent's name at the end of the pool so that
14 such agent may be available for another regional utilization review
15 agent assignment as needed.

16 (c) A practitioner is not eligible to perform a utilization review of
17 a covered person when the appearance of or an actual conflict of inter-
18 est exists. A conflict of interest shall include, but not be limited to,
19 instances where the utilization review agent or someone in their office
20 or place of employment or practice has treated or examined the covered
21 person. A conflict of interest may be presumed to exist when the utili-
22 zation review agent and a treating provider that previously treated the
23 covered person have a relationship which involves a direct or substan-
24 tial financial interest.

25 (d) A utilization review agent shall not become the treating provider
26 for the covered person unless authorized to do so by the commissioner,
27 or ordered to by an administrative law judge.

28 (e) A party may, within five business days of the appointment as a
29 utilization review agent for a particular covered person, request that
30 the utilization review agent disclose all potential conflicts of inter-
31 est to the commissioner that may result from any relationship between
32 the utilization review agent and the insurance carrier, self-insured
33 employer, or the covered person. A potential conflict of interest exists
34 when the utilization review agent, or someone in their immediate family,
35 receives something of material value from the insurance carrier whether
36 in the form of stock, royalties, consultantship, funding by a research
37 grant, or other payment by the insurance carrier for any additional
38 service other than the utilization review, or if the utilization review
39 agent receives more than fifty percent of his or her total earned income
40 by providing utilization reviews. Such request shall be submitted, in
41 writing, to the commissioner and a copy shall be sent, delivered, or
42 submitted to any other parties at substantially the same time. The
43 commissioner shall determine whether any conflict of interest is suffi-
44 ciently material as to require disqualification of the utilization
45 review agent from performing any utilization review under this article,
46 after prompt disclosure pursuant to this subdivision.

47 § 2. Subdivision 2 of section 4902 of the public health law, as added
48 by chapter 705 of the laws of 1996, is amended to read as follows:

49 2. Each utilization review agent shall assure adherence to the
50 requirements stated in subdivision one of this section by all contrac-
51 tors, subcontractors, subvendors, agents and employees affiliated by
52 contract or otherwise with such utilization review agent, and shall
53 conduct all reviews in an objective and impartial manner. Utilization
54 review agents shall have their records randomly reviewed and audited
55 periodically by the commissioner. The commissioner shall be author-
56 ized to conduct a random review of no more than five utilization review

agent records during an agent's registration period. If, in the opinion of the commissioner, three or more of the agent's records and documentation out of the five records that may be audited annually are judged to be deficient, the commissioner shall be authorized to audit additional records during such registration period and shall be authorized to institute a remedial program prior to the expiration of the registrant's current registration period. If during any two consecutive annual audit periods an agent's records and documentation are judged to be deficient in spite of any program of remedial action directed on the part of the commissioner, the commissioner may remove the utilization review agent from the pool of names available to conduct utilization reviews. Once a registrant's name has been removed from the pool, in order to re-register as an agent the registrant shall seek authorization in accordance with this chapter and in the same manner as a practitioner who has not previously been authorized.

§ 3. The insurance law is amended by adding a new section 4901-a to read as follows:

§ 4901-a. Impartiality of utilization review agents. (a) The superintendent is hereby directed to establish and periodically update from available applicants an independent pool of physicians and professional health service providers in each medical and professional health service specialty to serve as independent utilization review agents as defined by subsection (i) of section forty-nine hundred of this title. Such applicant shall, upon submitting their name to the superintendent, certify in writing that they will make all decisions on cases before them in a fair and unbiased manner, based upon the facts presented to them, and without any preconceived bias, pressure or influences asserted from outside elements or prior experiences or work. A licensed physician shall presume to be eligible to apply for inclusion in the pool, unless the superintendent finds extenuating circumstances dictate their disqualification.

(b)(1) The superintendent shall assign physicians or other professional health service providers authorized to examine or evaluate injury or illness from the pool in the appropriate medical or professional health service specialty and who practices in the same area or region to conduct physical examinations and review medical records of covered persons exclusively on a random, rotating basis to eliminate bias or preference in the selection of the independent utilization review agents, or alternatively, the superintendent may select a not-for-profit organization to assign providers from the pool on the same basis. Such assignment may be done through a process whereby a list of randomly selected, appropriate medical or professional health service providers is compiled by geographic region throughout the state and provided to the insurance carrier and the claimant for the purposes of providing both parties equal opportunity to reject no more than two names off such list until one utilization review agent remains to conduct the medical examination or review of medical records. When a person is rejected by either party such name shall however retain its place in the rotation for purposes of future assignments.

(2) When a utilization review agent is selected from the pool of qualified utilization review agents maintained by the department, the superintendent shall remove such utilization review agent's name from its then current place in the rotation and place such agent's name at the end of the pool so that such agent may be available for another regional utilization review agent assignment as needed.

(3) A practitioner is not eligible to perform a utilization review of a covered person when the appearance of or an actual conflict of interest exists. A conflict of interest shall include, but not be limited to, instances where the utilization review agent or someone in their office or place of employment or practice has treated or examined the covered person. A conflict of interest may be presumed to exist when the utilization review agent and a treating provider that previously treated the covered person have a relationship which involves a direct or substantial financial interest.

(4) A utilization review agent shall not become the treating provider for the covered person unless authorized to do so by the commissioner of health, or ordered to by an administrative law judge.

(5) A party may, within five business days of the appointment as a utilization review agent for a particular covered person, request that the utilization review agent disclose all potential conflicts of interest to the superintendent that may result from any relationship between the utilization review agent and the insurance carrier, self-insured employer, or the covered person. A potential conflict of interest exists when the utilization review agent, or someone in their immediate family, receives something of material value from the insurance carrier whether in the form of stock, royalties, consultantship, funding by a research grant, or other payment by the insurance carrier for any additional service other than the utilization review, or if the utilization review agent receives more than fifty percent of his or her total earned income by providing utilization reviews. Such request shall be submitted, in writing, to the superintendent and a copy shall be sent, delivered, or submitted to any other parties at substantially the same time. The superintendent shall determine whether any conflict of interest is sufficiently material as to require disqualification of the utilization review agent from performing any utilization review under this article, after prompt disclosure pursuant to this subdivision.

§ 4. Subsection (b) of section 4902 of the insurance law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

(b) Each utilization review agent shall assure adherence to the requirements stated in subsection (a) of this section by all contractors, subcontractors, subvendors, agents and employees affiliated by contract or otherwise with such utilization review agent, and shall conduct all reviews in an objective and impartial manner.

§ 5. Section 4902 of the insurance law is amended by adding two new subsections (c) and (d) to read as follows:

(c) Utilization review agents shall have their records randomly reviewed and audited periodically by both the superintendent of financial services and the commissioner of health. The superintendent and commissioner shall be authorized to conduct a random review of no more than five utilization review records annually during a utilization review agent's registration period. If, in the opinion of the superintendent and commissioner, three or more of the utilization review agent's records and documentation out of the five records that may be audited annually are judged to be deficient, such superintendent and commissioner shall be authorized to audit additional records during such registration period and shall be authorized to institute a remedial program prior to the expiration of the registrant's current registration period. If during any two consecutive annual audit periods a utilization review agent's records and documentation are judged to be deficient in spite of any program of remedial action directed on the part of the superintendent and commissioner, they may remove the utilization review

1 agent from the pool of names available to conduct utilization reviews.
2 Once a registrant's name has been removed from the pool, in order to
3 re-register as a utilization review agent the registrant shall seek
4 authorization in accordance with this article and in the same manner as
5 a practitioner who has not previously been authorized.

6 (d) The utilization review agent shall cite, whenever and wherever
7 possible, the specific page and reference to the relevant practice
8 guideline or to the relevant peer-reviewed medical literature, scientific
9 studies, abstracts, and/or standard reference compendia, that the
10 agent utilized to assist him or her in reaching a determination when
11 commenting on or making any determination adverse to the covered
12 persons' ongoing or concurrent care or a retrospective review based on a
13 review of the treating provider's records or an examination of the
14 injured patient or covered person.

15 § 6. Subsection (c) of section 4905 of the insurance law, as added by
16 chapter 705 of the laws of 1996, is amended to read as follows:

17 (c) Each utilization review agent, or contractors, subcontractors,
18 subvendors, agents and employees affiliated by contract or otherwise
19 with such utilization review agent, shall conduct all reviews in an
20 objective and impartial manner. Any health care professional who makes
21 determinations regarding the medical necessity of health care services
22 during the course of utilization review shall be appropriately licensed,
23 registered or certified.

24 § 7. Section 4905 of the insurance law is amended by adding three new
25 subsections (p), (q), and (r) to read as follows:

26 (p) A practitioner is not eligible to perform a utilization review of
27 a covered person when the appearance of or an actual conflict of inter-
28 est exists. A conflict of interest shall include, but not be limited to,
29 instances where the utilization review agent or someone in their office
30 or place of employment or practice has treated or examined the covered
31 person. A conflict of interest may be presumed to exist when the utili-
32 zation review agent and a provider that previously treated the covered
33 person have a relationship which involves a direct or substantial finan-
34 cial interest.

35 (q) A utilization review agent shall not become the treating provider
36 for the covered person unless authorized to do so by the commissioner of
37 health, or ordered to by an administrative law judge.

38 (r) A party may, within five business days of the appointment as a
39 utilization review agent for a particular covered person, request that
40 the utilization review agent disclose all potential conflicts of inter-
41 est to the superintendent that may result from any relationship between
42 the utilization review agent and the insurance carrier, self-insured
43 employer, or the covered person. A potential conflict of interest exists
44 when the utilization review agent, or someone in their immediate family,
45 receives something of material value from the insurance carrier whether
46 in the form of stock, royalties, consultantship, funding by a research
47 grant, or other payment by the insurance carrier for any additional
48 service other than the utilization review, or if the utilization review
49 agent receives more than fifty percent of his or her total earned income
50 by providing utilization reviews. Such request shall be submitted, in
51 writing, to the superintendent and a copy shall be sent, delivered, or
52 submitted to any other parties at substantially the same time. The
53 superintendent shall determine whether any conflict of interest is
54 sufficiently material as to require disqualification of the utilization
55 review agent from performing any utilization review under this article,
56 after prompt disclosure pursuant to this subdivision.

§ 8. Subdivision 3 of section 13-b of the workers' compensation law, as amended by section 1 of part CC of chapter 55 of the laws of 2019, is amended to read as follows:

3. A provider properly licensed or certified pursuant to the regulations of the commissioner of education and the requirements of the education law desirous of being authorized to render medical care under this chapter and/or to conduct independent medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter shall file an application for authorization under this chapter with the chair or chair's designee. Prior to receiving authorization, a physician must, together with submission of an application to the chair, submit such application to the medical society of the county in which the physician's office is located or of a board designated by such county society or of a board representing duly licensed physicians of any other school of medical practice in such county, and such medical society shall submit the recommendation to the board. In the event such county society or board fails to take action upon a physician's completed and signed application within forty-five days, the chair may complete review of the application without such approval. Upon approval of the application by the chair or the chair's designee, the applicant shall further agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking medical treatment, or submitting to an independent medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of providers authorized to render medical care or to conduct independent medical examinations under this chapter, or if the person seeking such treatment, or submitting to an independent medical examination, has been transferred from his or her care in accordance with the provisions of this chapter. The applicant shall also agree to conduct all examinations in an objective and impartial manner. This agreement shall run to the benefit of the injured person so treated or examined, and shall be available to him or her as a defense in any action by such provider for payment for treatment rendered by a provider after he or she has been removed from the list of providers authorized to render medical care or to conduct independent medical examinations under this chapter, or after the injured person was transferred from his or her care in accordance with the provisions of this chapter.

§ 9. Section 137 of the workers' compensation law is amended by adding two new subdivisions 13 and 14 to read as follows:

13. Examiners shall have their records randomly reviewed and audited periodically by the chair. The chair shall be authorized to conduct a random review of no more than five independent medical examination records during an examiner's triennial registration period. If, in the opinion of the chair, three or more of the examiner's records and documentation out of the five records that may be audited annually are judged to be deficient, the chair shall be authorized to audit additional records during such registration period and shall be authorized to institute a remedial program prior to the expiration of the registrant's current independent medical examiner registration period. If during any two consecutive annual audit periods an examiner's records and documentation are judged to be deficient in spite of any program of remedial action directed on the part of the chair, the chair may remove the examiner from the pool of names available to conduct independent medical examinations. Once a registrant's name has been removed from the pool, in order to re-register as an examiner the registrant shall seek

authorization in accordance with section thirteen-b of this chapter and in the same manner as a practitioner who has not previously been authorized.

14. The examiner shall cite, whenever and wherever possible, the specific page and reference to the relevant practice guideline or to the relevant peer-reviewed medical literature, scientific studies, abstracts, and/or standard reference compendia, that the examiner utilized to assist him or her in reaching a determination when commenting on or making any determination adverse to the claimant's ongoing or concurrent care or a retrospective review based on a review of the treating provider's records or an examination of the injured patient or claimant.

§ 10. The workers' compensation law is amended by adding a new section 137-a to read as follows:

§ 137-a. Impartiality of independent medical examinations. 1. The chair is hereby directed to establish and periodically update from available applicants an independent pool of physicians and professional health service providers in each medical and professional health service specialty to serve as examiners. Such applicant shall, upon submitting their name to the chair, certify in writing that they will make all decisions on cases before them in a fair and unbiased manner, based upon the facts presented to them, and without any preconceived bias, pressure or influences asserted from outside elements or prior experiences or work. A licensed physician shall presume to be eligible to apply for inclusion in the pool, unless the chair finds extenuating circumstances dictate their disqualification.

2. (a) The chair shall assign physicians or other professional health service providers authorized to examine or evaluate injury or illness from the pool in the appropriate medical or professional health service specialty and who practices in the same area or region to conduct physical examinations and review medical records of covered persons exclusively on a random, rotating basis to eliminate bias or preference in the selection of the examiners, or alternatively, the chair may select a not-for-profit organization to assign providers from the pool on the same basis. Such assignment may be done through a process whereby a list of randomly selected, appropriate medical or professional health service providers is compiled by geographic region throughout the state and provided to the insurance carrier and the claimant for the purposes of providing both parties equal opportunity to reject no more than two names off such list until one examiner remains to conduct the independent medical examination or review of medical records. Where a person is rejected by either party such name shall however retain its place in the rotation for purposes of future assignments.

(b) When an examiner is selected from the pool of qualified independent medical examiners maintained by the board, the chairman shall remove such assignee from its then current place in the rotation and place such agent's name at the end of the pool so that such agent may be available for another regional utilization review agent assignment as needed.

(c) A practitioner is not eligible to perform an independent medical examination of a claimant when the appearance of or an actual conflict of interest exists. A conflict of interest shall include, but not be limited to, instances where the utilization review agent or someone in their office or place of employment or practice has treated or examined the claimant. A conflict of interest may be presumed to exist when the examiner and a provider that previously treated the claimant have a relationship which involves a direct or substantial financial interest.

1 (d) An examiner shall not become the treating provider for the claim-
2 ant unless authorized to do so by the chair, or ordered to by an admin-
3 istrative law judge.

4 (e) A party may, within five business days of the appointment as an
5 examiner for a particular claimant, request that the examiner disclose
6 all potential conflicts of interest to the chairman that may result from
7 any relationship between the examiner and the insurance carrier, self-
8 insured employer, or the claimant. A potential conflict of interest
9 exists when the examiner, or someone in their immediate family, receives
10 something of material value from the insurance carrier whether in the
11 form of stock, royalties, consultantship, funding by a research grant,
12 or other payment by the insurance carrier for any additional service
13 other than the independent medical examination, or if the examiner
14 receives more than fifty percent of his or her total earned income by
15 providing independent medical examinations. Such request shall be
16 submitted, in writing, to the chair and a copy shall be sent, delivered,
17 or submitted to any other parties at substantially the same time. The
18 chair shall determine whether any conflict of interest is sufficiently
19 material as to require disqualification of the examiner from performing
20 any independent medical examination under this chapter, after prompt
21 disclosure pursuant to this subdivision.

22 § 11. This act shall take effect immediately.