

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DINOWITZ, PHEFFER, GALEF, HOOPER, GOTTFRIED --  
Multi-Sponsored by -- M. of A. ALFANO, BARRA, BOYLAND, BRENNAN,  
COLTON, GIANARIS, LIFTON, SWEENEY -- read once and referred to the  
Committee on Health

AN ACT to amend the insurance law and the public health law, in relation  
to access to health care providers in managed care plans

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

1 Section 1. Subsection (e) of section 4803 of the insurance law, as  
2 added by chapter 705 of the laws of 1996, is amended to read as follows:  
3 (e) No insurer shall terminate or refuse to renew a contract for  
4 participation in the in-network benefits portion of an insurer's network  
5 for a managed care product solely because the health care professional  
6 has: (1) advocated on behalf of an insured; (2) [has] filed a complaint  
7 against the insurer; (3) [has] appealed a decision of the insurer; (4)  
8 provided information or filed a report pursuant to section forty-four  
9 hundred six-c of the public health law; [or] (5) requested a hearing or  
10 review pursuant to this section; OR (6) RENDERED AN OPINION REGARDING  
11 WHETHER AN INSURED'S ILLNESS IS TERMINAL PURSUANT TO SECTION FOUR THOU-  
12 SAND EIGHT HUNDRED FOUR OF THIS ARTICLE.

13 S 2. Subsections (e) and (f) of section 4804 of the insurance law, as  
14 added by chapter 705 of the laws of 1996, are amended to read as  
15 follows:

16 (e) (1) If an insured's health care provider leaves the insurer's  
17 in-network benefits portion of its network of providers for a managed  
18 care product for reasons other than those for which the provider would  
19 not be eligible to receive a hearing pursuant to paragraph one of  
20 subsection (b) of section [forty-eight] FOUR THOUSAND EIGHT hundred  
21 three of this [chapter] ARTICLE, the insurer shall permit the insured to  
22 continue [an ongoing course of treatment with] TO RECEIVE HEALTH CARE

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

1 PROCEDURES, TREATMENTS, AND SERVICES FROM the insured's current health  
2 care provider during a transitional period of (i) up to [ninety days]  
3 ONE YEAR from the date of notice to the insured of the provider's disaf-  
4 filiation from the insurer's network[;] or (ii) if the insured has  
5 [entered the second trimester of pregnancy at the time of the provider's  
6 disaffiliation, for a transitional period that includes the provision of  
7 post-partum care directly related to the delivery] A TERMINAL ILLNESS OR  
8 CONDITION, UNTIL THE TIME OF SUCH INSURED'S DEATH.

9 (2) Notwithstanding the provisions of paragraph one of this  
10 subsection, such care shall be authorized by the insurer during the  
11 transitional period only if the health care provider agrees (i) to  
12 continue to accept reimbursement from the insurer at the rates applica-  
13 ble prior to the start of the transitional period as payment in full;  
14 (ii) to adhere to the insurer's quality assurance requirements and to  
15 provide to the insurer necessary medical information related to such  
16 care; and (iii) to otherwise adhere to the insurer's policies and proce-  
17 dures, including, but not limited to, procedures regarding referrals and  
18 obtaining pre-authorization and a treatment plan approved by the insur-  
19 er.

20 (f) If a new insured whose health care provider is not a member of the  
21 insurer's in-network benefits portion of the provider network enrolls in  
22 the managed care product, the insurer shall permit the insured to  
23 continue [an ongoing course of treatment with] TO RECEIVE HEALTH CARE  
24 PROCEDURES, TREATMENTS, AND SERVICES FROM the insured's current health  
25 care provider during a transitional period of up to [sixty days] ONE  
26 YEAR from the effective date of enrollment OR, if [(1)] the insured has  
27 a [life-threatening disease or condition or a degenerative and disabling  
28 disease or condition or (2) the insured has entered the second trimester  
29 of pregnancy at the time of enrollment, in which case the transitional  
30 period shall include the provision of post-partum care directly related  
31 to the delivery] TERMINAL ILLNESS OR CONDITION, UNTIL THE TIME OF SUCH  
32 INSURED'S DEATH. If an insured elects to continue to receive care from  
33 such health care provider pursuant to this [paragraph] SUBSECTION, such  
34 care shall be authorized by the insurer for the transitional period only  
35 if the health care provider agrees (A) to accept reimbursement from the  
36 insurer at rates established by the insurer as payment in full, which  
37 rates shall be no more than the level of reimbursement applicable to  
38 similar providers within the in-network benefits portion of the insur-  
39 er's network for such services; (B) to adhere to the insurer's quality  
40 assurance requirements and agrees to provide to the insurer necessary  
41 medical information related to such care; and (C) to otherwise adhere to  
42 the insurer's policies and procedures, including, but not limited to,  
43 procedures regarding referrals and obtaining pre-authorization and a  
44 treatment plan approved by the insurer. In no event shall this  
45 subsection be construed to require an insurer to provide coverage for  
46 benefits not otherwise covered or to diminish or impair pre-existing  
47 condition limitations contained within the insured's contract.

48 S 3. Section 4804 of the insurance law is amended by adding two new  
49 subsections (g) and (h) to read as follows:

50 (G) FOR THE PURPOSES OF THIS SECTION, THE TERM "TERMINAL ILLNESS OR  
51 CONDITION" SHALL MEAN AN ILLNESS OR CONDITION WHICH, IN THE OPINION OF  
52 THE PHYSICIAN OF THE PATIENT SUFFERING FROM SUCH TERMINAL ILLNESS OR  
53 CONDITION, IS LIKELY TO CAUSE OR BE A MAJOR CONTRIBUTING FACTOR IN CAUS-  
54 ING SUCH PATIENT'S DEATH WITHIN THREE YEARS.

55 (H) PROVIDER INCENTIVES (MONETARY OR OTHERWISE) TO A HEALTH CARE  
56 PROVIDER RELATING TO PROCEDURES, TREATMENTS, OR SERVICES PURSUANT TO

1 THIS SECTION, WHICH ARE INTENDED TO HAVE THE EFFECT OF INDUCING SUCH  
2 PROVIDER TO PROVIDE CARE TO AN INSURED IN A MANNER INCONSISTENT WITH  
3 THIS SECTION, ARE PROHIBITED.

4 S 4. Paragraphs (e) and (f) of subdivision 6 of section 4403 of the  
5 public health law, as added by chapter 705 of the laws of 1996, are  
6 amended to read as follows:

7 (e) (1) If an enrollee's health care provider leaves the health main-  
8 tenance organization's network of providers for reasons other than those  
9 for which the provider would not be eligible to receive a hearing pursu-  
10 ant to paragraph [a] (A) of subdivision two of section forty-four  
11 hundred six-d of this [chapter] ARTICLE, the health maintenance organ-  
12 ization shall permit the enrollee to continue [an ongoing course of  
13 treatment with] TO RECEIVE HEALTH CARE PROCEDURES, TREATMENTS, AND  
14 SERVICES FROM the enrollee's current health care provider during a tran-  
15 sitional period of (i) up to [ninety days] ONE YEAR from the date of  
16 notice to the enrollee of the provider's disaffiliation from the organ-  
17 ization's network[;] or (ii) if the enrollee has [entered the second  
18 trimester of pregnancy at the time of the provider's disaffiliation, for  
19 a transitional period that includes the provision of post-partum care  
20 directly related to the delivery] A TERMINAL ILLNESS OR CONDITION, UNTIL  
21 THE TIME OF SUCH ENROLLEE'S DEATH.

22 (2) Notwithstanding the provisions of subparagraph one of this para-  
23 graph, such care shall be authorized by the health maintenance organiza-  
24 tion during the transitional period only if the health care provider  
25 agrees (i) to continue to accept reimbursement from the health mainte-  
26 nance organization at the rates applicable prior to the start of the  
27 transitional period as payment in full; (ii) to adhere to the organiza-  
28 tion's quality assurance requirements and to provide to the organization  
29 necessary medical information related to such care; and (iii) to other-  
30 wise adhere to the organization's policies and procedures, including,  
31 but not limited to, procedures regarding referrals and obtaining pre-au-  
32 thorization and a treatment plan approved by the organization.

33 (f) If a new enrollee whose health care provider is not a member of  
34 the health maintenance organization's provider network enrolls in the  
35 health maintenance organization, the organization shall permit the  
36 enrollee to continue [an ongoing course of treatment with] TO RECEIVE  
37 HEALTH CARE PROCEDURES, TREATMENTS, AND SERVICES FROM the enrollee's  
38 current health care provider during a transitional period of up to  
39 [sixty days] ONE YEAR from the effective date of enrollment, if [(i)]  
40 the enrollee has a [life-threatening disease or condition or a degenera-  
41 tive and disabling disease or condition or (ii) the enrollee has entered  
42 the second trimester of pregnancy at the effective date of enrollment,  
43 in which case the transitional period shall include the provision of  
44 post-partum care directly related to the delivery] TERMINAL ILLNESS OR  
45 CONDITION, UNTIL THE TIME OF SUCH ENROLLEE'S DEATH. If an enrollee  
46 elects to continue to receive care from such health care provider pursu-  
47 ant to this paragraph, such care shall be authorized by the health main-  
48 tenance organization for the transitional period only if the health care  
49 provider agrees (A) to accept reimbursement from the health maintenance  
50 organization at rates established by the health maintenance organization  
51 as payment in full, which rates shall be no more than the level of  
52 reimbursement applicable to similar providers within the health mainte-  
53 nance organization's network for such services; (B) to adhere to the  
54 organization's quality assurance requirements and agrees to provide to  
55 the organization necessary medical information related to such care; and  
56 (C) to otherwise adhere to the organization's policies and procedures,

1 including, but not limited to, procedures regarding referrals and  
2 obtaining pre-authorization and a treatment plan approved by the organ-  
3 ization. In no event shall this paragraph be construed to require a  
4 health maintenance organization to provide coverage for benefits not  
5 otherwise covered or to diminish or impair pre-existing condition limi-  
6 tations contained within the subscriber's contract.

7 S 5. Section 4403 of the public health law is amended by adding two  
8 new subdivisions 7 and 8 to read as follows:

9 7. FOR THE PURPOSES OF THIS SECTION, "TERMINAL ILLNESS OR CONDITION"  
10 SHALL MEAN AN ILLNESS OR CONDITION WHICH, IN THE OPINION OF THE PHYSI-  
11 CIAN OF THE PATIENT SUFFERING FROM SUCH TERMINAL ILLNESS OR CONDITION,  
12 IS LIKELY TO CAUSE OR BE A MAJOR CONTRIBUTING FACTOR IN CAUSING SUCH  
13 PATIENT'S DEATH WITHIN THREE YEARS.

14 8. PROVIDER INCENTIVES (MONETARY OR OTHERWISE) TO A HEALTH CARE  
15 PROVIDER RELATING TO PROCEDURES, TREATMENTS, OR SERVICES PROVIDED PURSU-  
16 ANT TO THIS SECTION, WHICH ARE INTENDED TO INDUCE OR HAVE THE EFFECT OF  
17 INDUCING SUCH PROVIDER TO PROVIDE CARE TO AN ENROLLEE IN A MANNER INCON-  
18 SISTENT WITH THIS SECTION, ARE PROHIBITED.

19 S 6. Subdivision 5 of section 4406-d of the public health law, as  
20 added by chapter 705 of the laws of 1996, is amended to read as follows:

21 5. No health care plan shall terminate a contract or employment, or  
22 refuse to renew a contract, solely because a health care provider has:

- 23 (a) advocated on behalf of an enrollee;  
24 (b) filed a complaint against the health care plan;  
25 (c) appealed a decision of the health care plan;  
26 (d) provided information or filed a report pursuant to section forty-  
27 four hundred six-c of this article; [or]  
28 (e) requested a hearing or review pursuant to this section; OR  
29 (F) RENDERED AN OPINION REGARDING WHETHER A PATIENT'S ILLNESS IS  
30 TERMINAL PURSUANT TO SECTION FORTY-FOUR HUNDRED THREE OF THIS ARTICLE.

31 S 7. This act shall take effect on the one hundred twentieth day after  
32 it shall have become a law and shall apply to all contracts issued,  
33 renewed, modified or amended on and after such date.