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2009-2010 Regular Sessions

I N A S S E M B L Y

March 23, 2009

Introduced by M. of A. MORELLE, SPANO -- Multi-Sponsored by -- M. of A. GALEF, GREENE, JOHN, MAGEE -- (at request of the New York State Insurance Department) -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to unauthorized providers of health services

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

1 Section 1. The opening paragraph of section 5102 of the insurance law
2 is amended and a new subsection (n) is added to read as follows:
3 In this [chapter] ARTICLE:
4 (N) "PROVIDER OF HEALTH SERVICES" MEANS A PERSON OR ENTITY WHO RENDERS
5 HEALTH SERVICES.
6 S 2. Section 5109 of the insurance law, as added by chapter 423 of the
7 laws of 2005, is amended to read as follows:
8 S 5109. Unauthorized providers of health services. (a) [The super-
9 intendent, in consultation with the commissioner of health and the
10 commissioner of education, shall by regulation, promulgate standards and
11 procedures for investigating and suspending or removing the authori-
12 zation for providers of health services to demand or request payment for
13 health services as specified in paragraph one of subsection (a) of
14 section five thousand one hundred two of this article upon findings
15 reached after investigation pursuant to this section. Such regulations
16 shall ensure the same or greater due process provisions, including
17 notice and opportunity to be heard, as those afforded physicians inves-
18 tigated under article two of the workers' compensation law and shall
19 include provision for notice to all providers of health services of the
20 provisions of this section and regulations promulgated thereunder at
21 least ninety days in advance of the effective date of such regulations]
22 AS USED IN THIS SECTION, "HEALTH SERVICES" MEANS SERVICES, SUPPLIES,
23 THERAPIES OR OTHER TREATMENTS AS SPECIFIED IN SUBPARAGRAPH (I), (II) OR

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

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(IV) OF PARAGRAPH ONE OF SUBSECTION (A) OF SECTION FIVE THOUSAND ONE HUNDRED TWO OF THIS ARTICLE.

(b) [The commissioner of health and the commissioner of education shall provide a list of the names of all providers of health services who the commissioner of health and the commissioner of education shall deem, after reasonable investigation, not authorized to demand or request any payment for medical services in connection with any claim under this article because such] THE SUPERINTENDENT MAY PROHIBIT A provider of health services FROM DEMANDING OR REQUESTING PAYMENT FOR HEALTH SERVICES RENDERED UNDER THIS ARTICLE, FOR A PERIOD NOT EXCEEDING THREE YEARS, IF THE SUPERINTENDENT DETERMINES, AFTER NOTICE AND HEARING, THAT THE PROVIDER OF HEALTH SERVICES:

(1) has ADMITTED TO, OR been FOUND guilty of, professional [or other] misconduct, AS DEFINED IN THE EDUCATION LAW, [or incompetency] in connection with [medical] HEALTH services rendered under this article; [or

(2) has exceeded the limits of his or her professional competence in rendering medical care under this article or has knowingly made a false statement or representation as to a material fact in any medical report made in connection with any claim under this article; or

(3)] (2) solicited, or [has] employed another PERSON to solicit for [himself or herself] THE PROVIDER OF HEALTH SERVICES or [for] another PERSON OR ENTITY, professional treatment, examination or care of [an injured] A person in connection with any claim under this article; [or

(4) has] (3) refused to appear before, or [to] answer ANY QUESTION upon request of, the [commissioner of health, the] superintendent[,] or any duly authorized officer of [the] THIS state, [any legal question,] or REFUSED to produce any relevant information concerning [his or her] THE conduct OF THE PROVIDER OF HEALTH SERVICES in connection with [rendering medical] HEALTH services RENDERED under this article; [or

(5) has] (4) engaged in [patterns] A PATTERN of billing for:

(A) HEALTH services [which] ALLEGED TO HAVE BEEN RENDERED UNDER THIS ARTICLE, WHEN THE HEALTH SERVICES were not [provided.] RENDERED; OR

(B) UNNECESSARY HEALTH SERVICES;

(5) UTILIZED UNLICENSED PERSONS TO RENDER HEALTH SERVICES UNDER THIS ARTICLE, WHEN ONLY A PERSON LICENSED IN THIS STATE MAY RENDER THE HEALTH SERVICES;

(6) UTILIZED LICENSED PERSONS TO RENDER HEALTH SERVICES, WHEN RENDERING THE HEALTH SERVICES IS BEYOND THE AUTHORIZED SCOPE OF THE PERSON'S LICENSE;

(7) CEDED OWNERSHIP, OPERATION OR CONTROL OF A BUSINESS ENTITY AUTHORIZED TO PROVIDE PROFESSIONAL HEALTH SERVICES IN THIS STATE, INCLUDING BUT NOT LIMITED TO A PROFESSIONAL SERVICE CORPORATION, PROFESSIONAL LIMITED LIABILITY COMPANY OR REGISTERED LIMITED LIABILITY PARTNERSHIP, TO A PERSON NOT LICENSED TO RENDER THE HEALTH SERVICES FOR WHICH THE ENTITY IS LEGALLY AUTHORIZED TO PROVIDE, EXCEPT WHERE THE UNLICENSED PERSON'S OWNERSHIP, OPERATION OR CONTROL IS OTHERWISE PERMITTED BY LAW;

(8) COMMITTED A FRAUDULENT INSURANCE ACT AS DEFINED IN SECTION 176.05 OF THE PENAL LAW;

(9) HAS BEEN CONVICTED OF A CRIME INVOLVING FRAUDULENT OR DISHONEST PRACTICES; OR

(10) VIOLATED ANY PROVISION OF THIS ARTICLE OR REGULATIONS PROMULGATED THEREUNDER.

(c) [Providers] A PROVIDER of health services shall [refrain from subsequently treating for remuneration, as a private patient, any person seeking medical treatment] NOT DEMAND OR REQUEST PAYMENT FOR ANY HEALTH

1 SERVICES under this article [if such provider pursuant to this section
2 has been prohibited from demanding or requesting any payment for medical
3 services under this article. An injured claimant so treated or examined
4 may raise this as] THAT ARE RENDERED DURING THE TERM OF THE PROHIBITION
5 ORDERED BY THE SUPERINTENDENT PURSUANT TO SUBSECTION (B) OF THIS
6 SECTION. THE PROHIBITION ORDERED BY THE SUPERINTENDENT MAY BE a defense
7 in any action by [such] THE provider OF HEALTH SERVICES for payment for
8 [treatment rendered at any time after such provider has been prohibited
9 from demanding or requesting payment for medical services in connection
10 with any claim under this article] SUCH HEALTH SERVICES.

11 (d) The [commissioner of health and the commissioner of education]
12 SUPERINTENDENT shall maintain [and regularly update] a database contain-
13 ing a list of providers of health services prohibited by this section
14 from demanding or requesting any payment for health services [connected
15 to a claim] RENDERED under this article and shall make [such] THE infor-
16 mation available to the public [by means of a website and by a toll free
17 number].

18 (E) THE SUPERINTENDENT MAY LEVY A CIVIL PENALTY NOT EXCEEDING FIFTY
19 THOUSAND DOLLARS ON ANY PROVIDER OF HEALTH SERVICES THAT THE SUPERINTEN-
20 DENT PROHIBITS FROM DEMANDING OR REQUESTING PAYMENT FOR HEALTH SERVICES
21 PURSUANT TO SUBSECTION (B) OF THIS SECTION. ANY CIVIL PENALTY IMPOSED
22 FOR A FRAUDULENT INSURANCE ACT, AS DEFINED IN SECTION 176.05 OF THE
23 PENAL LAW, SHALL BE LEVIED PURSUANT TO ARTICLE FOUR OF THIS CHAPTER.

24 [(e)] (F) Nothing in this section shall be construed as limiting in
25 any respect the powers and duties of the commissioner of health, commis-
26 sioner of education or the superintendent to investigate instances of
27 misconduct by a [health care] provider [and, after a hearing and upon
28 written notice to the provider, to temporarily prohibit a provider of
29 health services under such investigation from demanding or requesting
30 any payment for medical services under this article for up to ninety
31 days from the date of such notice] OF HEALTH SERVICES AND TAKE APPROPRI-
32 ATE ACTION PURSUANT TO ANY OTHER PROVISION OF LAW. A DETERMINATION OF
33 THE SUPERINTENDENT PURSUANT TO SUBSECTION (B) OF THIS SECTION SHALL NOT
34 BE BINDING UPON THE COMMISSIONER OF HEALTH OR THE COMMISSIONER OF EDUCA-
35 TION IN A PROFESSIONAL DISCIPLINE PROCEEDING RELATING TO THE SAME
36 CONDUCT.

37 S 3. This act shall take effect immediately.