

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GOTTFRIED, BING, CHRISTENSEN, DINOWITZ, GALEF, PEOPLES-STOKES, MAGNARELLI, PAULIN, HOOPER, PHEFFER, FIELDS -- Multi-Sponsored by -- M. of A. CYMBROWITZ, GLICK, HIKIND, JOHN, KELLNER, LIFTON, McENENY, J. MILLER, J. RIVERA, P. RIVERA, SCARBOROUGH, SWEENEY, TITUS, TOWNS, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to clarifying the grounds for an external appeal based on medical necessity

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

1 Section 1. Legislative findings and intent. Where there is a sound
2 medical and scientific basis for a health care service or procedure, a
3 patient should not be denied access to that care.
4 This legislation provides, in the external appeal process, that, where
5 a health care plan denies coverage on grounds of "medical necessity",
6 the insured shall have the opportunity to demonstrate, through his or
7 her health care professional, based on applicable medical and scientific
8 evidence, the patient's medical record, and any other patient informa-
9 tion, that the proposed health service or treatment is likely to be more
10 beneficial than any standard treatment or treatments for the patient's
11 condition or disease.
12 This legislation does not require a health care plan to cover any
13 health care service or treatment that would not otherwise be a covered
14 benefit for the insured.
15 S 2. Subparagraph (A) of paragraph (d) of subdivision 2 of section
16 4914 of the public health law, as added by chapter 586 of the laws of
17 1998, is amended to read as follows:
18 (A) *MEDICAL NECESSITY*. For external appeals requested pursuant to
19 paragraph (a) of subdivision two of section forty-nine hundred ten of

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

1 this title, the external appeal agent shall review the utilization
2 review agent's final adverse determination and, in accordance with the
3 provisions of this title, shall make a determination as to whether the
4 health care plan acted reasonably and with sound medical judgment and in
5 the best interest of the patient. When the external appeal agent makes
6 its determination, it shall consider the clinical standards of the plan,
7 the information provided concerning the patient, the attending [physi-
8 cian's] HEALTH CARE PROFESSIONAL'S recommendation, and applicable gener-
9 ally accepted practice guidelines developed by the federal government,
10 national or professional [medical] societies, boards and associations.
11 WHERE APPLICABLE, THE APPEAL SHALL BE GRANTED IF, AND TO THE EXTENT, THE
12 EXTERNAL APPEAL AGENT DETERMINES, UPON REVIEW OF THE APPLICABLE MEDICAL
13 AND SCIENTIFIC EVIDENCE, THE PATIENT'S MEDICAL RECORD, AND ANY OTHER
14 PERTINENT INFORMATION, THAT THE PROPOSED HEALTH SERVICE OR TREATMENT IS
15 LIKELY TO BE MORE BENEFICIAL THAN ANY STANDARD TREATMENT OR TREATMENTS
16 FOR THE PATIENT'S CONDITION OR DISEASE OR NO TREATMENT; IF THE SPECIFIC
17 HEALTH SERVICE OR TREATMENT RECOMMENDED BY THE HEALTH CARE PROFESSIONAL
18 WOULD NOT OTHERWISE BE EXCLUDED FROM COVERAGE UNDER THE POLICY ON
19 GROUNDS OTHER THAN MEDICAL NECESSITY.

20 Provided that such determination shall:

- 21 (i) be conducted only by one or a greater odd number of clinical peer
22 reviewers,
- 23 (ii) be accompanied by a notice of appeal determination which shall
24 include the reasons for the determination; provided, however, that where
25 the final adverse determination is upheld on appeal, the notice shall
26 include the clinical rationale, if any, for such determination,
- 27 (iii) be subject to the terms and conditions generally applicable to
28 benefits under the evidence of coverage under the health care plan,
- 29 (iv) be binding on the plan and the enrollee, and
- 30 (v) be admissible in any court proceeding.

31 S 3. Subparagraph (A) of paragraph 4 of subsection (b) of section 4914
32 of the insurance law, as added by chapter 586 of the laws of 1998, is
33 amended to read as follows:

34 (A) MEDICAL NECESSITY. For external appeals requested pursuant to
35 paragraph one of subsection (b) of section four thousand nine hundred
36 ten of this title, the external appeal agent shall review the utiliza-
37 tion review agent's final adverse determination and, in accordance with
38 the provisions of this title, shall make a determination as to whether
39 the health care plan acted reasonably and with sound medical judgment
40 and in the best interest of the patient. When the external appeal agent
41 makes its determination, it shall consider the clinical standards of the
42 plan, the information provided concerning the patient, the attending
43 [physician's] HEALTH CARE PROFESSIONAL'S recommendation, applicable and
44 generally accepted practice guidelines developed by the federal govern-
45 ment, national or professional [medical] societies, boards and associ-
46 ations. WHERE APPLICABLE, THE APPEAL SHALL BE GRANTED IF, AND TO THE
47 EXTENT, THE EXTERNAL APPEAL AGENT DETERMINES, UPON REVIEW OF THE APPLI-
48 CABLE MEDICAL AND SCIENTIFIC EVIDENCE, THE PATIENT'S MEDICAL RECORD, AND
49 ANY OTHER PERTINENT INFORMATION, THAT THE PROPOSED HEALTH SERVICE OR
50 TREATMENT IS LIKELY TO BE MORE BENEFICIAL THAN ANY STANDARD TREATMENT OR
51 TREATMENTS FOR THE PATIENT'S CONDITION OR DISEASE OR NO TREATMENT; IF
52 THE SPECIFIC HEALTH SERVICE OR TREATMENT RECOMMENDED BY THE HEALTH CARE
53 PROFESSIONAL WOULD NOT OTHERWISE BE EXCLUDED FROM COVERAGE UNDER THE
54 POLICY ON GROUNDS OTHER THAN MEDICAL NECESSITY. Provided that such
55 determination shall:

- 1 (i) be conducted only by one or a greater odd number of clinical peer
 - 2 reviewers,
 - 3 (ii) be accompanied by a notice of appeal determination which shall
 - 4 include the reasons for the determination; provided, however, that where
 - 5 the final adverse determination is upheld on appeal, the notice shall
 - 6 include the clinical rationale, if any, for such determination,
 - 7 (iii) be subject to the terms and conditions generally applicable to
 - 8 benefits under the evidence of coverage under the health care plan,
 - 9 (iv) be binding on the plan and the insured, and
 - 10 (v) be admissible in any court proceeding.
- 11 S 4. This act shall take effect on the one hundred eightieth day after
- 12 it shall have become a law.