

792

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GOTTFRIED -- Multi-Sponsored by -- M. of A. KELLNER -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to approvals by a utilization review agent

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

1 Section 1. Paragraph (h) of subdivision 1 of section 4902 of the
2 public health law, as added by chapter 705 of the laws of 1996, is
3 amended to read as follows:
4 (h) Establishment of a requirement that emergency services rendered to
5 an enrollee shall not be subject to prior authorization nor shall
6 reimbursement for such services be denied on retrospective review;
7 provided, however, that such services are medically necessary to stabi-
8 lize or treat an emergency condition. IN REVIEWING A DENIAL FOR COVER-
9 AGE OF EMERGENCY SERVICES TO TREAT AN EMERGENCY MEDICAL CONDITION, THE
10 UTILIZATION REVIEW AGENT SHALL TAKE THE FOLLOWING FACTORS INTO CONSIDER-
11 ATION:
12 (1) THE TIME OF DAY AND DAY OF THE WEEK THE CARE WAS PROVIDED;
13 (2) THE PRESENTING SYMPTOMS, INCLUDING BUT NOT LIMITED TO, SEVERE
14 PAIN, TO ENSURE THAT THE DECISION TO DENY REIMBURSEMENT FOR EMERGENCY
15 SERVICE IS NOT MADE SOLELY ON THE BASIS OF THE FINAL DIAGNOSIS.
16 S 2. Subdivision 7 of section 4903 of the public health law, as added
17 by chapter 586 of the laws of 1998, is amended to read as follows:
18 7. Failure by the utilization review agent to make a determination
19 within the time periods prescribed in this section shall be deemed to be
20 an [adverse determination subject to appeal pursuant to section forty
21 nine hundred four of this title] APPROVAL.
22 S 3. Subdivision 1 of section 4904 of the public health law, as added
23 by chapter 705 of the laws of 1996, is amended to read as follows:

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

A

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1 1. An enrollee, the enrollee's designee and[, in connection with
2 retrospective adverse determinations,] an enrollee's health care provid-
3 er, may appeal an adverse determination rendered by a utilization review
4 agent.

5 S 4. The opening paragraph of subdivision 5 of section 4905 of the
6 public health law is designated paragraph (a) and a new paragraph (b) is
7 added to read as follows:

8 (B) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION
9 REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT
10 SHALL IMMEDIATELY THEREAFTER SUPPLY THE PROVIDER WITH A WRITTEN CONFIR-
11 MATION OF THE APPROVAL BY EITHER:

12 (I) SENDING A COPY OF SUCH APPROVAL THROUGH ELECTRONIC MAIL TO AN
13 ADDRESS SPECIFIED BY THE PROVIDER;

14 (II) SENDING A COPY OF SUCH APPROVAL THROUGH FACSIMILE TRANSMISSION TO
15 A NUMBER SPECIFIED BY THE PROVIDER; OR

16 (III) POSTING A COPY OF SUCH APPROVAL ON A SPECIFIC WEBPAGE OF THE
17 INSURER'S WEBSITE TO WHICH THE PROVIDER HAS BEEN DIRECTED AND TO WHICH
18 THE PROVIDER HAS BEEN GIVEN ACCESS SO THAT THE PROVIDER MAY IMMEDIATELY
19 PRINT AND RETAIN A HARD COPY.

20 S 5. The opening paragraph of subdivision 2 of section 4910 of the
21 public health law, as added by chapter 586 of the laws of 1998, is
22 amended to read as follows:

23 An enrollee, the enrollee's designee and[, in connection with retro-
24 spective adverse determinations,] an enrollee's health care provider,
25 shall have the right to request an external appeal when:

26 S 6. Paragraph 8 of subsection (a) of section 4902 of the insurance
27 law, as added by chapter 705 of the laws of 1996, is amended to read as
28 follows:

29 (8) Establishment of a requirement that emergency services rendered to
30 an insured shall not be subject to prior authorization nor shall
31 reimbursement for such services be denied on retrospective review;
32 provided, however, that such services are medically necessary to stabi-
33 lize or treat an emergency condition. IN REVIEWING A DENIAL FOR COVER-
34 AGE OF EMERGENCY SERVICES TO TREAT AN EMERGENCY MEDICAL CONDITION, THE
35 UTILIZATION REVIEW AGENT SHALL TAKE THE FOLLOWING FACTORS INTO CONSIDER-
36 ATION:

37 (I) THE TIME OF DAY AND DAY OF THE WEEK THE CARE WAS PROVIDED;

38 (II) THE PRESENTING SYMPTOMS, INCLUDING BUT NOT LIMITED TO, SEVERE
39 PAIN, TO ENSURE THAT THE DECISION TO DENY REIMBURSEMENT FOR EMERGENCY
40 SERVICE IS NOT MADE SOLELY ON THE BASIS OF THE FINAL DIAGNOSIS.

41 S 7. Subsection (g) of section 4903 of the insurance law, as added by
42 chapter 586 of the laws of 1998, is amended to read as follows:

43 (g) Failure by the utilization review agent to make a determination
44 within the time periods prescribed in this section shall be deemed to be
45 an [adverse determination subject to appeal pursuant to section four
46 thousand nine hundred four of this title] APPROVAL.

47 S 8. Subsection (a) of section 4904 of the insurance law, as added by
48 chapter 705 of the laws of 1996, is amended to read as follows:

49 (a) An insured, the insured's designee and[, in connection with retro-
50 spective adverse determinations,] an insured's health care provider, may
51 appeal an adverse determination rendered by a utilization review agent.

52 S 9. The opening paragraph of subsection (e) of section 4905 of the
53 insurance law is designated paragraph 1 and a new paragraph 2 is added
54 to read as follows:

55 (2) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION
56 REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT

1 SHALL IMMEDIATELY THEREAFTER SUPPLY THE PROVIDER WITH A WRITTEN CONFIR-
2 MATION OF THE APPROVAL BY EITHER:
3 (I) SENDING A COPY OF SUCH APPROVAL THROUGH ELECTRONIC MAIL TO AN
4 ADDRESS SPECIFIED BY THE PROVIDER;
5 (II) SENDING A COPY OF SUCH APPROVAL THROUGH FACSIMILE TRANSMISSION TO
6 A NUMBER SPECIFIED BY THE PROVIDER; OR
7 (III) POSTING A COPY OF SUCH APPROVAL ON A SPECIFIC WEBPAGE OF THE
8 INSURER'S WEBSITE TO WHICH THE PROVIDER HAS BEEN DIRECTED AND TO WHICH
9 THE PROVIDER HAS BEEN GIVEN ACCESS SO THAT THE PROVIDER MAY IMMEDIATELY
10 PRINT AND RETAIN A HARD COPY.

11 S 10. The opening paragraph of subsection (b) of section 4910 of the
12 insurance law, as added by chapter 586 of the laws of 1998, is amended
13 to read as follows:

14 An insured, the insured's designee and[, in connection with retrospec-
15 tive adverse determinations,] an insured's health care provider, shall
16 have the right to request an external appeal when:

17 S 11. This act shall take effect on January first next succeeding the
18 date on which it shall have become a law, and shall apply to all poli-
19 cies and contracts issued, renewed, modified, altered or amended on and
20 after such effective date.