S T A T E O F N E W Y O R K

3552

2009-2010 Regular Sessions

I N S E N A T E

March 24, 2009

Introduced by Sens. BRESLIN, STACHOWSKI, DIAZ -- (at request of the New York State Insurance Department and the Department of Health) -- read twice and ordered printed, and when printed to be committed 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:

Section 1. The opening paragraph of section 5102 of the insurance law is amended and a new subsection (n) is added to read as follows:

In this [chapter] ARTICLE:

(N) "PROVIDER OF HEALTH SERVICES" MEANS A PERSON OR ENTITY WHO RENDERS HEALTH SERVICES.

S 2. Section 5109 of the insurance law, as added by chapter 423 of the laws of 2005, is amended to read as follows:

S 5109. Unauthorized providers of health services. (a) [The superintendent, in consultation with the commissioner of health and the commissioner of education, shall by regulation, promulgate standards and procedures for investigating and suspending or removing the authorization for providers of health services to demand or request payment for health services as specified in paragraph one of subsection (a) of section five thousand one hundred two of this article upon findings reached after investigation pursuant to this section. Such regulations shall ensure the same or greater due process provisions, including notice and opportunity to be heard, as those afforded physicians investigated under article two of the workers' compensation law and shall include provision for notice to all providers of health services of the provisions of this section and regulations promulgated thereunder at least ninety days in advance of the effective date of such regulations] AS USED IN THIS SECTION, "HEALTH SERVICES" MEANS SERVICES, SUPPLIES, 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.

(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

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

(d) The [commissioner of health and the commissioner of education] SUPERINTENDENT shall maintain [and regularly update] a database containing a list of providers of health services prohibited by this section from demanding or requesting any payment for health services [connected to a claim] RENDERED under this article and shall make [such] THE information available to the public [by means of a website and by a toll free number].

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

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

S 3. This act shall take effect immediately.