

3909

2009-2010 Regular Sessions

I N S E N A T E

April 3, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed 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
20 this title, the external appeal agent shall review the utilization
21 review agent's final adverse determination and, in accordance with the
22 provisions of this title, shall make a determination as to whether the
23 health care plan acted reasonably and with sound medical judgment and in
24 the best interest of the patient. When the external appeal agent makes

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

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1 its determination, it shall consider the clinical standards of the plan,
2 the information provided concerning the patient, the attending [physi-
3 cian's] HEALTH CARE PROFESSIONAL'S recommendation, and applicable gener-
4 ally accepted practice guidelines developed by the federal government,
5 national or professional [medical] societies, boards and associations.
6 WHERE APPLICABLE, THE APPEAL SHALL BE GRANTED IF, AND TO THE EXTENT, THE
7 EXTERNAL APPEAL AGENT DETERMINES, UPON REVIEW OF THE APPLICABLE MEDICAL
8 AND SCIENTIFIC EVIDENCE, THE PATIENT'S MEDICAL RECORD, AND ANY OTHER
9 PERTINENT INFORMATION, THAT THE PROPOSED HEALTH SERVICE OR TREATMENT IS
10 LIKELY TO BE MORE BENEFICIAL THAN ANY STANDARD TREATMENT OR TREATMENTS
11 FOR THE PATIENT'S CONDITION OR DISEASE OR NO TREATMENT; IF THE SPECIFIC
12 HEALTH SERVICE OR TREATMENT RECOMMENDED BY THE HEALTH CARE PROFESSIONAL
13 WOULD NOT OTHERWISE BE EXCLUDED FROM COVERAGE UNDER THE POLICY ON
14 GROUNDS OTHER THAN MEDICAL NECESSITY.

15 Provided that such determination shall:

16 (i) be conducted only by one or a greater odd number of clinical peer
17 reviewers,

18 (ii) be accompanied by a notice of appeal determination which shall
19 include the reasons for the determination; provided, however, that where
20 the final adverse determination is upheld on appeal, the notice shall
21 include the clinical rationale, if any, for such determination,

22 (iii) be subject to the terms and conditions generally applicable to
23 benefits under the evidence of coverage under the health care plan,

24 (iv) be binding on the plan and the enrollee, and

25 (v) be admissible in any court proceeding.

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

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

51 (i) be conducted only by one or a greater odd number of clinical peer
52 reviewers,

53 (ii) be accompanied by a notice of appeal determination which shall
54 include the reasons for the determination; provided, however, that where
55 the final adverse determination is upheld on appeal, the notice shall
56 include the clinical rationale, if any, for such determination,

1 (iii) be subject to the terms and conditions generally applicable to
2 benefits under the evidence of coverage under the health care plan,
3 (iv) be binding on the plan and the insured, and
4 (v) be admissible in any court proceeding.
5 S 4. This act shall take effect on the one hundred eightieth day after
6 it shall have become a law.