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

4491--A

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the insurance law, in relation to nurse practitioner access

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

Section 1. Paragraph (a) of subdivision 5 of section 4403 of the public health law, as amended by chapter 586 of the laws of 1998, is amended to read as follows:

(a) The commissioner, at the time of initial licensure, at least every three years thereafter, and upon application for expansion of service area, shall ensure that the health maintenance organization maintains a network of health care providers adequate to meet the comprehensive health needs of its enrollees and to provide an appropriate choice of providers sufficient to provide the services covered under its enrollee's contracts by determining that (i) there are a sufficient number of geographically accessible participating providers; (ii) there are opportunities to select from at least three primary care providers pursuant to travel and distance time standards, providing that such standards account for the conditions of accessing providers in rural areas; (iii) there are sufficient providers in each area of specialty practice to meet the needs of the enrollment population; (iv) there is no exclusion of any appropriately licensed type of provider as a class; [and] (v) THERE IS NO EXCLUSION OF APPROPRIATELY LICENSED AND CERTIFIED NURSE PRACTITIONERS AS A CLASS OF PRIMARY CARE PRACTITIONERS OR AS PROVIDERS OF SPECIALTY PRACTICE AND (VI) contracts entered into with health care providers neither transfer financial risk to providers, in a manner inconsistent with the provisions of paragraph (c) of subdivision

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

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one of this section, nor penalize providers for unfavorable case mix so as to jeopardize the quality of or enrollees' appropriate access to medically necessary services; provided, however, that payment at less than prevailing fee for service rates or capitation shall not be deemed or presumed prima facie to jeopardize quality or access.

S 2. The insurance law is amended by adding a new section 3217-e to read as follows:

S 3217-E. NURSE PRACTITIONER SERVICE REIMBURSEMENT. NO INSURER SUBJECT TO THIS ARTICLE THAT PROVIDES COVERAGE FOR PHYSICIAN SERVICES SHALL EXCLUDE APPROPRIATELY LICENSED AND CERTIFIED NURSE PRACTITIONERS AS A CLASS OF PRIMARY CARE PRACTITIONERS OR AS PROVIDERS OF SPECIALTY PRACTICE. AN INSURER SHALL PROVIDE REIMBURSEMENT FOR THOSE SERVICES PRESCRIBED BY THIS SECTION AT RATES NEGOTIATED BETWEEN THE INSURER AND THE PROVIDER OF SUCH SERVICES. IN THE ABSENCE OF AGREED UPON RATES, AN INSURER SHALL PAY FOR SUCH SERVICES AT THE USUAL AND CUSTOMARY CHARGE, WHICH SHALL NOT BE UNREASONABLE.

S 3. Subparagraphs (F), (G) and (H) of paragraph 4 of subsection (f) of section 4235 of the insurance law, subparagraph (F) as added and subparagraphs (G) and (H) as relettered by chapter 456 of the laws of 1993, are amended and a new subparagraph (I) is added to read as follows:

(F) any speech-language pathology or audiology service which is within the lawful scope of practice of a duly licensed speech-language pathologist or audiologist, a subscriber to such policy shall be entitled to reimbursement for such service whether the said service is performed by a physician or duly licensed speech-language pathologist or audiologist, provided however, that nothing contained herein shall be construed to impair any terms of such policy which may require said service to be performed pursuant to a medical order, or a similar or related service of a physician, in which case coverage need not be provided for any tests, evaluations or diagnoses if such tests, evaluations or diagnoses have already been provided by or through a physician within twelve months of the referral or order from the physician. However, nothing herein shall be construed as preventing an insurer from covering more than one test or evaluation provided by a speech-language pathologist or audiologist within a twelve-month period where such test or evaluation is ordered by a physician as medically necessary. Nor shall anything herein be construed as prohibiting the limitation of such services, where covered, to specified settings other than offices, such as hospitals or to services provided by such professionals as part of a home care agency's services; and when such policy or any certificate issued thereunder is delivered or issued for delivery without the state by an authorized insurer, covered persons residing in this state shall be entitled to reimbursement for speech-language pathology or audiology service as herein provided[.];

(G) psychiatric or psychological services or for the diagnosis and treatment of mental, nervous, or emotional disorders or ailments, however defined in such policy, a subscriber to such policy shall be entitled to reimbursement for such psychiatric or psychological services or diagnosis or treatment whether performed by a physician, psychiatrist or a certified and registered psychologist when the services rendered are within the lawful scope of their practice, and when such policy or any certificate issued thereunder is delivered or issued for delivery without this state by an authorized insurer, covered persons residing in this state shall be entitled to reimbursement for such diagnosis and

treatment by a physician, psychiatrist or a certified and registered psychologist as hereinabove provided; [and]

(H) any service which is within the lawful scope of practice of a licensed chiropractor, a subscriber to such policy shall be entitled to reimbursement for such service when such service is performed by a licensed chiropractor[.]; AND

(I) ANY SERVICE WHICH IS WITHIN THE LAWFUL SCOPE OF PRACTICE OF A CERTIFIED NURSE PRACTITIONER, A SUBSCRIBER TO SUCH POLICY SHALL BE ENTITLED TO REIMBURSEMENT FOR SUCH SERVICE WHEN SAID SERVICE IS PERFORMED BY A CERTIFIED NURSE PRACTITIONER. AN INSURER SHALL PROVIDE REIMBURSEMENT FOR THOSE SERVICES PRESCRIBED BY THIS SUBPARAGRAPH AT RATES NEGOTIATED BETWEEN THE INSURER AND THE PROVIDER OF SUCH SERVICES. IN THE ABSENCE OF AGREED UPON RATES, AN INSURER SHALL PAY FOR SUCH SERVICES AT THE USUAL AND CUSTOMARY CHARGE, WHICH SHALL NOT BE UNREASONABLE.

S 4. Subsection (b) of section 4301 of the insurance law, subparagraph (G) of paragraph 1 and paragraph 3 as amended by chapter 593 of the laws of 2000 and subparagraph (I) of paragraph 1 as added and subparagraphs (J) and (K) of paragraph 1 as relettered by chapter 456 of the laws of 1993, is amended to read as follows:

(b) (1) Medical expense indemnity shall consist of reimbursement for:

(A) medical care provided through licensed physicians OR CERTIFIED NURSE PRACTITIONERS,

(B) dental care provided through licensed dentists,

(C) optometric care provided through licensed optometrists,

(D) podiatrical care provided through licensed podiatrists,

(E) chiropractic care provided through licensed chiropractors,

(F) psychiatric or psychological services provided through physicians, psychiatrists or certified and registered psychologists,

(G) physical and occupational therapy care provided through licensed physical and occupational therapists upon the prescription of a physician,

(H) nursing service,

(I) speech-language pathology or audiology services provided through licensed speech-language pathologists or audiologists, provided however, that nothing contained herein shall be construed to prohibit a contract from requiring said service from being performed pursuant to a medical order or similar or related service of a physician OR NURSE PRACTITIONER, in which case coverage need not be provided for any tests, evaluations or diagnoses if such tests, evaluations or diagnoses have already been provided by or through a physician within twelve months of the referral or order from the physician OR NURSE PRACTITIONER. However, nothing herein shall be construed as preventing a corporation from covering more than one test or evaluation provided by a speech-language pathologist or audiologist within a twelve-month period where such tests or evaluations is ordered by a physician OR NURSE PRACTITIONER as medically necessary. Nor shall anything herein be construed as prohibiting the limitation of such services, where covered, to specified settings other than offices, such as hospitals or to services provided by such professionals as part of a home care agency's services,

(J) necessary appliances, drugs, medicines and supplies, and

(K) bio-analytical or clinical laboratory examinations and reports thereof reported to a physician OR NURSE PRACTITIONER, osteopath, dentist, optometrist, podiatrist, chiropractor or physical therapist made by any privately operated bioanalytical or clinical laboratory.

(2) It is not mandatory that a contract issued by a medical expense indemnity corporation provide for and offer all of the services hereina-

bove described, but when any service is provided which can be performed by more than one of the practitioners hereinbefore referred to, benefits under the contract shall be provided regardless of which practitioner performed the service, provided that the performance of such service was within the scope of the license of such practitioner. Unless such contract shall otherwise provide there shall be no reimbursement for ophthalmic materials, lenses, spectacles, eyeglasses, and/or appurtenances thereto.

(3) Every medical expense indemnity corporation shall be open to the participation of licensed physicians, podiatrists, chiropractors, optometrists, physical and occupational therapists, speech-language pathologists, audiologists, and dentists, CERTIFIED NURSE PRACTITIONERS, certified and registered psychologists without discrimination against schools of medical practice, podiatry practice, chiropractic practice, optometric practice, physical and occupational therapy practice, dental practice, speech-language pathology practice (subject to the permitted limitations of paragraph one of this subsection), audiology practice (subject to the permitted limitations of paragraph one of this subsection), and psychological training as defined in the education law.

S 5. The insurance law is amended by adding a new section 4325-a to read as follows:

S 4325-A. NURSE PRACTITIONER SERVICE REIMBURSEMENT. NO INSURER SUBJECT TO THIS ARTICLE THAT PROVIDES COVERAGE FOR PHYSICIAN SERVICES SHALL EXCLUDE APPROPRIATELY LICENSED AND CERTIFIED NURSE PRACTITIONERS AS A CLASS OF PRIMARY CARE PRACTITIONERS OR AS PROVIDERS OF SPECIALTY PRACTICE. AN INSURER SHALL PROVIDE REIMBURSEMENT FOR THOSE SERVICES PRESCRIBED BY THIS SECTION AT RATES NEGOTIATED BETWEEN THE INSURER AND THE PROVIDER OF SUCH SERVICES. IN THE ABSENCE OF AGREED UPON RATES, AN INSURER SHALL PAY FOR SUCH SERVICES AT THE USUAL AND CUSTOMARY CHARGE, WHICH SHALL NOT BE UNREASONABLE.

S 6. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date.