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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. HYER-SPENCER, ALFANO, SPANO, WALKER, TITONE -- Multi-Sponsored by -- M. of A. BARRA, DIAZ, GABRYSZAK, MAISEL, McDONOUGH, TOBACCO -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the executive law, in relation to enacting the "fair insurance treatment act of 2009"

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

Section 1. Short title. This act shall be known and may be cited as the "fair insurance treatment act of 2009".

S 2. Legislative findings and intent. The legislature hereby declares that health insurance policies and health maintenance organization contracts have traditionally discriminated against persons with mental illness (including children with serious emotional disorders) and persons with chemical dependency by either not including medically necessary mental health and chemical dependency treatment and services as covered benefits or subjecting these services to disparate benefit limitations or cost sharing requirements. Although federal law has prohibited the imposition of lower annual and lifetime dollars limits by certain plans on mental health coverage, it is the intent of this legislation to strengthen and enhance those protections, and to ensure that mental health and chemical dependency coverage is provided by insurers and health maintenance organizations, and is provided on terms comparable to other health care and medical services. Nothing in this act is intended to limit or restrict the right of health maintenance organizations and health insurers to require that all services covered by them satisfy reasonable and appropriate utilization review requirements, in accordance with their contracts, and applicable laws and regulations, provided that such utilization review requirements are applied in a consistent fashion to all services covered by such contracts.

S 3. Subsection (i) of section 3216 of the insurance law is amended by adding a new paragraph 26 to read as follows:

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

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(26) EVERY POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH PROVIDES COVERAGE FOR MEDICAL OR HOSPITAL CARE SHALL PROVIDE COVERAGE FOR THE TREATMENT AND DIAGNOSIS OF MENTAL, NERVOUS OR EMOTIONAL DISORDERS OR AILMENTS OF ALCOHOLISM, ALCOHOL ABUSE, SUBSTANCE ABUSE, SUBSTANCE DEPENDENCE OR CHEMICAL DEPENDENCE, HOWEVER DEFINED IN SUCH CONTRACT. SUCH POLICY SHALL NOT IMPOSE ANY GREATER LIMITATIONS ON SUCH COVERAGE THAN IT DOES FOR PHYSICAL HEALTH BENEFITS.

S 4. Paragraph 4 of subsection (b) of section 3217 of the insurance law is amended to read as follows:

(4) elimination of provisions which may be contrary to the health care needs of the public, as certified to the superintendent by the commissioner of health, ELIMINATION OF PROVISIONS WHICH MAY BE CONTRARY TO THE MENTAL HEALTH CARE NEEDS OF THE PUBLIC, AS CERTIFIED TO THE SUPERINTENDENT BY THE COMMISSIONER OF MENTAL HEALTH, AND ELIMINATION OF PROVISIONS WHICH MAY BE CONTRARY TO THE SUBSTANCE ABUSE AND CHEMICAL DEPENDENCY CARE NEEDS OF THE PUBLIC, AS CERTIFIED TO THE SUPERINTENDENT BY THE COMMISSIONER OF ALCOHOL AND SUBSTANCE ABUSE SERVICES; and

S 5. Paragraphs 6 and 7 of subsection (1) of section 3221 of the insurance law, paragraph 6 as amended by chapter 558 of the laws of 1999 and paragraph 7 as amended by chapter 565 of the laws of 2000, are amended to read as follows:

(6) (A) Every insurer delivering a group or school blanket policy or issuing a group or school blanket policy for delivery, in this state, which provides coverage for inpatient hospital care [must make available and, if requested by the policyholder,] SHALL provide, AS PART OF SUCH POLICY, coverage for the diagnosis and treatment of chemical abuse and chemical dependence, however defined in such policy, provided, however, that the term chemical abuse shall mean and include alcohol and substance abuse and chemical dependence shall mean and include alcoholism and substance dependence, however defined in such policy. Written notice of the availability of such coverage shall be delivered to the policyholder prior to inception of such group policy and annually thereafter, except that this notice shall not be required where a policy covers two hundred or more employees or where the benefit structure was the subject of collective bargaining affecting persons who are employed in more than one state.

(B) Such coverage shall [be at least equal to] INCLUDE the following:

(i) [with respect to] benefits for detoxification as a consequence of chemical dependence, inpatient benefits in a hospital or a detoxification facility [may not be limited to less than seven days of active treatment in any calendar year]; and

(ii) [with respect to] benefits for rehabilitation services, [such benefits may not be limited to less than thirty days of] AND inpatient care in [any calendar year] A HOSPITAL OR REHABILITATION FACILITY.

(C) Such coverage may be limited to facilities in New York state which are certified by the office of alcoholism and substance abuse services and, in other states, to those which are accredited by the joint commission on accreditation of hospitals as alcoholism, substance abuse or chemical dependence treatment programs.

(D) Such coverage shall be made available at the inception of all new policies and with respect to all other policies at any anniversary date of the policy subject to evidence of insurability.

(E) Such coverage may be subject to annual deductibles and co-insurance as may be deemed appropriate by the superintendent and are consistent with those imposed on other benefits within a given policy. [Further, each insurer shall report to the superintendent each year the

number of contract holders to whom it has issued policies for the inpatient treatment of chemical dependence, and the approximate number of persons covered by such policies.]

(F) Such coverage shall not replace, restrict or eliminate existing coverage provided by the policy.

(7) Every insurer delivering a group or school blanket policy or issuing a group or school blanket policy for delivery in this state which provides coverage for inpatient hospital care [must] SHALL provide coverage, AS PART OF SUCH POLICY, for [at least sixty] outpatient [visits in any calendar year] CARE for the diagnosis and treatment of chemical dependence of which up to twenty VISITS may be for family members, except that this provision shall not apply to a policy which covers persons employed in more than one state or the benefit structure of which was the subject of collective bargaining affecting persons who are employed in more than one state. Such coverage may be limited to facilities in New York state certified by the office of alcoholism and substance abuse services or licensed by such office as outpatient clinics or medically supervised ambulatory substance abuse programs and, in other states, to those which are accredited by the joint commission on accreditation of hospitals as alcoholism or chemical dependence treatment programs. Such coverage may be subject to annual deductibles and co-insurance as may be deemed appropriate by the superintendent and are consistent with those imposed on other benefits within a given policy. Such coverage shall not replace, restrict, or eliminate existing coverage provided by the policy. Except as otherwise provided in the applicable policy or contract, no insurer delivering a group or school blanket policy or issuing a group or school blanket policy providing coverage for alcoholism or substance abuse services pursuant to this section shall deny coverage to a family member who identifies themself as a family member of a person suffering from the disease of alcoholism, substance abuse or chemical dependency and who seeks treatment as a family member who is otherwise covered by the applicable policy or contract pursuant to this section. The coverage required by this paragraph shall include treatment as a family member pursuant to such family members' own policy or contract provided such family member (i) does not exceed the allowable number of family visits provided by the applicable policy or contract pursuant to this section, and (ii) is otherwise entitled to coverage pursuant to this section and such family members' applicable policy or contract.

S 6. Subsections (k) and (l) of section 4303 of the insurance law, subsection (k) as amended by chapter 558 of the laws of 1999 and subsection (l) as amended by chapter 565 of the laws of 2000, are amended to read as follows:

(k) A hospital service corporation or a health service corporation which provides group, group remittance or school blanket coverage for inpatient hospital care [must make available and if requested by the contract holder] SHALL provide, AS PART OF ANY CONTRACT ISSUED PURSUANT TO THIS SECTION, coverage for the diagnosis and treatment of chemical abuse and chemical dependence, however defined in such policy, provided, however, that the term chemical abuse shall mean and include alcohol and substance abuse and chemical dependence shall mean and include alcoholism and substance dependence, however defined in such policy, except that this provision shall not apply to a policy which covers persons employed in more than one state or the benefit structure of which was the subject of collective bargaining affecting persons who are employed in more than one state. Such coverage shall [be at least equal to]

INCLUDE the following: (1) [with respect to] benefits for detoxification as a consequence of chemical dependence, inpatient benefits for care in a hospital or detoxification facility [may not be limited to less than seven days of active treatment in any calendar year]; and (2) [with respect to] benefits for inpatient rehabilitation services[, such benefits may not be limited to less than thirty days of] AND inpatient rehabilitation in a hospital based or free standing chemical dependence facility [in any calendar year]. Such coverage may be limited to facilities in New York state which are certified by the office of alcoholism and substance abuse services and, in other states, to those which are accredited by the joint commission on accreditation of hospitals as alcoholism, substance abuse, or chemical dependence treatment programs. Such coverage shall be [made available] PROVIDED at the inception of all new policies and with respect to policies issued before the effective date of this subsection at the first annual anniversary date thereafter[, without evidence of insurability and at any subsequent annual anniversary date subject to evidence of insurability]. Such coverage may be subject to annual deductibles and co-insurance as may be deemed appropriate by the superintendent and are consistent with those imposed on other benefits within a given policy. Further, each hospital service corporation or health service corporation shall report to the superintendent each year the number of contract holders to whom it has issued policies for the inpatient treatment of chemical dependence, and the approximate number of persons covered by such policies. Such coverage shall not replace, restrict or eliminate existing coverage provided by the policy. Written notice of the availability of such coverage shall be delivered to the group remitting agent or group contract holder prior to inception of such contract and annually thereafter, except that this notice shall not be required where a policy covers two hundred or more employees or where the benefit structure was the subject of collective bargaining affecting persons who are employed in more than one state.

(l) A hospital service corporation or a health service corporation which provides group, group remittance or school blanket coverage for inpatient hospital care must provide coverage, AS PART OF ANY CONTRACT ISSUED PURSUANT TO THIS SECTION, for [at least sixty] outpatient [visits in any calendar year] CARE for the diagnosis and treatment of chemical dependence of which up to twenty OUTPATIENT VISITS may be for family members, except that this provision shall not apply to a contract issued pursuant to section four thousand three hundred five of this article which covers persons employed in more than one state or the benefit structure of which was the subject of collective bargaining affecting persons who are employed in more than one state. Such coverage may be limited to facilities in New York state certified by the office of alcoholism and substance abuse services or licensed by such office as outpatient clinics or medically supervised ambulatory substance abuse programs and, in other states, to those which are accredited by the joint commission on accreditation of hospitals as alcoholism or chemical dependence substance abuse treatment programs. Such coverage may be subject to annual deductibles and co-insurance as may be deemed appropriate by the superintendent and are consistent with those imposed on other benefits within a given policy. Such coverage shall not replace, restrict or eliminate existing coverage provided by the policy. Except as otherwise provided in the applicable policy or contract, no hospital service corporation or health service corporation providing coverage for alcoholism or substance abuse services pursuant to this section shall deny coverage to a family member who identifies themself as a family

member of a person suffering from the disease of alcoholism, substance abuse or chemical dependency and who seeks treatment as a family member who is otherwise covered by the applicable policy or contract pursuant to this section. The coverage required by this subsection shall include treatment as a family member pursuant to such family members' own policy or contract provided such family member (i) does not exceed the allowable number of family visits provided by the applicable policy or contract pursuant to this section, and (ii) is otherwise entitled to coverage pursuant to this section and such family members' applicable policy or contract.

S 7. Section 4320 of the insurance law, as added by chapter 695 of the laws of 1993, is amended to read as follows:

S 4320. Limitations on administrative services and stop-loss coverage. No insurer, subsidiary of an insurer, or controlled person of a holding company system may act as an administrator or claims paying agent, as opposed to an insurer, on behalf of a group which denies or limits benefits for OR IMPOSES COST SHARING OBLIGATIONS RELATING TO a specific disease or condition or for a procedure or treatment unique to a specific disease or condition in a manner which would be inconsistent with this chapter or regulations promulgated by the superintendent had the group purchased insurance OR WHICH ARE INCONSISTENT WITH LIMITS OR OBLIGATIONS IMPOSED WITH RESPECT TO OTHER DISEASES OR CONDITIONS IN THE HEALTH PLAN. No insurer, subsidiary of an insurer, or controlled person of a holding company may provide stop loss, catastrophic or reinsurance coverage to groups which deny or limit benefits for OR IMPOSES COST SHARING OBLIGATIONS RELATING TO a specific disease or condition or for a procedure or treatment unique to a specific disease or condition in a manner which would be inconsistent with this chapter or regulations promulgated by the superintendent had the group purchased insurance OR WHICH ARE INCONSISTENT WITH LIMITS OR OBLIGATIONS IMPOSED WITH RESPECT TO OTHER DISEASES OR CONDITIONS IN THE HEALTH PLAN. A limit, maximum, COST SHARING OBLIGATION or other mechanism that controls total coverage without regard to a specific disease or condition shall not be deemed one that denies or limits benefits for a specific disease or condition, or for a procedure or treatment unique to a specific disease or condition. Nothing herein shall be construed to mandate the inclusion of specified benefits in an employer group plan, if such plan is not subject to the provisions of this chapter.

S 8. Paragraphs 17, 18 and 19 of subsection (b) of section 4322 of the insurance law, as added by chapter 504 of the laws of 1995, are amended to read as follows:

(17) Inpatient diagnosis and treatment of mental, nervous or emotional disorders or ailments [up to thirty days per calendar year combined with inpatient treatment of alcoholism and substance abuse].

(18) Inpatient diagnosis and treatment of alcoholism and alcohol abuse and substance abuse and [substance] CHEMICAL dependence [up to thirty days per calendar year], AND for detoxification [combined with] AND inpatient treatment of mental, nervous or emotional disorders or ailments.

(19) Outpatient diagnosis and treatment of mental, nervous or emotional disorders or ailments [up to thirty non-emergency and three emergency visits per calendar year] OR ALCOHOLISM AND ALCOHOL ABUSE AND CHEMICAL DEPENDENCE.

S 9. Subdivision 20 of section 296 of the executive law, as renumbered by chapter 204 of the laws of 1996, is renumbered 21 and a new subdivision 20 is added to read as follows:

20. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR ANY EMPLOYER, LABOR ORGANIZATION, INSURER, HEALTH MAINTENANCE ORGANIZATION OR OTHER ENTITY TO LIMIT HEALTH CARE COVERAGE FOR SPECIFIC DISEASES OR CONDITIONS, INCLUDING MENTAL, NERVOUS OR EMOTIONAL DISORDERS OR AILMENTS OR ALCOHOLISM, ALCOHOL ABUSE, SUBSTANCE ABUSE, SUBSTANCE DEPENDENCE OR CHEMICAL DEPENDENCE, TO A SPECIFIC NUMBER OF DAYS OR TO A SPECIFIC ANNUAL DOLLAR AMOUNT OR TO A SPECIFIC LIFETIME DOLLAR AMOUNT OR TO IMPOSE SPECIFIC COST-SHARING OBLIGATIONS FOR THE RECEIPT OF SUCH COVERAGE, UNLESS SUCH LIMITS OR OBLIGATIONS APPLY, IN A CONSISTENT AND COMPARABLE FASHION, TO ALL HEALTH CARE SERVICES PROVIDED BY SUCH COVERAGE.

S 10. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such effective date; provided that any rules and regulations necessary for the implementation of the provisions of this act on its effective date are authorized and directed to be promulgated on or before such date.