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2009-2010 Regular Sessions

I N A S S E M B L Y

April 28, 2009

Introduced by M. of A. GOTTFRIED, ENGLEBRIGHT, JACOBS, PAULIN, LIFTON, DelMONTE, TOWNS, EDDINGTON, CHRISTENSEN, KAVANAGH -- Multi-Sponsored by -- M. of A. BRENNAN, DESTITO, DINOWITZ, FARRELL, GALEF, GLICK, GUNTHER, HOOPER, JAFFEE, JOHN, KOON, LUPARDO, MAYERSOHN, McENENY, PHEFFER, REILLY, SWEENEY -- read once and referred to the Committee on Insurance

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:

1 Section 1. Paragraph (a) of subdivision 5 of section 4403 of the
2 public health law, as amended by chapter 586 of the laws of 1998, is
3 amended to read as follows:
4 (a) The commissioner, at the time of initial licensure, at least every
5 three years thereafter, and upon application for expansion of service
6 area, shall ensure that the health maintenance organization maintains a
7 network of health care providers adequate to meet the comprehensive
8 health needs of its enrollees and to provide an appropriate choice of
9 providers sufficient to provide the services covered under its
10 enrollee's contracts by determining that (i) there are a sufficient
11 number of geographically accessible participating providers; (ii) there
12 are opportunities to select from at least three primary care providers
13 pursuant to travel and distance time standards, providing that such
14 standards account for the conditions of accessing providers in rural
15 areas; (iii) there are sufficient providers in each area of specialty
16 practice to meet the needs of the enrollment population; (iv) there is
17 no exclusion of any appropriately licensed type of provider as a class;
18 [and] (v) THERE IS NO EXCLUSION OF APPROPRIATELY LICENSED AND CERTIFIED
19 NURSE PRACTITIONERS AS A CLASS OF PRIMARY CARE PRACTITIONERS OR AS
20 PROVIDERS OF SPECIALTY PRACTICE AND (VI) contracts entered into with
21 health care providers neither transfer financial risk to providers, in a

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

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1 manner inconsistent with the provisions of paragraph (c) of subdivision
2 one of this section, nor penalize providers for unfavorable case mix so
3 as to jeopardize the quality of or enrollees' appropriate access to
4 medically necessary services; provided, however, that payment at less
5 than prevailing fee for service rates or capitation shall not be deemed
6 or presumed prima facie to jeopardize quality or access.

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

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

18 S 3. Subparagraphs (F), (G) and (H) of paragraph 4 of subsection (f)
19 of section 4235 of the insurance law, subparagraph (F) as added and
20 subparagraphs (G) and (H) as relettered by chapter 456 of the laws of
21 1993, are amended and a new subparagraph (I) is added to read as
22 follows:

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

47 (G) psychiatric or psychological services or for the diagnosis and
48 treatment of mental, nervous, or emotional disorders or ailments, howev-
49 er defined in such policy, a subscriber to such policy shall be entitled
50 to reimbursement for such psychiatric or psychological services or diag-
51 nosis or treatment whether performed by a physician, psychiatrist or a
52 certified and registered psychologist when the services rendered are
53 within the lawful scope of their practice, and when such policy or any
54 certificate issued thereunder is delivered or issued for delivery with-
55 out this state by an authorized insurer, covered persons residing in
56 this state shall be entitled to reimbursement for such diagnosis and

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

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

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

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

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

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

23 (B) dental care provided through licensed dentists,

24 (C) optometric care provided through licensed optometrists,

25 (D) podiatric care provided through licensed podiatrists,

26 (E) chiropractic care provided through licensed chiropractors,

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

29 (G) physical and occupational therapy care provided through licensed
30 physical and occupational therapists upon the prescription of a physi-
31 cian,

32 (H) nursing service,

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

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

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

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

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

9 (3) Every medical expense indemnity corporation shall be open to the
10 participation of licensed physicians, podiatrists, chiropractors, opto-
11 metrists, physical and occupational therapists, speech-language patholo-
12 gists, audiologists, and dentists, CERTIFIED NURSE PRACTITIONERS, certi-
13 fied and registered psychologists without discrimination against schools
14 of medical practice, podiatry practice, chiropractic practice, optome-
15 tric practice, physical and occupational therapy practice, dental prac-
16 tice, speech-language pathology practice (subject to the permitted limi-
17 tations of paragraph one of this subsection), audiology practice
18 (subject to the permitted limitations of paragraph one of this
19 subsection), and psychological training as defined in the education law.

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

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

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