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

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I N A S S E M B L Y

January 20, 2010

Introduced by M. of A. BING, JACOBS, PHEFFER, GALEF, MARKEY, REILLY, JAFFEE, CASTRO -- Multi-Sponsored by -- M. of A. BENJAMIN, CAHILL, COOK, GUNTHER, KOON, MAGEE, MAGNARELLI, M. MILLER, SKARTADOS, SPANO, STIRPE -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to pre-authorization of care

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

Section 1. Subsection (e) of section 4905 of the insurance law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

(e) If a health care service has been specifically preauthorized or approved for an insured by a utilization review agent, a utilization review agent shall not pursuant to retrospective review revise or modify the specific standards, criteria or procedures used for the utilization review for procedures, treatment and services delivered to the insured, during the same course of treatment.

(1) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT SHALL IMMEDIATELY THEREAFTER SUPPLY THE PROVIDER WITH A WRITTEN CONFIRMATION OF THE APPROVAL BY EITHER:

(I) SENDING A COPY OF SUCH APPROVAL THROUGH ELECTRONIC MAIL TO AN ADDRESS SPECIFIED BY THE PROVIDER;

(II) SENDING A COPY OF SUCH APPROVAL THROUGH FACSIMILE TRANSMISSION TO A NUMBER SPECIFIED BY THE PROVIDER; OR

(III) POSTING A COPY OF SUCH APPROVAL ON A WEBSITE ACCESSIBLE TO THE PROVIDER SO THAT THE PROVIDER MAY IMMEDIATELY PRINT AND RETAIN A HARD COPY.

(2) ABSENT A SHOWING OF MISREPRESENTATION ON BEHALF OF THE PROVIDER OR THE INSURED, A COPY OF THE APPROVAL REQUIRED PURSUANT TO PARAGRAPH ONE OF THIS SUBSECTION SHALL BE PRIMA FACIE EVIDENCE THAT THE SERVICES PERFORMED BY THE PROVIDER WERE MEDICALLY NECESSARY COVERED SERVICES. SUCH SERVICES SHALL NOT THEREAFTER BE DENIED OR LIMITED, NOR SHALL REIMBURSEMENT FOR SUCH SERVICES BE DENIED OR LIMITED. WHEN ACTUAL SERVICES RENDERED DIFFER FROM THOSE SPECIFIC SERVICES PREAUTHORIZED OR

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

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APPROVED DUE TO A RAPID CHANGE IN PATIENT NEEDS, SUCH SERVICES SHALL BE PRESUMPTIVELY APPROVED BUT MAY BE DENIED ON A RETROSPECTIVE REVIEW AFTER PAYMENT IF SUCH SERVICES ARE DETERMINED NOT TO BE MEDICALLY NECESSARY.

S 2. Subdivision 5 of section 4905 of the public health law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

5. If a health care service has been specifically pre-authorized or approved for an enrollee by a utilization review agent, a utilization review agent shall not, pursuant to retrospective review, revise or modify the specific standards, criteria or procedures used for the utilization review for procedures, treatment and services delivered to the enrollee during the same course of treatment.

(A) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT SHALL IMMEDIATELY THEREAFTER SUPPLY THE PROVIDER WITH A WRITTEN CONFIRMATION OF THE APPROVAL BY EITHER:

(I) SENDING A COPY OF SUCH APPROVAL THROUGH ELECTRONIC MAIL TO AN ADDRESS SPECIFIED BY THE PROVIDER;

(II) SENDING A COPY OF SUCH APPROVAL THROUGH FACSIMILE TRANSMISSION TO A NUMBER SPECIFIED BY THE PROVIDER; OR

(III) POSTING A COPY OF SUCH APPROVAL ON A WEBSITE ACCESSIBLE TO THE PROVIDER SO THAT THE PROVIDER MAY IMMEDIATELY PRINT AND RETAIN A HARD COPY.

(B) ABSENT A SHOWING OF MISREPRESENTATION ON BEHALF OF THE PROVIDER OR THE ENROLLEE, A COPY OF THE APPROVAL REQUIRED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE PRIMA FACIE EVIDENCE THAT THE SERVICES PERFORMED BY THE PROVIDER WERE MEDICALLY NECESSARY COVERED SERVICES. SUCH SERVICES SHALL NOT THEREAFTER BE DENIED OR LIMITED, NOR SHALL REIMBURSEMENT FOR SUCH SERVICES BE DENIED OR LIMITED. WHEN ACTUAL SERVICES RENDERED DIFFER FROM THOSE SPECIFIC SERVICES PREAUTHORIZED OR APPROVED DUE TO A RAPID CHANGE IN PATIENT NEEDS, SUCH SERVICES SHALL BE PRESUMPTIVELY APPROVED BUT MAY BE DENIED ON RETROSPECTIVE REVIEW AFTER PAYMENT IF SUCH SERVICES ARE DETERMINED NOT TO BE MEDICALLY NECESSARY.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.