

1705

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

Introduced by Sens. DILAN, ADAMS, DIAZ, HASSELL-THOMPSON, KRUEGER, ONORATO, PARKER, SAMPSON, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to establishing factors to be considered when a health care practitioner upon examination has a different opinion from an applicant's treating health care practitioner's opinion as to an applicant's disability; and requires an explicit written determination by the health care practitioner when the diagnoses differ

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

1 Section 1. Subdivision 4 of section 332-b of the social services law
2 is amended by adding a new paragraph (f) to read as follows:
3 (F) IN THE EVENT THE PRACTITIONER TO WHOM THE INDIVIDUAL IS REFERRED
4 PURSUANT TO THIS SUBDIVISION OR PARAGRAPH (B) OF SUBDIVISION TWO OF THIS
5 SECTION ISSUES AN OPINION THAT DIFFERS FROM THE APPLICANT'S TREATING
6 HEALTH CARE PRACTITIONER'S OPINION, THE APPLICANT'S TREATING HEALTH CARE
7 PRACTITIONER'S OPINION IS GENERALLY CONTROLLING, SUBJECT TO, BUT NOT
8 LIMITED TO, THE FOLLOWING FACTORS:
9 (I) THE LENGTH AND FREQUENCY OF THE TREATMENT PROVIDED,
10 (II) CONSISTENCY OF THE OPINION WITH THE RECORD AS A WHOLE,
11 (III) THE DEGREE TO WHICH THE OPINION IS SUPPORTED BY CONCRETE
12 EVIDENCE, AND
13 (IV) THE PRACTITIONER'S SPECIALTY.
14 FURTHERMORE, IF THE PRACTITIONER TO WHOM THE INDIVIDUAL IS REFERRED
15 PURSUANT TO THIS SUBDIVISION OR PARAGRAPH (B) OF SUBDIVISION TWO OF THIS
16 SECTION ISSUES AN OPINION THAT DIFFERS FROM THE APPLICANT'S TREATING
17 HEALTH CARE PRACTITIONER, THE PRACTITIONER MUST PROVIDE AN EXPLICIT
18 WRITTEN DETERMINATION AS TO WHY THE PRACTITIONER DISAGREES WITH THE
19 APPLICANT'S TREATING HEALTH CARE PRACTITIONER'S DISABILITY DETERMINATION
20 AND PRESENT EVIDENCE THAT SUPPORTS THE OPINION.
21 S 2. This act shall take effect immediately.

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

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