

3909

2009-2010 Regular Sessions

I N S E N A T E

April 3, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to clarifying the grounds for an external appeal based on medical necessity

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

1 Section 1. Legislative findings and intent. Where there is a sound  
2 medical and scientific basis for a health care service or procedure, a  
3 patient should not be denied access to that care.

4 This legislation provides, in the external appeal process, that, where  
5 a health care plan denies coverage on grounds of "medical necessity",  
6 the insured shall have the opportunity to demonstrate, through his or  
7 her health care professional, based on applicable medical and scientific  
8 evidence, the patient's medical record, and any other patient informa-  
9 tion, that the proposed health service or treatment is likely to be more  
10 beneficial than any standard treatment or treatments for the patient's  
11 condition or disease.

12 This legislation does not require a health care plan to cover any  
13 health care service or treatment that would not otherwise be a covered  
14 benefit for the insured.

15 S 2. Subparagraph (A) of paragraph (d) of subdivision 2 of section  
16 4914 of the public health law, as added by chapter 586 of the laws of  
17 1998, is amended to read as follows:

18 (A) *MEDICAL NECESSITY*. For external appeals requested pursuant to  
19 paragraph (a) of subdivision two of section forty-nine hundred ten of  
20 this title, the external appeal agent shall review the utilization  
21 review agent's final adverse determination and, in accordance with the  
22 provisions of this title, shall make a determination as to whether the  
23 health care plan acted reasonably and with sound medical judgment and in  
24 the best interest of the patient. When the external appeal agent makes

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

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1 its determination, it shall consider the clinical standards of the plan,  
2 the information provided concerning the patient, the attending [physi-  
3 cian's] HEALTH CARE PROFESSIONAL'S recommendation, and applicable gener-  
4 ally accepted practice guidelines developed by the federal government,  
5 national or professional [medical] societies, boards and associations.  
6 WHERE APPLICABLE, THE APPEAL SHALL BE GRANTED IF, AND TO THE EXTENT, THE  
7 EXTERNAL APPEAL AGENT DETERMINES, UPON REVIEW OF THE APPLICABLE MEDICAL  
8 AND SCIENTIFIC EVIDENCE, THE PATIENT'S MEDICAL RECORD, AND ANY OTHER  
9 PERTINENT INFORMATION, THAT THE PROPOSED HEALTH SERVICE OR TREATMENT IS  
10 LIKELY TO BE MORE BENEFICIAL THAN ANY STANDARD TREATMENT OR TREATMENTS  
11 FOR THE PATIENT'S CONDITION OR DISEASE OR NO TREATMENT; IF THE SPECIFIC  
12 HEALTH SERVICE OR TREATMENT RECOMMENDED BY THE HEALTH CARE PROFESSIONAL  
13 WOULD NOT OTHERWISE BE EXCLUDED FROM COVERAGE UNDER THE POLICY ON  
14 GROUNDS OTHER THAN MEDICAL NECESSITY.

15 Provided that such determination shall:

16 (i) be conducted only by one or a greater odd number of clinical peer  
17 reviewers,

18 (ii) be accompanied by a notice of appeal determination which shall  
19 include the reasons for the determination; provided, however, that where  
20 the final adverse determination is upheld on appeal, the notice shall  
21 include the clinical rationale, if any, for such determination,

22 (iii) be subject to the terms and conditions generally applicable to  
23 benefits under the evidence of coverage under the health care plan,

24 (iv) be binding on the plan and the enrollee, and

25 (v) be admissible in any court proceeding.

26 S 3. Subparagraph (A) of paragraph 4 of subsection (b) of section 4914  
27 of the insurance law, as added by chapter 586 of the laws of 1998, is  
28 amended to read as follows:

29 (A) MEDICAL NECESSITY. For external appeals requested pursuant to  
30 paragraph one of subsection (b) of section four thousand nine hundred  
31 ten of this title, the external appeal agent shall review the utiliza-  
32 tion review agent's final adverse determination and, in accordance with  
33 the provisions of this title, shall make a determination as to whether  
34 the health care plan acted reasonably and with sound medical judgment  
35 and in the best interest of the patient. When the external appeal agent  
36 makes its determination, it shall consider the clinical standards of the  
37 plan, the information provided concerning the patient, the attending  
38 [physician's] HEALTH CARE PROFESSIONAL'S recommendation, applicable and  
39 generally accepted practice guidelines developed by the federal govern-  
40 ment, national or professional [medical] societies, boards and associ-  
41 ations. WHERE APPLICABLE, THE APPEAL SHALL BE GRANTED IF, AND TO THE  
42 EXTENT, THE EXTERNAL APPEAL AGENT DETERMINES, UPON REVIEW OF THE APPLI-  
43 CABLE MEDICAL AND SCIENTIFIC EVIDENCE, THE PATIENT'S MEDICAL RECORD, AND  
44 ANY OTHER PERTINENT INFORMATION, THAT THE PROPOSED HEALTH SERVICE OR  
45 TREATMENT IS LIKELY TO BE MORE BENEFICIAL THAN ANY STANDARD TREATMENT OR  
46 TREATMENTS FOR THE PATIENT'S CONDITION OR DISEASE OR NO TREATMENT; IF  
47 THE SPECIFIC HEALTH SERVICE OR TREATMENT RECOMMENDED BY THE HEALTH CARE  
48 PROFESSIONAL WOULD NOT OTHERWISE BE EXCLUDED FROM COVERAGE UNDER THE  
49 POLICY ON GROUNDS OTHER THAN MEDICAL NECESSITY. Provided that such  
50 determination shall:

51 (i) be conducted only by one or a greater odd number of clinical peer  
52 reviewers,

53 (ii) be accompanied by a notice of appeal determination which shall  
54 include the reasons for the determination; provided, however, that where  
55 the final adverse determination is upheld on appeal, the notice shall  
56 include the clinical rationale, if any, for such determination,

1 (iii) be subject to the terms and conditions generally applicable to  
2 benefits under the evidence of coverage under the health care plan,  
3 (iv) be binding on the plan and the insured, and  
4 (v) be admissible in any court proceeding.  
5 S 4. This act shall take effect on the one hundred eightieth day after  
6 it shall have become a law.