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

417

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sens. BRESLIN, ADAMS, DILAN, DUANE, HASSELL-THOMPSON, KRUEGER, KRUGER, MONTGOMERY, ONORATO, OPPENHEIMER, PARKER, SAMPSON, SAVINO, SCHNEIDERMAN, SMITH, STACHOWSKI, STAVISKY, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, the civil practice law and rules and the public health law, in relation to holding health care organizations responsible for the consequences of their decisions

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

Section 1. Legislative findings. The legislature finds that a wide variety of entities are integrating the functions of paying for health care, determining what health care is paid for, and providing the care. This integration is breaking down traditional distinctions as to function. Increasingly, payor determinations are governing health care and controlling decisions that in the past were the exclusive domain of health care professionals and patients. The legislature further finds that this integration makes it imperative that health care organizations be held fully responsible for the consequences of their decisions, much as health care professionals have been held responsible for the consequences of their decisions.

S 2. The general obligations law is amended by adding a new section 11-108 to read as follows:

S 11-108. RESPONSIBILITY OF HEALTH CARE ORGANIZATIONS. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT CLEARLY REQUIRES OTHERWISE:

(A) "HEALTH CARE ORGANIZATION" MEANS AN ENTITY THAT APPROVES, PROVIDES, ARRANGES FOR, OR PAYS FOR HEALTH CARE SERVICES, INCLUDING BUT NOT LIMITED TO AN ENTITY LICENSED UNDER THE INSURANCE LAW OR LICENSED OR CERTIFIED UNDER THE PUBLIC HEALTH LAW.

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

LBD03585-01-9

(B) "HEALTH CARE PROVIDER" MEANS AN ENTITY LICENSED OR CERTIFIED UNDER ARTICLE TWENTY-EIGHT, THIRTY-SIX OR FORTY-FOUR OF THE PUBLIC HEALTH LAW; AN ENTITY LICENSED OR CERTIFIED UNDER ARTICLE SIXTEEN OR THIRTY-ONE OF THE MENTAL HYGIENE LAW; A HEALTH CARE PRACTITIONER LICENSED OR CERTIFIED UNDER TITLE EIGHT OF THE EDUCATION LAW; OR A PROVIDER OF PHARMACEUTICAL PRODUCTS AND SERVICES OR DURABLE MEDICAL EQUIPMENT.

(C) "HEALTH CARE SERVICE" MEANS HEALTH CARE SERVICES, TREATMENTS, PRODUCTS OR EQUIPMENT PROVIDED BY A HEALTH CARE PROVIDER.

2. WHENEVER A HEALTH CARE ORGANIZATION DELAYS, FAILS OR REFUSES TO APPROVE, PROVIDE, ARRANGE FOR, OR PAY FOR, IN A TIMELY MANNER, ANY HEALTH CARE SERVICES TO A PERSON TO THE EXTENT IT IS CONTRACTUALLY OR LEGALLY OBLIGATED TO DO SO, IT SHALL BE LIABLE FOR ANY PERSONAL INJURY, DEATH OR DAMAGES CAUSED BY THE DELAY, FAILURE OR REFUSAL.

3. THE FAILURE OF THE PERSON (OR OF ANY OTHER PERSON ACTING ON THE PERSON'S BEHALF) TO SEEK AN ALTERNATE PROVIDER OF OR TO PAY FOR THE HEALTH CARE SERVICE SHALL NOT DIMINISH THE HEALTH CARE ORGANIZATION'S LIABILITY OR CONSTITUTE CULPABLE CONDUCT FOR THE PURPOSES OF SECTION ONE THOUSAND FOUR HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES.

4. NOTHING IN THIS SECTION SHALL LIMIT ANY OTHER RIGHT, REMEDY, OR CAUSE OF ACTION THAT ANY PERSON MAY OTHERWISE HAVE.

5. NO CONTRACT OR AGREEMENT BETWEEN A HEALTH CARE PROVIDER AND A HEALTH CARE ORGANIZATION SHALL DIRECTLY OR INDIRECTLY REQUIRE A HEALTH CARE PROVIDER TO INDEMNIFY OR HOLD HARMLESS THE HEALTH CARE ORGANIZATION FOR ANY LIABILITY RESULTING FROM THE HEALTH CARE ORGANIZATION'S ACTS OR OMISSIONS.

6. NO CONTRACT OR AGREEMENT BETWEEN A HEALTH CARE ORGANIZATION AND ANY ENTITY OR PERSON SHALL WAIVE OR LIMIT ANY LIABILITY OF THE HEALTH CARE ORGANIZATION TO THE ENTITY OR PERSON UNDER THIS ARTICLE.

7. A HEALTH CARE ORGANIZATION SHALL, WITHIN TEN DAYS OF A WRITTEN REQUEST FOR SAME, PROVIDE TO A PERSON OR AN ATTORNEY OR HEALTH CARE PRACTITIONER AUTHORIZED TO REPRESENT OR ACT ON BEHALF OF THE PERSON OR THE PERSON'S ESTATE, AN OPPORTUNITY TO INSPECT AND TO RECEIVE COPIES OF ALL INFORMATION AND RECORDS RELATING OR PERTAINING TO ITS DELAY, FAILURE OR REFUSAL TO APPROVE, PROVIDE, ARRANGE FOR, OR PAY FOR, IN A TIMELY MANNER, ANY HEALTH CARE SERVICES TO THE EXTENT IT IS CONTRACTUALLY OR LEGALLY OBLIGATED TO DO SO FOR THE PERSON. THE HEALTH CARE ORGANIZATION MAY IMPOSE A REASONABLE CHARGE, NOT TO EXCEED THE CHARGES IMPOSED FOR INSPECTION AND COPIES AS SET FORTH IN SECTIONS SEVENTEEN AND EIGHTEEN OF THE PUBLIC HEALTH LAW.

8. IF THE TIME IN WHICH A PLAINTIFF COULD HAVE COMMENCED AN ACTION FOR PROFESSIONAL MALPRACTICE FOR THE ACT, ERROR OR OMISSION COMPLAINED OF HAS EXPIRED PRIOR TO COMMENCEMENT OF AN ACTION BROUGHT PURSUANT TO THIS SECTION AGAINST A HEALTH CARE ORGANIZATION, THE DEFENDANT IN SAID ACTION SHALL BE BARRED FROM COMMENCING A THIRD-PARTY ACTION AGAINST A PERSON NOT A PARTY WHO IS OR MAY BE LIABLE TO THAT DEFENDANT FOR ALL OR PART OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT, AND AGAINST WHOM THE PLAINTIFF CANNOT COMMENCE AN ACTION FOR PROFESSIONAL MALPRACTICE DUE TO THE EXPIRATION OF THE STATUTE OF LIMITATIONS PRIOR TO COMMENCEMENT OF THE ACTION AGAINST THE DEFENDANT.

S 3. Section 1602 of the civil practice law and rules is amended by adding a new subdivision 14 to read as follows:

14. NOT APPLY TO AN ACTION AGAINST A HEALTH CARE ORGANIZATION BROUGHT PURSUANT TO SECTION 11-108 OF THE GENERAL OBLIGATIONS LAW.

S 4. Subdivision 1 of section 4410 of the public health law, as added by chapter 938 of the laws of 1976, is amended to read as follows:

1. The provision of comprehensive health services directly or indirectly, by a health maintenance organization through its comprehensive health services plan shall not be considered the practice of the profession of medicine by such organization or plan. However[,]:

(A) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO LIMIT ANY LIABILITY THE HEALTH MAINTENANCE ORGANIZATION OR ITS COMPREHENSIVE HEALTH SERVICES PLAN WOULD OTHERWISE HAVE RELATING TO ANY PROFESSIONAL SERVICES RENDERED BY, ON BEHALF OF OR IN CONNECTION WITH THE ORGANIZATION OR PLAN;

(B) each member, employee or agent of such organization or plan shall be fully and personally liable and accountable for any negligent or wrongful act or misconduct committed by him OR HER or any person under his OR HER direct supervision and control while rendering professional services on behalf of [such] THE organization or plan; AND

(C) NO CONTRACT OR AGREEMENT BETWEEN A HEALTH MAINTENANCE ORGANIZATION OR ITS COMPREHENSIVE HEALTH SERVICES PLAN AND ANY HEALTH CARE PROVIDER SHALL REQUIRE THE HEALTH CARE PROVIDER TO INDEMNIFY OR HOLD HARMLESS THE ORGANIZATION OR PLAN FOR ANY LIABILITY THE ORGANIZATION OR PLAN MAY INCUR.

S 5. If any provision of this act or the application thereof shall be held to be invalid, such invalidity shall not affect other provisions or other application of any provision of this act which can be given effect without the invalid provision or application, and to that end, the provisions and applications of this act are severable.

S 6. This act shall take effect immediately.