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

5547

2009-2010 Regular Sessions

I N S E N A T E

May 15, 2009

Introduced by Sen. DILAN -- 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 requiring 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:

Section 1. Section 332-b of the social services law is amended by adding two new subdivisions 4-a and 4-b to read as follows:

4-A. IF THE PRACTITIONER TO WHOM THE INDIVIDUAL IS REFERRED PURSUANT TO SUBDIVISION FOUR OR PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION ISSUES AN OPINION THAT DIFFERS FROM THE APPLICANT'S TREATING HEALTH CARE PRACTITIONER, THE PRACTITIONER MUST PROVIDE AN EXPLICIT WRITTEN DETERMINATION AS TO WHY THE PRACTITIONER DISAGREES WITH THE APPLICANT'S TREATING HEALTH CARE PRACTITIONER'S DISABILITY DETERMINATION AND PRESENT EVIDENCE THAT SUPPORTS THE OPINION.

4-B. IN THE EVENT THE PRACTITIONER TO WHOM THE INDIVIDUAL IS REFERRED PURSUANT TO SUBDIVISION FOUR OR PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION ISSUES AN OPINION THAT DIFFERS FROM THE APPLICANT'S TREATING HEALTH CARE PRACTITIONER'S OPINION, THE APPLICANT'S TREATING HEALTH CARE PRACTITIONER'S OPINION IS GENERALLY CONTROLLING, SUBJECT TO, BUT NOT LIMITED TO, THE FOLLOWING FACTORS:

(A) THE LENGTH AND FREQUENCY OF THE TREATMENT PROVIDED,

(B) CONSISTENCY OF THE OPINION WITH THE RECORD AS A WHOLE,

(C) THE DEGREE TO WHICH THE OPINION IS SUPPORTED BY CONCRETE EVIDENCE, AND

(D) THE PRACTITIONER'S SPECIALTY.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.

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

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