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

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 6, 2011

Introduced by M. of A. GOTTFRIED, P. RIVERA, SCHIMEL, WEPRIN -- read once and referred to the Committee on Health -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the public health law, in relation to requiring a health care plan which provides coverage of out of network care to provide certain information to insureds, subscribers or enrollees

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

Section 1. Subsection (a) of section 3217-a of the insurance law is amended by adding a new paragraph 18 to read as follows:

(18) WHERE APPLICABLE, IF THE POLICY OFFERS OUT-OF-NETWORK COVERAGE APPROVED BY THE SUPERINTENDENT PURSUANT TO SECTION THIRTY-TWO HUNDRED FORTY OF THIS ARTICLE, A DESCRIPTION OF ITS METHODOLOGY FOR REIMBURSING OUT-OF-NETWORK HEALTH CARE SERVICES WHICH SHALL BE SET FORTH AS THE PERCENTAGE OF THE USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES THE POLICY WILL COVER. INCLUDED WITHIN THIS DESCRIPTION SHALL BE EXAMPLES OF ANTICIPATED OUT OF PACKET COSTS FOR FREQUENTLY BILLED OUT-OF-NETWORK HEALTH CARE SERVICES PROVIDED BY VARIOUS HEALTH CARE PROVIDER SPECIALISTS. FOR THE PURPOSES OF THIS PARAGRAPH "USUAL AND CUSTOMARY COSTS OF OUT-OF NETWORK HEALTH CARE SERVICES" SHALL MEAN THE EIGHTIETH PERCENTILE OF THE ACTUAL CHARGES FOR A HEALTH CARE SERVICE PERFORMED BY AN OUT-OF-NETWORK HEALTH CARE PROVIDER IN THE SAME OR SIMILAR SPECIALITY, AND PROVIDED IN THE SAME ZIP CODE OR IN THE SAME GEOGRAPHICAL AREA DEFINED BY LOCALITIES WITH THE SAME FIRST THREE ZIP CODE DIGITS, AS REPORTED IN A BENCHMARKING DATABASE MAINTAINED BY A NONPROFIT ORGANIZATION WITHOUT AFFILIATION WITH AN INSURER LICENSED TO

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

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WRITE ACCIDENT AND HEALTH INSURANCE, A CORPORATION ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, A HEALTH MAINTENANCE ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, CREATED AS A RESULT OF SETTLEMENTS ENTERED INTO DURING THE YEAR TWO THOUSAND NINE BETWEEN THE DEPARTMENT OF LAW AND INDIVIDUAL HEALTH INSURANCE ORGANIZATIONS.

S 2. The insurance law is amended by adding a new section 3240 to read as follows:

S 3240. OUT-OF-NETWORK HEALTH CARE SERVICES. (A) A HEALTH PLAN WHICH PROVIDES COVERAGE FOR OUT-OF-NETWORK HEALTH CARE SERVICES SHALL PROVIDE TO THEIR INSUREDS, SUBSCRIBERS OR ENROLLEES A DESCRIPTION OF ITS METHODOLOGY FOR REIMBURSING OUT-OF-NETWORK HEALTH CARE SERVICES WHICH SHALL BE SET FORTH AS A PERCENTAGE OF THE USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES THE CONTRACT OR POLICY WILL COVER. THE HEALTH PLAN SHALL INCLUDE WITHIN THIS DESCRIPTION EXAMPLES OF ANTICIPATED OUT OF POCKET COSTS FOR FREQUENTLY BILLED OUT-OF-NETWORK HEALTH CARE SERVICES PROVIDED BY VARIOUS HEALTH CARE PROVIDER SPECIALISTS. UPON REQUEST OF AN INSURED, SUBSCRIBER OR ENROLLEE, THE HEALTH PLAN SHALL PROVIDE INFORMATION TO THE INSURED, SUBSCRIBER OR ENROLLEE IN WRITING OR THROUGH AN INTERNET WEBSITE THAT REASONABLY PERMITS THE INSURED, SUBSCRIBER OR ENROLLEE TO DETERMINE THE ANTICIPATED OUT OF PACKET COSTS FOR A SPECIFIC OUT-OF-NETWORK HEALTH CARE SERVICE BASED UPON THE DIFFERENCE BETWEEN THE ORGANIZATION'S METHODOLOGY FOR REIMBURSING OUT-OF-NETWORK HEALTH CARE SERVICES AND THE USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES. THE SUPERINTENDENT SHALL NOT APPROVE A POLICY ISSUED BY A HEALTH PLAN THAT PROVIDES COVERAGE FOR OUT-OF-NETWORK HEALTH CARE SERVICES UNLESS THE HEALTH PLAN DEMONSTRATES THAT THE POLICY WILL PROVIDE SIGNIFICANT COVERAGE OF THE USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES.

(B) FOR THE PURPOSES OF THIS SECTION, THE TERM:

(1) "HEALTH PLAN" SHALL MEAN AN INSURER LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE, A CORPORATION ORGANIZED PURSUANT TO ARTICLE FORTY-THREE OF THIS CHAPTER, A HEALTH MAINTENANCE ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW OR A MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN PURSUANT TO ARTICLE FORTY-SEVEN OF THIS CHAPTER; AND

(2) "USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES" SHALL MEAN THE EIGHTIETH PERCENTILE OF THE ACTUAL CHARGES FOR A HEALTH CARE SERVICE PERFORMED BY AN OUT-OF-NETWORK HEALTH CARE PROVIDER IN THE SAME OR SIMILAR SPECIALTY, AND PROVIDED IN THE SAME ZIP CODE OR WITHIN THE SAME GEOGRAPHICAL AREA DEFINED BY LOCALITIES WITH THE SAME FIRST THREE ZIP CODE DIGITS, AS REPORTED IN A BENCHMARKING DATABASE MAINTAINED BY A NONPROFIT ORGANIZATION WITHOUT AFFILIATION WITH A HEALTH PLAN, CREATED AS A RESULT OF SETTLEMENTS ENTERED INTO DURING THE YEAR TWO THOUSAND NINE BETWEEN THE DEPARTMENT OF LAW AND INDIVIDUAL HEALTH INSURANCE ORGANIZATIONS.

S 3. Subsection (a) of section 4324 of the insurance law is amended by adding a new paragraph 19 to read as follows:

(19) WHERE APPLICABLE, IF THE CONTRACT INCLUDES OUT OF NETWORK COVERAGE APPROVED BY THE SUPERINTENDENT PURSUANT TO SECTION THIRTY-TWO HUNDRED FORTY OF THIS CHAPTER, A DESCRIPTION OF THE METHODOLOGY FOR REIMBURSING OUT-OF-NETWORK HEALTH CARE SERVICES WHICH SHALL BE SET FORTH AS THE PERCENTAGE OF THE USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES THE CONTRACT WILL COVER. INCLUDED WITHIN THIS DESCRIPTION SHALL BE EXAMPLES OF ANTICIPATED OUT OF POCKET COSTS FOR FREQUENTLY BILLED OUT-OF-NETWORK HEALTH CARE SERVICES PROVIDED BY VARI-

OUS HEALTH CARE PROVIDER SPECIALISTS. FOR THE PURPOSES OF THIS PARAGRAPH "USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES" SHALL MEAN THE EIGHTIETH PERCENTILE OF THE ACTUAL CHARGES FOR A HEALTH CARE SERVICE PERFORMED BY AN OUT-OF-NETWORK HEALTH CARE PROVIDER IN THE SAME OR SIMILAR SPECIALTY, AND PROVIDED IN THE SAME ZIP CODE OR WITHIN THE SAME GEOGRAPHICAL AREA DEFINED BY LOCALITIES WITH THE SAME FIRST THREE ZIP CODE DIGITS, AS REPORTED IN A BENCHMARKING DATABASE MAINTAINED BY A NONPROFIT ORGANIZATION WITHOUT AFFILIATION WITH AN INSURER LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE, A CORPORATION ORGANIZED PURSUANT TO THIS ARTICLE, OR A HEALTH MAINTENANCE ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, CREATED AS A RESULT OF SETTLEMENTS ENTERED INTO DURING THE YEAR TWO THOUSAND NINE BETWEEN THE DEPARTMENT OF LAW AND INDIVIDUAL HEALTH INSURANCE ORGANIZATIONS.

S 4. Subdivision 1 of section 4408 of the public health law is amended by adding a new paragraph (s) to read as follows:

(S) WHERE APPLICABLE, IF THE CONTRACT INCLUDES OUT OF NETWORK COVERAGE APPROVED BY THE SUPERINTENDENT PURSUANT TO SECTION THIRTY-TWO HUNDRED FORTY OF THE INSURANCE LAW, A DESCRIPTION OF THE METHODOLOGY FOR REIMBURSING OUT-OF-PLAN HEALTH CARE SERVICES WHICH SHALL BE SET FORTH AS THE PERCENTAGE OF THE USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES THE CONTRACT WILL COVER. INCLUDED WITHIN THIS DESCRIPTION SHALL BE EXAMPLES OF ANTICIPATED OUT OF POCKET COSTS FOR FREQUENTLY BILLED OUT-OF-PLAN HEALTH CARE SERVICES PROVIDED BY VARIOUS HEALTH CARE PROVIDER SPECIALISTS. FOR THE PURPOSES OF THIS PARAGRAPH, "USUAL AND CUSTOMARY COSTS OF OUT-OF-NETWORK HEALTH CARE SERVICES" SHALL MEAN THE EIGHTIETH PERCENTILE OF THE ACTUAL CHARGES FOR A HEALTH CARE SERVICE PERFORMED BY AN OUT-OF-PLAN HEALTH CARE PROVIDER IN THE SAME OR SIMILAR SPECIALTY, AND PROVIDED IN THE SAME ZIP CODE OR WITHIN THE SAME GEOGRAPHICAL AREA DEFINED BY LOCALITIES WITH THE SAME FIRST THREE ZIP CODE DIGITS, AS REPORTED IN THE BENCHMARKING DATABASE MAINTAINED BY A NONPROFIT ORGANIZATION WITHOUT AFFILIATION WITH AN ORGANIZATION CERTIFIED UNDER THIS ARTICLE OR AN INSURER OR CORPORATION LICENSED UNDER THE INSURANCE LAW, CREATED AS A RESULT OF SETTLEMENTS ENTERED INTO DURING THE YEAR TWO THOUSAND NINE BETWEEN THE DEPARTMENT OF LAW AND INDIVIDUAL HEALTH INSURANCE ORGANIZATIONS.

S 5. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date.