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1691

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 11, 2011
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Introduced by M. of A. ORTIZ -- Multi-Sponsored by -- M. of A. CRESPO --
   read once and referred to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation
   to providing access to diagnostic laboratories by patients in health
   maintenance organizations

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

 1   Section 1. Section 4406 of the public health law is amended by adding
 2 a new subdivision 6 to read as follows:
 3   6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN ENROLLEE IS
 4 REFERRED BY AN IN-PLAN PROVIDER TO A PROVIDER OF CLINICAL LABORATORY
 5 SERVICES NOT PARTICIPATING IN THE PLAN (A "NON-PARTICIPATING PROVIDER"),
 6 ANY SERVICE PROVIDED BY A NON-PARTICIPATING PROVIDER THAT WOULD OTHER-
 7 WISE BE PAID FOR BY THE PLAN TO OTHER NON-PARTICIPATING PROVIDERS SHALL
 8 BE PAID FOR BY THE PLAN, AND THE PLAN SHALL BE RESPONSIBLE FOR PAYMENT
 9 DIRECTLY TO THE NON-PARTICIPATING PROVIDER FOR THAT SERVICE IN ACCORD-
10 ANCE WITH THE TIME FRAME FOR SUCH PAYMENTS SET FORTH IN SECTION THREE
11 THOUSAND TWO HUNDRED TWENTY-FOUR-A OF THE INSURANCE LAW; PROVIDED,
12 HOWEVER, THAT THE ENROLLEE SHALL BE RESPONSIBLE FOR ANY APPLICABLE
13 COPAY, COINSURANCE OR DEDUCTIBLE FOR SUCH SERVICES. CLINICAL LABORATO-
14 RIES SEEKING REIMBURSEMENT PURSUANT TO THIS ARTICLE FOR SERVICES
15 RENDERED SHALL DIRECTLY BILL THE PLAN WHOSE ENROLLEE RECEIVED THE
16 SERVICES. ANY PAYMENT MADE BY A PLAN DIRECTLY TO THE ENROLLEE RATHER
17 THAN TO THE CLINICAL LABORATORY SEEKING REIMBURSEMENT SHALL NOT SATISFY
18 THE PLAN'S PAYMENT OBLIGATION TO THE CLINICAL LABORATORY.
19   S 2. Section 4406-c of the public health law is amended by adding two
20 new subdivisions 4-a and 4-b to read as follows:
21   4-A. NO HEALTH CARE PLAN, NOT-FOR-PROFIT OR FOR-PROFIT HEALTH MAINTE-
22 NANCE ORGANIZATION, PREFERRED PROVIDER ORGANIZATION, POINT OF SERVICE
23 PLAN, GOVERNMENT SUBSIDIZED HEALTH CARE PLAN OR SELF INSURED PLAN
24 (COLLECTIVELY, "PLAN") SHALL EXCLUDE FROM PARTICIPATING WITHIN ITS

1 NETWORK ANY PROVIDER OF CLINICAL LABORATORY SERVICES THAT MEETS THE
2 FOLLOWING REQUIREMENTS: (A) SUCH PROVIDER IS LICENSED AS A MEDICARE
3 PROVIDER BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;
4 (B) SUCH PROVIDER IS EITHER ACCREDITED BY THE COLLEGE OF AMERICAN
5 PATHOLOGISTS, OR LICENSED BY THE NEW YORK STATE DEPARTMENT OF HEALTH;
6 AND (C) SUCH PROVIDER SUBMITS ELECTRONIC CLAIMS TO THE PLAN FOR THE
7 PAYMENT OF CLINICAL LABORATORY SERVICES RENDERED TO ENROLLEES. EACH PLAN
8 SHALL DIRECTLY PAY FOR CLINICAL LABORATORY SERVICES RENDERED TO ENROL-
9 LEES BY ANY PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING WITHIN
10 ITS NETWORK IN ACCORDANCE WITH THE TIME FRAME FOR SUCH PAYMENTS SET
11 FORTH IN SECTION THREE THOUSAND TWO HUNDRED TWENTY-FOUR-A OF THE INSUR-
12 ANCE LAW; PROVIDED, HOWEVER, THAT THE ENROLLEE SHALL BE RESPONSIBLE FOR
13 ANY APPLICABLE COPAY, COINSURANCE OR DEDUCTIBLE FOR SUCH SERVICES.
14   4-B. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN NO EVENT SHALL ANY
15 PLAN: (A) REIMBURSE ANY IN-PLAN PROVIDER OF CLINICAL LABORATORY SERVICES
16 FOR A PARTICULAR LABORATORY TEST BUT NOT REIMBURSE ANOTHER IN-PLAN
17 PROVIDER OF CLINICAL LABORATORY SERVICES FOR THAT LABORATORY TEST; (B)
18 ASSIGN PREFERENTIAL STATUS NOR PROVIDE PREFERENTIAL TREATMENT TO A
19 PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING WITHIN ITS NETWORK.
20 SUCH PROHIBITED PREFERENTIAL TREATMENT SHALL INCLUDE, BUT IS NOT LIMITED
21 TO, MAINTAINING A SUBSTANTIALLY DIFFERENT RATE OF PAYMENT OR FEES FOR
22 SIMILAR PRODUCTS AND SERVICES PROVIDED BY ONE IN-PLAN PROVIDER OVER
23 THOSE OF OTHER IN-PLAN PROVIDERS, OR ESTABLISHING A PAYMENT PROCEDURE
24 WITH ONE IN-PLAN PROVIDER AS OPPOSED TO OTHER IN-PLAN PROVIDERS KNOWN TO
25 LIKELY RESULT IN THE LOSS OF PAYMENT FOR SUCH IN-PLAN PROVIDERS; (C)
26 ESTABLISH DIFFERENT PERFORMANCE MEASURES OR REQUIREMENTS FOR ONE IN-PLAN
27 PROVIDER OVER THOSE OF OTHER IN-PLAN PROVIDERS OF CLINICAL LABORATORY
28 SERVICES, INCLUDING BUT NOT LIMITED TO, THE NUMBER OF PATIENT SERVICE
29 CENTERS REQUIRED TO BE OPERATED IN A COVERED AREA OR FLUCTUATING REPORT-
30 ING GUIDELINES AND REQUIREMENTS; (D) SUBCONTRACT THE MANAGEMENT OF THE
31 NETWORK TO AN IN-PLAN LABORATORY THAT COLLECTS A MANAGEMENT FEE FOR SUCH
32 MANAGEMENT SERVICES; OR (E) TREAT ANY ENROLLEE UTILIZING THE SERVICES OF
33 ANY PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING WITHIN ITS
34 NETWORK IN A MANNER WHICH IS NOT THE SAME AS OR SIMILAR IN ALL MATERIAL
35 RESPECTS TO THE MANNER IN WHICH ALL OTHER ENROLLEES UTILIZING THE
36 SERVICES OF ANY PROVIDER OF CLINICAL LABORATORY SERVICES PRACTICING
37 WITHIN ITS NETWORK ARE TREATED.
38   S 3. Section 4804 of the insurance law is amended by adding a new
39 subsection (g) to read as follows:
40   (G) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN INSURED IS
41 REFERRED BY AN IN-PLAN PROVIDER TO A PROVIDER OF CLINICAL LABORATORY
42 SERVICES NOT PARTICIPATING IN THE PLAN (A "NON-PARTICIPATING PROVIDER"),
43 ANY SERVICE THAT WOULD OTHERWISE BE COVERED AS AN IN-PLAN SERVICE UNDER
44 THE PLAN THAT IS PROVIDED BY THE NON-PARTICIPATING PROVIDER SHALL BE
45 COVERED, AND THE ORGANIZATION SHALL BE RESPONSIBLE FOR PAYMENT DIRECTLY
46 TO THE NON-PARTICIPATING PROVIDER FOR THOSE SERVICES IN ACCORDANCE WITH
47 THE TIME FRAME FOR SUCH PAYMENTS SET FORTH IN SECTION THREE THOUSAND TWO
48 HUNDRED TWENTY-FOUR-A OF THIS CHAPTER; PROVIDED, HOWEVER, THAT THE
49 INSURED SHALL BE RESPONSIBLE FOR ANY APPLICABLE COPAY, COINSURANCE OR
50 DEDUCTIBLE FOR SUCH SERVICES. CLINICAL LABORATORIES SEEKING REIMBURSE-
51 MENT PURSUANT TO THIS ARTICLE FOR SERVICES RENDERED SHALL DIRECTLY BILL
52 THE ORGANIZATION WHOSE INSURED RECEIVED THE SERVICES. ANY PAYMENT MADE
53 BY AN ORGANIZATION DIRECTLY TO THE INSURED RATHER THAN TO THE CLINICAL
54 LABORATORY SEEKING REIMBURSEMENT SHALL NOT SATISFY THE ORGANIZATION'S
55 PAYMENT OBLIGATION TO THE CLINICAL LABORATORY.
56   S 4. This act shall take effect immediately.