

1808

2011-2012 Regular Sessions

I N A S S E M B L Y

January 12, 2011

Introduced by M. of A. DINOWITZ, PHEFFER, GALEF, HOOPER, GOTTFRIED --  
Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, COLTON, LIFTON, SWEE-  
NEY -- read once and referred to the Committee on Health

AN ACT to amend the insurance law and the public health law, in relation  
to access to health care providers in managed care plans

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

1 Section 1. Subsection (e) of section 4803 of the insurance law, as  
2 added by chapter 705 of the laws of 1996, is amended to read as follows:  
3 (e) No insurer shall terminate or refuse to renew a contract for  
4 participation in the in-network benefits portion of an insurer's network  
5 for a managed care product solely because the health care professional  
6 has: (1) advocated on behalf of an insured; (2) [has] filed a complaint  
7 against the insurer; (3) [has] appealed a decision of the insurer; (4)  
8 provided information or filed a report pursuant to section forty-four  
9 hundred six-c of the public health law; [or] (5) requested a hearing or  
10 review pursuant to this section; OR (6) RENDERED AN OPINION REGARDING  
11 WHETHER AN INSURED'S ILLNESS IS TERMINAL PURSUANT TO SECTION FOUR THOU-  
12 SAND EIGHT HUNDRED FOUR OF THIS ARTICLE.  
13 S 2. Subsections (e) and (f) of section 4804 of the insurance law, as  
14 added by chapter 705 of the laws of 1996, are amended to read as  
15 follows:  
16 (e) (1) If an insured's health care provider leaves the insurer's  
17 in-network benefits portion of its network of providers for a managed  
18 care product for reasons other than those for which the provider would  
19 not be eligible to receive a hearing pursuant to paragraph one of  
20 subsection (b) of section [forty-eight] FOUR THOUSAND EIGHT hundred  
21 three of this [chapter] ARTICLE, the insurer shall permit the insured to  
22 continue [an ongoing course of treatment with] TO RECEIVE HEALTH CARE  
23 PROCEDURES, TREATMENTS, AND SERVICES FROM the insured's current health  
24 care provider during a transitional period of (i) up to [ninety days]

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

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1 ONE YEAR from the date of notice to the insured of the provider's disaf-  
2 filiation from the insurer's network[;] or (ii) if the insured has  
3 [entered the second trimester of pregnancy at the time of the provider's  
4 disaffiliation, for a transitional period that includes the provision of  
5 post-partum care directly related to the delivery] A TERMINAL ILLNESS OR  
6 CONDITION, UNTIL THE TIME OF SUCH INSURED'S DEATH.

7 (2) Notwithstanding the provisions of paragraph one of this  
8 subsection, such care shall be authorized by the insurer during the  
9 transitional period only if the health care provider agrees (i) to  
10 continue to accept reimbursement from the insurer at the rates applica-  
11 ble prior to the start of the transitional period as payment in full;  
12 (ii) to adhere to the insurer's quality assurance requirements and to  
13 provide to the insurer necessary medical information related to such  
14 care; and (iii) to otherwise adhere to the insurer's policies and proce-  
15 dures, including, but not limited to, procedures regarding referrals and  
16 obtaining pre-authorization and a treatment plan approved by the insur-  
17 er.

18 (f) If a new insured whose health care provider is not a member of the  
19 insurer's in-network benefits portion of the provider network enrolls in  
20 the managed care product, the insurer shall permit the insured to  
21 continue [an ongoing course of treatment with] TO RECEIVE HEALTH CARE  
22 PROCEDURES, TREATMENTS, AND SERVICES FROM the insured's current health  
23 care provider during a transitional period of up to [sixty days] ONE  
24 YEAR from the effective date of enrollment OR, if [(1)] the insured has  
25 a [life-threatening disease or condition or a degenerative and disabling  
26 disease or condition or (2) the insured has entered the second trimester  
27 of pregnancy at the time of enrollment, in which case the transitional  
28 period shall include the provision of post-partum care directly related  
29 to the delivery] TERMINAL ILLNESS OR CONDITION, UNTIL THE TIME OF SUCH  
30 INSURED'S DEATH. If an insured elects to continue to receive care from  
31 such health care provider pursuant to this [paragraph] SUBSECTION, such  
32 care shall be authorized by the insurer for the transitional period only  
33 if the health care provider agrees (A) to accept reimbursement from the  
34 insurer at rates established by the insurer as payment in full, which  
35 rates shall be no more than the level of reimbursement applicable to  
36 similar providers within the in-network benefits portion of the insur-  
37 er's network for such services; (B) to adhere to the insurer's quality  
38 assurance requirements and agrees to provide to the insurer necessary  
39 medical information related to such care; and (C) to otherwise adhere to  
40 the insurer's policies and procedures, including, but not limited to,  
41 procedures regarding referrals and obtaining pre-authorization and a  
42 treatment plan approved by the insurer. In no event shall this  
43 subsection be construed to require an insurer to provide coverage for  
44 benefits not otherwise covered or to diminish or impair pre-existing  
45 condition limitations contained within the insured's contract.

46 S 3. Section 4804 of the insurance law is amended by adding two new  
47 subsections (g) and (h) to read as follows:

48 (G) FOR THE PURPOSES OF THIS SECTION, THE TERM "TERMINAL ILLNESS OR  
49 CONDITION" SHALL MEAN AN ILLNESS OR CONDITION WHICH, IN THE OPINION OF  
50 THE PHYSICIAN OF THE PATIENT SUFFERING FROM SUCH TERMINAL ILLNESS OR  
51 CONDITION, IS LIKELY TO CAUSE OR BE A MAJOR CONTRIBUTING FACTOR IN CAUS-  
52 ING SUCH PATIENT'S DEATH WITHIN THREE YEARS.

53 (H) PROVIDER INCENTIVES (MONETARY OR OTHERWISE) TO A HEALTH CARE  
54 PROVIDER RELATING TO PROCEDURES, TREATMENTS, OR SERVICES PURSUANT TO  
55 THIS SECTION, WHICH ARE INTENDED TO HAVE THE EFFECT OF INDUCING SUCH

1 PROVIDER TO PROVIDE CARE TO AN INSURED IN A MANNER INCONSISTENT WITH  
2 THIS SECTION, ARE PROHIBITED.

3 S 4. Paragraphs (e) and (f) of subdivision 6 of section 4403 of the  
4 public health law, as added by chapter 705 of the laws of 1996, are  
5 amended to read as follows:

6 (e) (1) If an enrollee's health care provider leaves the health main-  
7 tenance organization's network of providers for reasons other than those  
8 for which the provider would not be eligible to receive a hearing pursu-  
9 ant to paragraph [a] (A) of subdivision two of section forty-four  
10 hundred six-d of this [chapter] ARTICLE, the health maintenance organ-  
11 ization shall permit the enrollee to continue [an ongoing course of  
12 treatment with] TO RECEIVE HEALTH CARE PROCEDURES, TREATMENTS, AND  
13 SERVICES FROM the enrollee's current health care provider during a tran-  
14 sitional period of (i) up to [ninety days] ONE YEAR from the date of  
15 notice to the enrollee of the provider's disaffiliation from the organ-  
16 ization's network[;] or (ii) if the enrollee has [entered the second  
17 trimester of pregnancy at the time of the provider's disaffiliation, for  
18 a transitional period that includes the provision of post-partum care  
19 directly related to the delivery] A TERMINAL ILLNESS OR CONDITION, UNTIL  
20 THE TIME OF SUCH ENROLLEE'S DEATH.

21 (2) Notwithstanding the provisions of subparagraph one of this para-  
22 graph, such care shall be authorized by the health maintenance organiza-  
23 tion during the transitional period only if the health care provider  
24 agrees (i) to continue to accept reimbursement from the health mainte-  
25 nance organization at the rates applicable prior to the start of the  
26 transitional period as payment in full; (ii) to adhere to the organiza-  
27 tion's quality assurance requirements and to provide to the organization  
28 necessary medical information related to such care; and (iii) to other-  
29 wise adhere to the organization's policies and procedures, including,  
30 but not limited to, procedures regarding referrals and obtaining pre-au-  
31 thorization and a treatment plan approved by the organization.

32 (f) If a new enrollee whose health care provider is not a member of  
33 the health maintenance organization's provider network enrolls in the  
34 health maintenance organization, the organization shall permit the  
35 enrollee to continue [an ongoing course of treatment with] TO RECEIVE  
36 HEALTH CARE PROCEDURES, TREATMENTS, AND SERVICES FROM the enrollee's  
37 current health care provider during a transitional period of up to  
38 [sixty days] ONE YEAR from the effective date of enrollment, if [(i)]  
39 the enrollee has a [life-threatening disease or condition or a degenera-  
40 tive and disabling disease or condition or (ii) the enrollee has entered  
41 the second trimester of pregnancy at the effective date of enrollment,  
42 in which case the transitional period shall include the provision of  
43 post-partum care directly related to the delivery] TERMINAL ILLNESS OR  
44 CONDITION, UNTIL THE TIME OF SUCH ENROLLEE'S DEATH. If an enrollee  
45 elects to continue to receive care from such health care provider pursu-  
46 ant to this paragraph, such care shall be authorized by the health main-  
47 tenance organization for the transitional period only if the health care  
48 provider agrees (A) to accept reimbursement from the health maintenance  
49 organization at rates established by the health maintenance organization  
50 as payment in full, which rates shall be no more than the level of  
51 reimbursement applicable to similar providers within the health mainte-  
52 nance organization's network for such services; (B) to adhere to the  
53 organization's quality assurance requirements and agrees to provide to  
54 the organization necessary medical information related to such care; and  
55 (C) to otherwise adhere to the organization's policies and procedures,  
56 including, but not limited to, procedures regarding referrals and

1 obtaining pre-authorization and a treatment plan approved by the organ-  
2 ization. In no event shall this paragraph be construed to require a  
3 health maintenance organization to provide coverage for benefits not  
4 otherwise covered or to diminish or impair pre-existing condition limi-  
5 tations contained within the subscriber's contract.

6 S 5. Section 4403 of the public health law is amended by adding two  
7 new subdivisions 7 and 8 to read as follows:

8 7. FOR THE PURPOSES OF THIS SECTION, "TERMINAL ILLNESS OR CONDITION"  
9 SHALL MEAN AN ILLNESS OR CONDITION WHICH, IN THE OPINION OF THE PHYSI-  
10 CIAN OF THE PATIENT SUFFERING FROM SUCH TERMINAL ILLNESS OR CONDITION,  
11 IS LIKELY TO CAUSE OR BE A MAJOR CONTRIBUTING FACTOR IN CAUSING SUCH  
12 PATIENT'S DEATH WITHIN THREE YEARS.

13 8. PROVIDER INCENTIVES (MONETARY OR OTHERWISE) TO A HEALTH CARE  
14 PROVIDER RELATING TO PROCEDURES, TREATMENTS, OR SERVICES PROVIDED PURSU-  
15 ANT TO THIS SECTION, WHICH ARE INTENDED TO INDUCE OR HAVE THE EFFECT OF  
16 INDUCING SUCH PROVIDER TO PROVIDE CARE TO AN ENROLLEE IN A MANNER INCON-  
17 SISTENT WITH THIS SECTION, ARE PROHIBITED.

18 S 6. Subdivision 5 of section 4406-d of the public health law, as  
19 added by chapter 705 of the laws of 1996, is amended to read as follows:

20 5. No health care plan shall terminate a contract or employment, or  
21 refuse to renew a contract, solely because a health care provider has:

- 22 (a) advocated on behalf of an enrollee;  
23 (b) filed a complaint against the health care plan;  
24 (c) appealed a decision of the health care plan;  
25 (d) provided information or filed a report pursuant to section forty-  
26 four hundred six-c of this article; [or]  
27 (e) requested a hearing or review pursuant to this section; OR  
28 (F) RENDERED AN OPINION REGARDING WHETHER A PATIENT'S ILLNESS IS  
29 TERMINAL PURSUANT TO SECTION FORTY-FOUR HUNDRED THREE OF THIS ARTICLE.

30 S 7. This act shall take effect on the one hundred twentieth day after  
31 it shall have become a law and shall apply to all contracts issued,  
32 renewed, modified or amended on and after such date.