

2711

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. BING, JACOBS, PHEFFER, GALEF, MARKEY, REILLY, JAFFEE, CASTRO, N. RIVERA, PERRY -- Multi-Sponsored by -- M. of A. CAHILL, COOK, GLICK, MAGEE, MAGNARELLI, M. MILLER, SCHIMEL, SPANO -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to pre-authorization of care

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

1 Section 1. Subsection (e) of section 4905 of the insurance law, as  
2 added by chapter 705 of the laws of 1996, is amended to read as follows:  
3 (e) If a health care service has been specifically preauthorized or  
4 approved for an insured by a utilization review agent, a utilization  
5 review agent shall not pursuant to retrospective review revise or modify  
6 the specific standards, criteria or procedures used for the utilization  
7 review for procedures, treatment and services delivered to the insured,  
8 during the same course of treatment.  
9 (1) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION  
10 REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT  
11 SHALL IMMEDIATELY THEREAFTER SUPPLY THE PROVIDER WITH A WRITTEN CONFIR-  
12 MATION OF THE APPROVAL BY EITHER:  
13 (I) SENDING A COPY OF SUCH APPROVAL THROUGH ELECTRONIC MAIL TO AN  
14 ADDRESS SPECIFIED BY THE PROVIDER;  
15 (II) SENDING A COPY OF SUCH APPROVAL THROUGH FACSIMILE TRANSMISSION TO  
16 A NUMBER SPECIFIED BY THE PROVIDER; OR  
17 (III) POSTING A COPY OF SUCH APPROVAL ON A WEBSITE ACCESSIBLE TO THE  
18 PROVIDER SO THAT THE PROVIDER MAY IMMEDIATELY PRINT AND RETAIN A HARD  
19 COPY.  
20 (2) ABSENT A SHOWING OF MISREPRESENTATION ON BEHALF OF THE PROVIDER OR  
21 THE INSURED, A COPY OF THE APPROVAL REQUIRED PURSUANT TO PARAGRAPH ONE  
22 OF THIS SUBSECTION SHALL BE PRIMA FACIE EVIDENCE THAT THE SERVICES  
23 PERFORMED BY THE PROVIDER WERE MEDICALLY NECESSARY COVERED SERVICES.

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

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1 SUCH SERVICES SHALL NOT THEREAFTER BE DENIED OR LIMITED, NOR SHALL  
2 REIMBURSEMENT FOR SUCH SERVICES BE DENIED OR LIMITED. WHEN ACTUAL  
3 SERVICES RENDERED DIFFER FROM THOSE SPECIFIC SERVICES PREAUTHORIZED OR  
4 APPROVED DUE TO A RAPID CHANGE IN PATIENT NEEDS, SUCH SERVICES SHALL BE  
5 PRESUMPTIVELY APPROVED BUT MAY BE DENIED ON A RETROSPECTIVE REVIEW AFTER  
6 PAYMENT IF SUCH SERVICES ARE DETERMINED NOT TO BE MEDICALLY NECESSARY.

7 S 2. Subdivision 5 of section 4905 of the public health law, as added  
8 by chapter 705 of the laws of 1996, is amended to read as follows:

9 5. If a health care service has been specifically pre-authorized or  
10 approved for an enrollee by a utilization review agent, a utilization  
11 review agent shall not, pursuant to retrospective review, revise or  
12 modify the specific standards, criteria or procedures used for the  
13 utilization review for procedures, treatment and services delivered to  
14 the enrollee during the same course of treatment.

15 (A) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION  
16 REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT  
17 SHALL IMMEDIATELY THEREAFTER SUPPLY THE PROVIDER WITH A WRITTEN CONFIR-  
18 MATION OF THE APPROVAL BY EITHER:

19 (I) SENDING A COPY OF SUCH APPROVAL THROUGH ELECTRONIC MAIL TO AN  
20 ADDRESS SPECIFIED BY THE PROVIDER;

21 (II) SENDING A COPY OF SUCH APPROVAL THROUGH FACSIMILE TRANSMISSION TO  
22 A NUMBER SPECIFIED BY THE PROVIDER; OR

23 (III) POSTING A COPY OF SUCH APPROVAL ON A WEBSITE ACCESSIBLE TO THE  
24 PROVIDER SO THAT THE PROVIDER MAY IMMEDIATELY PRINT AND RETAIN A HARD  
25 COPY.

26 (B) ABSENT A SHOWING OF MISREPRESENTATION ON BEHALF OF THE PROVIDER OR  
27 THE ENROLLEE, A COPY OF THE APPROVAL REQUIRED PURSUANT TO PARAGRAPH (A)  
28 OF THIS SUBDIVISION SHALL BE PRIMA FACIE EVIDENCE THAT THE SERVICES  
29 PERFORMED BY THE PROVIDER WERE MEDICALLY NECESSARY COVERED SERVICES.  
30 SUCH SERVICES SHALL NOT THEREAFTER BE DENIED OR LIMITED, NOR SHALL  
31 REIMBURSEMENT FOR SUCH SERVICES BE DENIED OR LIMITED. WHEN ACTUAL  
32 SERVICES RENDERED DIFFER FROM THOSE SPECIFIC SERVICES PREAUTHORIZED OR  
33 APPROVED DUE TO A RAPID CHANGE IN PATIENT NEEDS, SUCH SERVICES SHALL BE  
34 PRESUMPTIVELY APPROVED BUT MAY BE DENIED ON RETROSPECTIVE REVIEW AFTER  
35 PAYMENT IF SUCH SERVICES ARE DETERMINED NOT TO BE MEDICALLY NECESSARY.

36 S 3. This act shall take effect on the sixtieth day after it shall  
37 have become a law.