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

6582

I N S E N A T E

February 29, 2012

Introduced by Sens. KLEIN, PARKER, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to authorizing the commissioner of health, in consultation with the superintendent of financial services, to develop uniform plan-provider contracts and the provisions thereof; and providing for the repeal of such provisions upon the expiration thereof

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

Section 1. Legislative intent. The legislature finds that the public would benefit greatly if the commissioner of health, in consultation with the superintendent of financial services, were to develop uniform plan-provider contracts (UPPCs) and the provisions thereof, not including rate sheets, through a process that requires support from representatives of health plans, health care providers, consumers and employers, and to adopt and require the use of such UPPCs and provisions thereof by health plans and health care providers when contracting for the provision of health care services to fee-for-service plan enrollees.

The legislature finds that the use of UPPCs and such provisions thereof would: (a) significantly reduce expenditures by health plans and health care providers in the drafting, review, negotiation and implementation of plan-provider contracts; (b) reduce expenditures by the state and municipalities in the contract-by-contract review and approval of such agreements; (c) reduce or eliminate unclear provisions, unfair provisions and non-compliant provisions in plan-provider contracts; (d) make it practical for provider clinical and administrative staff to learn and follow requirements in plan-provider contracts; (e) reduce interpretive disputes; and (f) help plans meet their medical loss ratio requirements under the federal health care reform law.

S 2. The public health law is amended by adding a new section 4406-f to read as follows:

S 4406-F. UNIFORM PLAN-PROVIDER CONTRACTS. 1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "CONTRACT PROVISION" MEANS ANY INDIVIDUAL PROVISION OF A UPPC.

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

LBD14232-05-2

(B) "COUNCIL" MEANS THE UPPC COUNCIL ESTABLISHED IN SUBDIVISION THREE OF THIS SECTION.

(C) "HEALTH CARE PROVIDER" OR "PROVIDER" MEANS A HEALTH CARE FACILITY OR PROGRAM THAT IS ESTABLISHED OR LICENSED, OR THAT HOLDS AN OPERATING CERTIFICATE ISSUED PURSUANT TO THIS CHAPTER OR THE MENTAL HYGIENE LAW, OR A PHYSICIAN OR OTHER HEALTH CARE PROVIDER LICENSED, REGISTERED OR CERTIFIED PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW, OR ANY ORGANIZATION COMPOSED OF HEALTH CARE PROVIDERS LICENSED, REGISTERED AND/OR CERTIFIED PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW.

(D) "HEALTH PLAN" OR "PLAN" MEANS AN INSURER LICENSED TO WRITE ACCIDENT AND HEALTH INSURANCE PURSUANT TO THE INSURANCE LAW, OR A CORPORATION LICENSED PURSUANT TO ARTICLE FORTY-THREE OF THE INSURANCE LAW, OR A HEALTH MAINTENANCE ORGANIZATION CERTIFIED PURSUANT TO THIS ARTICLE.

(E) "UNIFORM PLAN-PROVIDER CONTRACT" OR "UPPC" MEANS A CONTRACT FORM OR PART THEREOF THAT IS ESTABLISHED, IN REGULATION, BY THE COMMISSIONER, IN CONSULTATION WITH THE SUPERINTENDENT OF FINANCIAL SERVICES, WHICH PLANS AND PROVIDERS SHALL BE REQUIRED TO USE WHEN CONTRACTING FOR FEE-FOR-SERVICE PLAN ENROLLEES.

(I) UPPCS AND CONTRACT PROVISIONS MAY INCLUDE, BUT SHALL NOT BE LIMITED TO:

(A) DEFINITIONS FOR TERMS THAT ARE COMMONLY FOUND IN PLAN-PROVIDER CONTRACTS INCLUDING, BUT NOT LIMITED TO, TERMS SUCH AS "COVERED SERVICE", "EMERGENCY", "MEDICALLY NECESSARY" AND ANY VARIATIONS THEREOF;

(B) PROVIDER REPRESENTATIONS AND OBLIGATIONS;

(C) PLAN REPRESENTATIONS AND OBLIGATIONS;

(D) THE PLAN'S OBLIGATION TO PAY FOR COVERED SERVICES AT THE AGREED-UPON RATE (ALTHOUGH THE RATE SHEET ITSELF SHALL NOT BE PART OF THE UPPC OR A TERM THEREOF);

(E) REQUIREMENTS RELATING TO PLAN POLICIES AND PROCEDURES;

(F) UTILIZATION REVIEW REQUIREMENTS;

(G) COORDINATION OF BENEFITS REQUIREMENTS;

(H) CONSTRAINTS ON THE PROVIDER BILLING PLAN ENROLLEES DIRECTLY;

(I) TERM AND TERMINATION LANGUAGE (BUT NOT THE ACTUAL TIME PERIOD);

(J) CONFIDENTIALITY REQUIREMENTS;

(K) DISPUTE RESOLUTION;

(L) AMENDMENTS;

(M) MISCELLANEOUS BOILERPLATE PROVISIONS; AND

(N) MEDICARE OR MEDICAID MANAGED CARE ADDENDUM.

(II) UPPC AND CONTRACT PROVISIONS SHALL NOT INCLUDE RATES, PAYMENT METHODOLOGIES OR OTHER REIMBURSEMENT TERMS, WHICH SHALL REMAIN MATTERS THAT PLANS AND PROVIDERS ARE FREE TO NEGOTIATE.

(III) UPPCS AND CONTRACT PROVISIONS MAY INCLUDE ALTERNATIVE PROVISIONS, OPTIONAL PROVISIONS OR PROVISIONS WITH NEGOTIABLE COMPONENTS.

(IV) UPPCS AND CONTRACT PROVISIONS MAY INCLUDE REQUIREMENTS OR LANGUAGE PREVIOUSLY MANDATED BY THE COMMISSIONER BY REGULATION.

2. AUTHORITY OF COMMISSIONER. (A) SUBJECT TO THE PROVISIONS OF THIS SECTION, THE COMMISSIONER, IN CONSULTATION WITH THE SUPERINTENDENT OF FINANCIAL SERVICES, SHALL HAVE THE AUTHORITY TO PROMULGATE REGULATIONS THAT ADOPT ONE OR MORE UPPCS OR CONTRACT PROVISIONS, AND TO REQUIRE THE USE OF SUCH UPPCS OR CONTRACT PROVISIONS BY A PLAN AND PROVIDER WHEN CONTRACTING FOR THE PROVIDER TO PROVIDE HEALTH CARE SERVICES TO THE PLAN'S ENROLLEES ON A FEE-FOR-SERVICE BASIS.

(B) THE COMMISSIONER, IN CONSULTATION WITH THE SUPERINTENDENT OF FINANCIAL SERVICES, MAY ADOPT ONE OR MORE UPPCS OR CONTRACT PROVISIONS ONLY AFTER GAINING THE APPROVAL OF THE COUNCIL OF THE UPPC OR CONTRACT

PROVISION, OR A SUBSTANTIALLY SIMILAR UPPC OR CONTRACT PROVISION, PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

(C) NOTWITHSTANDING THE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT, THE COMMISSIONER MAY IMPLEMENT ANY REGULATION ADOPTED PURSUANT TO THIS SECTION ONLY AFTER A PERIOD OF TWO YEARS FROM THE DATE OF ADOPTION, OR SUCH LONGER PERIOD AS MAY BE PRESCRIBED BY THE COMMISSIONER. DURING THE PERIOD BETWEEN THE DATE OF ADOPTION AND THE DATE OF IMPLEMENTATION AND ENFORCEMENT REQUIRED, THE USE OF THE UPPC OR CONTRACT PROVISION BY PLANS AND PROVIDERS SHALL BE VOLUNTARY.

(D) PLANS AND PROVIDERS SHALL REMAIN FREE TO NEGOTIATE AND AGREE UPON ANY LAWFUL PROVISIONS IN PLAN-PROVIDER CONTRACTS THAT DO NOT CONFLICT WITH REGULATIONS OF THE COMMISSIONER.

(E) ANNUALLY, ON OR BEFORE THE FIRST OF FEBRUARY, THE COMMISSIONER, IN CONSULTATION WITH THE SUPERINTENDENT OF FINANCIAL SERVICES, SHALL SUBMIT A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF HIS OR HER FINDINGS, CONCLUSIONS AND RECOMMENDATIONS WITH REGARD TO THE IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION, AND MAY SUBMIT THEREWITH SUCH LEGISLATIVE PROPOSALS AS HE OR SHE SHALL DEEM NECESSARY TO IMPLEMENT SUCH RECOMMENDATIONS.

3. UPPC COUNCIL. (A) THE COMMISSIONER SHALL, WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, ESTABLISH A UPPC COUNCIL. THE COUNCIL SHALL BE COMPOSED OF THE COMMISSIONER AND THE SUPERINTENDENT OF FINANCIAL SERVICES, OR THEIR DESIGNEES, WHO SHALL BE THE CO-CHAIRS OF THE COUNCIL, AND TWELVE MEMBERS APPOINTED BY THE COMMISSIONER AS FOLLOWS:

(I) FIVE MEMBERS REPRESENTING THE INTERESTS OF HEALTH PLANS;

(II) FIVE MEMBERS REPRESENTING THE INTERESTS OF PROVIDERS, SUCH AS PHYSICIANS, HOSPITALS, NURSING HOMES, HOME CARE AGENCIES AND OTHER HEALTH CARE PROVIDERS;

(III) ONE MEMBER REPRESENTING THE INTERESTS OF HEALTH CARE CONSUMERS; AND

(IV) ONE MEMBER REPRESENTING THE INTERESTS OF EMPLOYERS THAT PURCHASE HEALTH INSURANCE OR HEALTH CARE PLANS FOR THEIR EMPLOYEES.

(B) EACH APPOINTED MEMBER OF THE COUNCIL SHALL SERVE A TERM OF FOUR YEARS; PROVIDED, HOWEVER, THAT OF THE INITIAL APPOINTMENTS THREE MEMBERS SHALL SERVE A TERM OF ONE YEAR, THREE MEMBERS SHALL SERVE A TERM OF TWO YEARS, THREE MEMBERS SHALL SERVE A TERM OF THREE YEARS AND THREE MEMBERS SHALL SERVE A TERM OF FOUR YEARS, AS DETERMINED BY THE COMMISSIONER. VACANCIES IN THE MEMBERSHIP OF THE COUNCIL SHALL BE FILLED IN THE MANNER PROVIDED FOR ORIGINAL APPOINTMENTS.

(C) THE COUNCIL SHALL CONSIDER PROPOSED UPPCS AND CONTRACT PROVISIONS, AND RECOMMEND SUITABLE AND ACCEPTABLE UPPCS AND CONTRACT PROVISIONS FOR ADOPTION BY THE COMMISSIONER. IN REVIEWING UPPCS AND CONTRACT PROVISIONS, THE COUNCIL SHALL CONSIDER THE FAIRNESS, CLARITY AND PRACTICALITY OF THE CONTRACTS AND TERMS, AND THE EFFECTIVENESS OF THE CONTRACTS AND TERMS IN ENSURING ACCESS TO MEDICALLY NECESSARY CARE AND IN PROMOTING COST-EFFECTIVENESS OF HEALTH CARE.

(D) A RECOMMENDATION BY THE COUNCIL SHALL REQUIRE APPROVAL BY AT LEAST NINE MEMBERS, INCLUDING AT LEAST THREE MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPH (I) AND THREE MEMBERS APPOINTED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION.

(E) MEMBERS OF THE COUNCIL SHALL SERVE WITHOUT COMPENSATION, BUT SHALL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF OFFICIAL DUTIES.

(F) THE PROVISIONS OF SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW SHALL APPLY TO THE MEMBERS OF THE COUNCIL, AND THE PROVISIONS OF ARTICLE

SEVEN OF THE PUBLIC OFFICERS LAW SHALL APPLY TO THE MEETINGS OF THE COUNCIL.

S 3. This act shall take effect immediately and shall expire and be deemed repealed five years after it shall have taken effect.