

366--B

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ, GALEF, HOOPER, GOTTFRIED -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, COLTON, JACOBS, LIFTON, SWEENEY -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, 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

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

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1 three of this [chapter] ARTICLE, the insurer shall permit the insured to
2 continue [an ongoing course of treatment with] TO RECEIVE HEALTH CARE
3 PROCEDURES, TREATMENTS, AND SERVICES FROM the insured's current health
4 care provider during a transitional period of (i) up to [ninety days]
5 ONE YEAR from the date of notice to the insured of the provider's disaf-
6 filiation from the insurer's network[;] or (ii) if the insured has
7 entered the second trimester of pregnancy at the time of the provider's
8 disaffiliation, for a transitional period that includes the provision of
9 post-partum care directly related to the delivery; OR A TERMINAL ILLNESS
10 OR CONDITION, UNTIL THE TIME OF SUCH INSURED'S DEATH.

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

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

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

53 (G) FOR THE PURPOSES OF THIS SECTION, THE TERM "TERMINAL ILLNESS OR
54 CONDITION" SHALL MEAN AN ILLNESS OR CONDITION WHICH, IN THE OPINION OF
55 THE PHYSICIAN OF THE PATIENT SUFFERING FROM SUCH TERMINAL ILLNESS OR

1 CONDITION, IS LIKELY TO CAUSE OR BE A MAJOR CONTRIBUTING FACTOR IN CAUS-
2 ING SUCH PATIENT'S DEATH WITHIN THREE YEARS.

3 (H) PROVIDER INCENTIVES (MONETARY OR OTHERWISE) TO A HEALTH CARE
4 PROVIDER RELATING TO PROCEDURES, TREATMENTS, OR SERVICES PURSUANT TO
5 THIS SECTION, WHICH ARE INTENDED TO HAVE THE EFFECT OF INDUCING SUCH
6 PROVIDER TO PROVIDE CARE TO AN INSURED IN A MANNER INCONSISTENT WITH
7 THIS SECTION, ARE PROHIBITED.

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

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

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

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

1 the health maintenance organization's network for such services; (B) to
2 adhere to the organization's quality assurance requirements and agrees
3 to provide to the organization necessary medical information related to
4 such care; and (C) to otherwise adhere to the organization's policies
5 and procedures, including, but not limited to, procedures regarding
6 referrals and obtaining pre-authorization and a treatment plan approved
7 by the organization. In no event shall this paragraph be construed to
8 require a health maintenance organization to provide coverage for bene-
9 fits not otherwise covered or to diminish or impair pre-existing condi-
10 tion limitations contained within the subscriber's contract.

11 S 5. Section 4403 of the public health law is amended by adding two
12 new subdivisions 9 and 10 to read as follows:

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

18 10. PROVIDER INCENTIVES (MONETARY OR OTHERWISE) TO A HEALTH CARE
19 PROVIDER RELATING TO PROCEDURES, TREATMENTS, OR SERVICES PROVIDED PURSU-
20 ANT TO THIS SECTION, WHICH ARE INTENDED TO INDUCE OR HAVE THE EFFECT OF
21 INDUCING SUCH PROVIDER TO PROVIDE CARE TO AN ENROLLEE IN A MANNER INCON-
22 SISTENT WITH THIS SECTION, ARE PROHIBITED.

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

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

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

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