

5256

2013-2014 Regular Sessions

I N   S E N A T E

May 15, 2013

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Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to approvals by a utilization review agent

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

1     Section 1. Subdivision 7 of section 4903 of the public health law, as  
2     added by chapter 586 of the laws of 1998, is amended to read as follows:  
3     7. Failure by the utilization review agent to make a determination  
4     within the time periods prescribed in this section shall be deemed to be  
5     an [adverse determination subject to appeal pursuant to section forty  
6     nine hundred four of this title] APPROVAL.  
7     S 2. The opening paragraph of subdivision 5 of section 4905 of the  
8     public health law is designated paragraph (a) and a new paragraph (b) is  
9     added to read as follows:  
10    (B) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION  
11    REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT  
12    SHALL IMMEDIATELY, BUT NOT LATER THAN WITHIN ONE BUSINESS DAY; SUPPLY  
13    THE PROVIDER WITH A WRITTEN CONFIRMATION OF THE APPROVAL BY EITHER:  
14    (I) SENDING A COPY OF SUCH APPROVAL THROUGH ELECTRONIC MAIL TO AN  
15    ADDRESS SPECIFIED BY THE PROVIDER;  
16    (II) SENDING A COPY OF SUCH APPROVAL THROUGH FACSIMILE TRANSMISSION TO  
17    A NUMBER SPECIFIED BY THE PROVIDER; OR  
18    (III) POSTING A COPY OF SUCH APPROVAL ON A SPECIFIC WEBPAGE OF THE  
19    INSURER'S WEBSITE TO WHICH THE PROVIDER HAS BEEN DIRECTED AND TO WHICH  
20    THE PROVIDER HAS BEEN GIVEN ACCESS SO THAT THE PROVIDER MAY IMMEDIATELY  
21    PRINT AND RETAIN A HARD COPY.  
22    S 3. Paragraph (a) of subdivision 2 of section 4914 of the public  
23    health law, as amended by chapter 219 of the laws of 2011, is amended to  
24    read as follows:

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

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1 (a) The enrollee shall have four months to initiate an external appeal  
2 after the enrollee receives notice from the health care plan, or such  
3 plan's utilization review agent if applicable, of a final adverse deter-  
4 mination or denial or after both the plan and the enrollee have jointly  
5 agreed to waive any internal appeal, or after the enrollee is deemed to  
6 have exhausted or is not required to complete any internal appeal pursu-  
7 ant to section 2719 of the Public Health Service Act, 42 U.S.C. S  
8 300gg-19. Where applicable, the enrollee's health care provider shall  
9 have [forty-five days] FOUR MONTHS to initiate an external appeal after  
10 the enrollee or the enrollee's health care provider, as applicable,  
11 receives notice from the health care plan, or such plan's utilization  
12 review agent if applicable, of a final adverse determination or denial  
13 or after both the plan and the enrollee have jointly agreed to waive any  
14 internal appeal. Such request shall be in writing in accordance with the  
15 instructions and in such form prescribed by subdivision five of this  
16 section. The enrollee, and the enrollee's health care provider where  
17 applicable, shall have the opportunity to submit additional documenta-  
18 tion with respect to such appeal to the external appeal agent within the  
19 applicable time period above; provided however that when such documenta-  
20 tion represents a material change from the documentation upon which the  
21 utilization review agent based its adverse determination or upon which  
22 the health plan based its denial, the health plan shall have three busi-  
23 ness days to consider such documentation and amend or confirm such  
24 adverse determination.

25 S 4. Subsection (g) of section 4903 of the insurance law, as added by  
26 chapter 586 of the laws of 1998, is amended to read as follows:

27 (g) Failure by the utilization review agent to make a determination  
28 within the time periods prescribed in this section shall be deemed to be  
29 an [adverse determination subject to appeal pursuant to section four  
30 thousand nine hundred four of this title] APPROVAL.

31 S 5. The opening paragraph of subsection (e) of section 4905 of the  
32 insurance law is designated paragraph 1 and a new paragraph 2 is added  
33 to read as follows:

34 (2) WHENEVER A UTILIZATION REVIEW AGENT MAKES A VERBAL REPRESENTATION  
35 REGARDING PREAUTHORIZATION OR APPROVAL, THE UTILIZATION REVIEW AGENT  
36 SHALL IMMEDIATELY, BUT NO LATER THAN WITHIN ONE BUSINESS DAY, SUPPLY THE  
37 PROVIDER WITH A WRITTEN CONFIRMATION OF THE APPROVAL BY EITHER:

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

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

42 (III) POSTING A COPY OF SUCH APPROVAL ON A SPECIFIC WEBPAGE OF THE  
43 INSURER'S WEBSITE TO WHICH THE PROVIDER HAS BEEN DIRECTED AND TO WHICH  
44 THE PROVIDER HAS BEEN GIVEN ACCESS SO THAT THE PROVIDER MAY IMMEDIATELY  
45 PRINT AND RETAIN A HARD COPY.

46 S 6. Paragraph 1 of subsection (b) of section 4914 of the insurance  
47 law, as amended by chapter 219 of the laws of 2011, is amended to read  
48 as follows:

49 (1) The insured shall have four months to initiate an external appeal  
50 after the insured receives notice from the health care plan, or such  
51 plan's utilization review agent if applicable, of a final adverse deter-  
52 mination or denial, or after both the plan and the insured have jointly  
53 agreed to waive any internal appeal, or after the insured is deemed to  
54 have exhausted or is not required to complete any internal appeal pursu-  
55 ant to section 2719 of the Public Health Service Act, 42 U.S.C. S  
56 300gg-19. Where applicable, the insured's health care provider shall

1 have [forty-five days] FOUR MONTHS to initiate an external appeal after  
2 the insured or the insured's health care provider, as applicable,  
3 receives notice from the health care plan, or such plan's utilization  
4 review agent if applicable, of a final adverse determination or denial  
5 or after both the plan and the insured have jointly agreed to waive any  
6 internal appeal. Such request shall be in writing in accordance with the  
7 instructions and in such form prescribed by subsection (e) of this  
8 section. The insured, and the insured's health care provider where  
9 applicable, shall have the opportunity to submit additional documenta-  
10 tion with respect to such appeal to the external appeal agent within the  
11 applicable time period above; provided however that when such documenta-  
12 tion represents a material change from the documentation upon which the  
13 utilization review agent based its adverse determination or upon which  
14 the health plan based its denial, the health plan shall have three busi-  
15 ness days to consider such documentation and amend or confirm such  
16 adverse determination.  
17 S 7. This act shall take effect July 1, 2014.