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

4996

2013-2014 Regular Sessions

I N A S S E M B L Y

February 14, 2013

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

AN ACT to amend the social services law and the public health law, in relation to medicaid reviews and appeals

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

Section 1. Section 22 of the social services law is amended by adding a new subdivision 15 to read as follows:

15. WITH RESPECT TO MEDICAL ASSISTANCE UNDER TITLE ELEVEN OF ARTICLE FIVE OF THIS CHAPTER, WHERE THE MEDICAL SERVICE AT ISSUE IS OR WOULD BE PROVIDED BY AN ENTITY SUBJECT TO ARTICLE FORTY-NINE OF THE PUBLIC HEALTH LAW OR ARTICLE FORTY-NINE OF THE INSURANCE LAW:

1. AN ENROLLEE SHALL NOT BE REQUIRED TO EXHAUST HIS OR HER REVIEW OR APPEAL REMEDIES UNDER ARTICLE FORTY-NINE OF THE PUBLIC HEALTH LAW OR ARTICLE FORTY-NINE OF THE INSURANCE LAW PRIOR TO REQUESTING A FAIR HEARING UNDER THIS SECTION OR ANY OTHER STATE OR FEDERAL LAW. HOWEVER, IN AN APPROPRIATE CASE, THE HOLDING OR CONTINUING OF THE FAIR HEARING MAY BE DELAYED PENDING THE OUTCOME OF SUCH REVIEW OR APPEAL.

2. THE RIGHTS AND REMEDIES CONFERRED UNDER THOSE PROVISIONS OF THE PUBLIC HEALTH LAW OR THE INSURANCE LAW SHALL BE CUMULATIVE AND IN ADDITION TO AND NOT IN LIEU OF ANY OTHER RIGHTS OR REMEDIES AVAILABLE UNDER LAW.

S 2. Subdivision 8 of section 365-a of the social services law, as added by section 46-a of part B of chapter 58 of the laws of 2009, is amended to read as follows:

8. When a non-governmental entity is authorized by the department pursuant to contract or subcontract to make prior authorization or prior approval determinations that may be required for any item of medical assistance, a recipient may challenge any action taken or failure to act in connection with a prior authorization or prior approval determination as if such determination were made by a government entity, and shall be

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

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entitled to the same medical assistance benefits and standards and to the same notice and procedural due process rights, including a right to a fair hearing and aid continuing pursuant to section twenty-two of this chapter, as if the prior authorization or prior approval determination were made by a government entity, WITHOUT REGARD TO EXPIRATION OF THE PRIOR SERVICE AUTHORIZATION.

S 3. Subparagraph (ii) of paragraph (a) of subdivision 7 of section 4403-f of the public health law, as amended by section 41-b of part H of chapter 59 of the laws of 2011, is amended to read as follows:

(ii) Notwithstanding any inconsistent provision of the social services law to the contrary, the commissioner shall, pursuant to regulation, determine whether and the extent to which the applicable provisions of the social services law or regulations relating to approvals and authorizations of, and utilization limitations on, health and long term care services reimbursed pursuant to title XIX of the federal social security act, including, but not limited to, fiscal assessment requirements, are inconsistent with the flexibility necessary for the efficient administration of managed long term care plans and such regulations shall provide that such provisions shall not be applicable to enrollees or managed long term care plans, provided that such determinations are consistent with applicable federal law and regulation, AND SUBJECT TO THE PROVISIONS OF SUBDIVISION EIGHT OF SECTION THREE HUNDRED SIXTY-FIVE-A OF THE SOCIAL SERVICES LAW.

S 4. This act shall take effect immediately and shall apply to any review or appeal under the social services law, public health law or insurance law pending at the time it becomes a law; provided, however, that the amendments to section 4403-f of the public health law made by section three of this act shall not affect the repeal of such section and shall be deemed repealed therewith.