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

8610

2015-2016 Regular Sessions

I N A S S E M B L Y

December 16, 2015

Introduced by M. of A. TITUS -- read once and referred to the Committee on Insurance

AN ACT to amend the public health law and the insurance law, in relation to utilization review agents

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

Section 1. Section 206 of the public health law is amended by adding two new subdivisions 30 and 31 to read as follows:

30. THE COMMISSIONER IS HEREBY DIRECTED TO ESTABLISH AND PERIODICALLY UPDATE FROM AVAILABLE APPLICANTS AN INDEPENDENT POOL OF PHYSICIANS AND PROFESSIONAL HEALTH SERVICE PROVIDERS IN EACH MEDICAL AND PROFESSIONAL HEALTH SERVICE SPECIALTY TO SERVE AS INDEPENDENT UTILIZATION REVIEW AGENTS AS DEFINED BY SUBDIVISION NINE OF SECTION FORTY-NINE HUNDRED OF THIS CHAPTER.

31. (A) THE COMMISSIONER SHALL ASSIGN PHYSICIANS OR OTHER PROFESSIONAL HEALTH SERVICE PROVIDERS AUTHORIZED TO EXAMINE OR EVALUATE INJURY OR ILLNESS FROM THE POOL IN THE APPROPRIATE MEDICAL OR PROFESSIONAL HEALTH SERVICE SPECIALTY AND WHO PRACTICES IN THE SAME AREA OR REGION TO CONDUCT PHYSICAL EXAMINATIONS AND REVIEW MEDICAL RECORDS OF COVERED PERSONS EXCLUSIVELY ON A RANDOM, ROTATING BASIS TO ELIMINATE BIAS OR PREFERENCE IN THE SELECTION OF THE INDEPENDENT UTILIZATION REVIEW AGENTS, OR ALTERNATIVELY, THE COMMISSIONER MAY SELECT A NOT-FOR-PROFIT ORGANIZATION TO ASSIGN PROVIDERS FROM THE POOL ON THE SAME BASIS. SUCH ASSIGNMENT MAY BE DONE THROUGH A PROCESS WHEREBY A LIST OF RANDOMLY SELECTED, APPROPRIATE MEDICAL OR PROFESSIONAL HEALTH SERVICE PROVIDERS IS COMPILED BY GEOGRAPHIC REGION THROUGHOUT THE STATE AND PROVIDED TO THE INSURANCE CARRIER AND THE CLAIMANT FOR THE PURPOSES OF PROVIDING BOTH PARTIES EQUAL OPPORTUNITY TO STRIKE AN EQUAL NUMBER OF NAMES OFF SUCH LIST UNTIL ONE UTILIZATION REVIEW AGENT REMAINS TO CONDUCT THE MEDICAL EXAMINATION OR REVIEW OF MEDICAL RECORDS.

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

LBD13142-01-5

(B) WHEN A UTILIZATION REVIEW AGENT IS SELECTED FROM THE POOL OF QUALIFIED UTILIZATION REVIEW AGENTS MAINTAINED BY THE DEPARTMENT, THE COMMISSIONER SHALL REMOVE SUCH UTILIZATION REVIEW AGENT'S NAME FROM THE POOL FOR A SET PERIOD OF TIME SO THAT SUCH AGENT SHALL NOT BE AVAILABLE FOR ANOTHER REGIONAL UTILIZATION REVIEW AGENT ASSIGNMENT WITHIN A SPECIFIC DURATION OF TIME AS SHALL BE DETERMINED BY THE COMMISSIONER. THE COMMISSIONER SHALL ADJUST THE DURATION OF TIME DURING WHICH A NAME MUST BE WITHHELD FROM THE POOL AS NECESSARY TO BALANCE THE NEED TO REDUCE OVERUTILIZATION OF CERTAIN INDEPENDENT UTILIZATION REVIEW AGENTS WITH THE NEED TO ENSURE THAT AN ADEQUATE POOL OF INDEPENDENT UTILIZATION REVIEW AGENTS IS AVAILABLE IN EACH REGION OR GEOGRAPHIC AREA.

S 2. Subdivision 2 of section 4902 of the public health law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

2. Each utilization review agent shall assure adherence to the requirements stated in subdivision one of this section by all contractors, subcontractors, subvendors, agents and employees affiliated by contract or otherwise with such utilization review agent, AND SHALL CONDUCT ALL REVIEWS IN AN OBJECTIVE AND IMPARTIAL MANNER.

S 3. Subsection (b) of section 4902 of the insurance law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

(b) Each utilization review agent shall assure adherence to the requirements stated in subsection (a) of this section by all contractors, subcontractors, subvendors, agents and employees affiliated by contract or otherwise with such utilization review agent, AND SHALL CONDUCT ALL REVIEWS IN AN OBJECTIVE AND IMPARTIAL MANNER.

S 4. Section 4902 of the insurance law is amended by adding two new subsections (c) and (d) to read as follows:

(C) UTILIZATION REVIEW AGENTS MAY HAVE THEIR RECORDS RANDOMLY REVIEWED AND AUDITED PERIODICALLY BY BOTH THE SUPERINTENDENT OF FINANCIAL SERVICES AND THE COMMISSIONER OF HEALTH. SUCH SUPERINTENDENT AND COMMISSIONER SHALL BE AUTHORIZED TO CONDUCT A RANDOM REVIEW OF NO MORE THAN FIVE UTILIZATION REVIEW RECORDS ANNUALLY DURING A UTILIZATION REVIEW AGENT'S TRIENNIAL REGISTRATION PERIOD. IF, IN THE OPINION OF SUCH SUPERINTENDENT AND COMMISSIONER, THREE OR MORE OF THE UTILIZATION REVIEW AGENT'S RECORDS AND DOCUMENTATION OUT OF THE FIVE RECORDS THAT MAY BE AUDITED ANNUALLY ARE JUDGED TO BE DEFICIENT, SUCH SUPERINTENDENT AND COMMISSIONER SHALL BE AUTHORIZED TO AUDIT ADDITIONAL RECORDS DURING SUCH REGISTRATION PERIOD AND SHALL BE AUTHORIZED TO INSTITUTE A REMEDIAL PROGRAM PRIOR TO THE EXPIRATION OF THE REGISTRANT'S CURRENT UTILIZATION REVIEW AGENT REGISTRATION PERIOD. IF DURING ANY TWO CONSECUTIVE ANNUAL AUDIT PERIODS A UTILIZATION REVIEW AGENT'S RECORDS AND DOCUMENTATION ARE JUDGED TO BE DEFICIENT IN SPITE OF ANY PROGRAM OF REMEDIAL ACTION DIRECTED ON THE PART OF SUCH SUPERINTENDENT AND COMMISSIONER, THEY MAY REMOVE THE UTILIZATION REVIEW AGENT FROM THE POOL OF NAMES AVAILABLE TO CONDUCT UTILIZATION REVIEWS. ONCE A REGISTRANT'S NAME HAS BEEN REMOVED FROM THE POOL, IN ORDER TO RE-REGISTER AS A UTILIZATION REVIEW AGENT THE REGISTRANT SHALL SEEK AUTHORIZATION IN ACCORDANCE WITH THIS ARTICLE AND IN THE SAME MANNER AS A PRACTITIONER WHO HAS NOT PREVIOUSLY BEEN AUTHORIZED.

(D) THE UTILIZATION REVIEW AGENT SHALL CITE, WHENEVER AND WHEREVER POSSIBLE, THE SPECIFIC PAGE AND REFERENCE TO THE RELEVANT PRACTICE GUIDELINE OR TO THE RELEVANT PEER-REVIEWED MEDICAL LITERATURE, SCIENTIFIC STUDIES, ABSTRACTS, AND/OR STANDARD REFERENCE COMPENDIA, THAT THE AGENT UTILIZED TO ASSIST HIM OR HER IN REACHING A DETERMINATION WHEN COMMENTING ON OR MAKING ANY DETERMINATION ADVERSE TO THE CLAIMANT'S ONGOING OR CONCURRENT CARE OR A RETROSPECTIVE REVIEW BASED ON A REVIEW

OF THE TREATING PROVIDER'S RECORDS OR AN EXAMINATION OF THE INJURED PATIENT OR CLAIMANT.

S 5. Section 4905 of the insurance law is amended by adding three new subsections (p), (q), and (r) to read as follows:

(P) A PRACTITIONER IS NOT ELIGIBLE TO PERFORM A UTILIZATION REVIEW OF A CLAIMANT WHEN THE APPEARANCE OF OR AN ACTUAL CONFLICT OF INTEREST EXISTS. A CONFLICT OF INTEREST SHALL INCLUDE, BUT NOT BE LIMITED TO, INSTANCES WHERE THE UTILIZATION REVIEW AGENT OR SOMEONE IN THEIR OFFICE OR PLACE OF EMPLOYMENT OR PRACTICE PRACTITIONER HAS TREATED OR EXAMINED THE CLAIMANT. A CONFLICT OF INTEREST MAY BE PRESUMED TO EXIST WHEN THE UTILIZATION REVIEW AGENT AND A PROVIDER THAT PREVIOUSLY TREATED THE CLAIMANT HAS A RELATIONSHIP WHICH INVOLVES A DIRECT OR SUBSTANTIAL FINANCIAL INTEREST.

(Q) A UTILIZATION REVIEW AGENT SHALL NOT BECOME THE TREATING PROVIDER FOR THE CLAIMANT UNLESS AUTHORIZED TO DO SO BY THE COMMISSIONER OF HEALTH, OR ORDERED TO BY AN ADMINISTRATIVE LAW JUDGE.

(R) A PARTY MAY, WITHIN FIVE BUSINESS DAYS OF THE APPOINTMENT AS A UTILIZATION REVIEW AGENT FOR A PARTICULAR CLAIMANT, REQUEST THAT THE UTILIZATION REVIEW AGENT DISCLOSE ALL POTENTIAL CONFLICTS OF INTEREST TO SUCH COMMISSIONER OF HEALTH THAT MAY RESULT FROM ANY RELATIONSHIP BETWEEN THE UTILIZATION REVIEW AGENT AND THE INSURANCE CARRIER, SELF-INSURED EMPLOYER, OR THE CLAIMANT. A POTENTIAL CONFLICT OF INTEREST EXISTS WHEN THE UTILIZATION REVIEW AGENT, OR SOMEONE IN THEIR IMMEDIATE FAMILY, RECEIVES SOMETHING OF MATERIAL VALUE FROM THE INSURANCE CARRIER WHETHER IN THE FORM OF STOCK, ROYALTIES, CONSULTANTSHIP, FUNDING BY A RESEARCH GRANT, OR OTHER PAYMENT BY THE INSURANCE CARRIER FOR ANY ADDITIONAL SERVICE OTHER THAN THE UTILIZATION REVIEW, OR IF THE UTILIZATION REVIEW AGENT RECEIVES MORE THAN FIFTY PERCENT OF HIS OR HER TOTAL EARNED INCOME BY PROVIDING UTILIZATION REVIEWS. SUCH REQUEST SHALL BE SUBMITTED, IN WRITING, TO THE COMMISSIONER OF HEALTH AND A COPY SHALL BE SENT, DELIVERED, OR SUBMITTED TO ANY OTHER PARTIES AT SUBSTANTIALLY THE SAME TIME. SUCH COMMISSIONER SHALL DETERMINE WHETHER ANY CONFLICT OF INTEREST IS SUFFICIENTLY MATERIAL AS TO REQUIRE DISQUALIFICATION OF THE UTILIZATION REVIEW AGENT FROM PERFORMING ANY UTILIZATION REVIEW UNDER THIS ARTICLE, AFTER PROMPT DISCLOSURE PURSUANT TO THIS SUBDIVISION.

S 6. This act shall take effect immediately.