

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 S 6. This act shall take effect immediately.