

9384

I N A S S E M B L Y

February 29, 2016

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

AN ACT to amend the insurance law, in relation to health insurance coverage of physical and occupational therapy services and payment for early intervention services; and to amend the insurance law and the public health law, in relation to the provision of medically necessary care and utilization review

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

1 Section 1. Paragraph 23 of subsection (i) of section 3216 of the
2 insurance law, as added by chapter 593 of the laws of 2000, is amended
3 to read as follows:
4 (23) If a policy provides for reimbursement for physical and occupa-
5 tional therapy service which is within the lawful scope of practice of a
6 duly licensed physical or occupational therapist, an insured shall be
7 entitled to reimbursement for such service whether the said service is
8 performed by a physician or through a duly licensed physical or occupa-
9 tional therapist, provided however, that nothing contained herein shall
10 be construed to impair any terms of such policy including appropriate
11 utilization review and the requirement that said service be performed
12 pursuant to a medical order, or a similar or related service of a physi-
13 cian PROVIDED, FURTHER, THAT SUCH TERMS SHALL NOT IMPOSE CO-PAYMENTS IN
14 EXCESS OF TWENTY PERCENT OF THE TOTAL REIMBURSEMENT TO THE PROVIDER OF
15 CARE. VISIT LIMITS FOR PHYSICAL AND OCCUPATIONAL THERAPY SERVICES SHALL
16 BE SUBJECT TO AN EXCEPTIONS PROCESS, THAT SHALL INCLUDE THE INSURED'S
17 PHYSICIAN CERTIFYING THAT THE CESSATION OF SERVICES WOULD MOST LIKELY
18 RESULT IN FURTHER DISABILITY OR HARM TO THE INSURED. ANY EXCEPTIONS
19 PROCESS SHALL BE FURTHER DETERMINED BY THE SUPERINTENDENT.
20 S 2. Subsection (b) of section 3235-a of the insurance law, as added
21 by section 3 of part C of chapter 1 of the laws of 2002, is amended to
22 read as follows:
23 (b) Where a policy of accident and health insurance, including a
24 contract issued pursuant to article forty-three of this chapter,
25 provides coverage for an early intervention program service, such cover-

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

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age shall not be applied against any maximum annual or lifetime monetary limits set forth in such policy or contract. Visit limitations [and other terms and conditions of the policy] will continue to apply to early intervention services. However, any visits used for early intervention program services shall not reduce the number of visits otherwise available under the policy or contract for such services.

S 3. Clause (ii) of subparagraph (A) of paragraph 1 of subsection f of section 4235 of the insurance law, as amended by chapter 219 of the laws of 2011, is amended to read as follows:

(ii) a policy under which coverage terminates at a specified age shall not so terminate with respect to an unmarried child who is incapable of self-sustaining employment by reason of mental illness, developmental disability, mental retardation, as defined in the mental hygiene law, or physical handicap and who became so incapable prior to attainment of the age at which coverage would otherwise terminate and who is chiefly dependent upon such employee or member for support and maintenance, while the insurance of the employee or member remains in force and the child remains in such condition, if the insured employee or member has within thirty-one days of such child's attainment of the termination age submitted proof of such child's incapacity as described [herein] IN THIS CLAUSE. NO POLICY OF GROUP ACCIDENT, GROUP HEALTH OR GROUP ACCIDENT AND HEALTH INSURANCE SHALL IMPOSE CO-PAYMENTS IN EXCESS OF TWENTY PERCENT OF THE TOTAL REIMBURSEMENT TO THE PROVIDER OF CARE. VISIT LIMITS FOR PHYSICAL AND OCCUPATIONAL SERVICES SHALL BE SUBJECT TO AN EXCEPTIONS PROCESS, THAT SHALL INCLUDE AN INSURED'S PHYSICIAN CERTIFYING THAT THE CESSATION OF SERVICES WOULD MOST LIKELY RESULT IN FURTHER DISABILITY OR HARM TO THE INSURED. ANY EXCEPTIONS PROCESS SHALL BE FURTHER DETERMINED BY THE SUPERINTENDENT.

S 4. Subparagraph (A) of paragraph 4 of subsection (f) of section 4235 of the insurance law, as amended by chapter 593 of the laws of 2000, is amended to read as follows:

(A) any physical and occupational therapy service which is within the lawful scope of practice of a licensed physical and occupational therapist, a subscriber to such policy shall be entitled to reimbursement for such service, whether the said service is performed by a physician or licensed physical and occupational therapist pursuant to prescription or referral by a physician. NO POLICY OF GROUP ACCIDENT, GROUP HEALTH OR GROUP ACCIDENT AND HEALTH INSURANCE SHALL IMPOSE CO-PAYMENTS IN EXCESS OF TWENTY PERCENT OF THE TOTAL REIMBURSEMENT TO THE PROVIDER OF CARE. VISIT LIMITS FOR PHYSICAL AND OCCUPATIONAL THERAPY SERVICES SHALL BE SUBJECT TO AN EXCEPTIONS PROCESS, THAT SHALL INCLUDE AN INSURED'S PHYSICIAN CERTIFYING THAT THE CESSATION OF SERVICES WOULD MOST LIKELY RESULT IN FURTHER DISABILITY OR HARM TO THE INSURED. ANY EXCEPTIONS PROCESS SHALL BE FURTHER DETERMINED BY THE SUPERINTENDENT;

S 5. Subparagraph (G) of paragraph 1 of subsection (b) of section 4301 of the insurance law, as amended by chapter 593 of the laws of 2000, is amended to read as follows:

(G) physical and occupational therapy care provided through licensed physical and occupational therapists upon the prescription of a physician. CO-PAYMENTS RELATED TO REIMBURSEMENT FOR SUCH SERVICES SHALL NOT EXCEED TWENTY PERCENT OF THE TOTAL REIMBURSEMENT TO THE PROVIDER OF CARE. VISIT LIMITS FOR PHYSICAL AND OCCUPATIONAL THERAPY SERVICES SHALL BE SUBJECT TO AN EXCEPTIONS PROCESS, THAT SHALL INCLUDE THE COVERED PERSON'S PHYSICIAN CERTIFYING THAT THE CESSATION OF SERVICES WOULD MOST LIKELY RESULT IN FURTHER DISABILITY OR HARM TO THE COVERED PERSON. ANY EXCEPTIONS PROCESS SHALL BE FURTHER DETERMINED BY THE SUPERINTENDENT,

1 S 6. Paragraph 13 of subsection (b) of section 4322 of the insurance
2 law, as added by chapter 504 of the laws of 1995, is amended and a new
3 paragraph 13-a is added to read as follows:

4 (13) Outpatient physical therapy up to ninety visits per condition per
5 calendar year. ANY CO-PAYMENTS RELATED TO REIMBURSEMENT FOR PHYSICAL
6 THERAPY SERVICES SHALL NOT EXCEED TWENTY PERCENT OF THE TOTAL REIMBURSE-
7 MENT TO THE PROVIDER OF CARE. VISIT LIMITS FOR PHYSICAL THERAPY SERVICES
8 SHALL BE SUBJECT TO AN EXCEPTIONS PROCESS, THAT SHALL INCLUDE THE
9 COVERED PERSON'S PHYSICIAN CERTIFYING THAT THE CESSATION OF SERVICES
10 WOULD MOST LIKELY RESULT IN FURTHER DISABILITY OR HARM TO THE COVERED
11 PERSON. ANY EXCEPTIONS PROCESS SHALL BE FURTHER DETERMINED BY THE
12 SUPERINTENDENT.

13 (13-A) OUTPATIENT OCCUPATIONAL THERAPY UP TO NINETY VISITS PER CONDI-
14 TION PER CALENDAR YEAR. ANY CO-PAYMENTS RELATED TO REIMBURSEMENT FOR
15 OCCUPATIONAL THERAPY SERVICES SHALL NOT EXCEED TWENTY PERCENT OF THE
16 TOTAL REIMBURSEMENT TO THE PROVIDER OF CARE. VISIT LIMITS FOR OCCUPA-
17 TIONAL THERAPY SERVICES SHALL BE SUBJECT TO AN EXCEPTIONS PROCESS, THAT
18 SHALL INCLUDE THE COVERED PERSON'S PHYSICIAN CERTIFYING THAT SUCH CESSA-
19 TION OF SERVICES WOULD MOST LIKELY RESULT IN FURTHER DISABILITY OR HARM
20 TO THE COVERED PERSON. ANY EXCEPTIONS PROCESS SHALL BE FURTHER DETER-
21 MINED BY THE SUPERINTENDENT.

22 S 7. Subsection (e) of section 4803 of the insurance law, as added by
23 chapter 705 of the laws of 1996, is amended and a new subsection (a-1)
24 is added to read as follows:

25 (e) No insurer shall terminate [or], THREATEN TO TERMINATE, refuse to
26 renew OR THREATEN REFUSAL TO RENEW a contract for participation in the
27 in-network benefits portion of an insurer's network for a managed care
28 product [solely] because the health care professional has (1) advocated
29 on behalf of an insured; (2) has filed a complaint against the insurer;
30 (3) has appealed a decision of the insurer; (4) provided information or
31 filed a report pursuant to section forty-four hundred six-c of the
32 public health law; [or] (5) requested a hearing or review pursuant to
33 this section; OR (6) ORDERED OR RENDERED MEDICALLY NECESSARY CARE.

34 (A-1) UPON WRITTEN REQUEST BY A PARTICIPATING HEALTH CARE PROFES-
35 SIONAL, A HEALTH CARE PLAN SHALL PROVIDE SPECIFIC WRITTEN CLINICAL
36 REVIEW CRITERIA RELATING TO A PARTICULAR CONDITION, DISEASE, SERVICE OR
37 PROCEDURE AND, WHERE APPROPRIATE, OTHER CLINICAL INFORMATION WHICH THE
38 HEALTH CARE PLAN OR ITS UTILIZATION REVIEW AGENT MIGHT CONSIDER IN ITS
39 UTILIZATION REVIEW AND THE HEALTH CARE PLAN SHALL INCLUDE WITH THE
40 INFORMATION A DESCRIPTION OF HOW IT WILL BE USED IN THE UTILIZATION
41 REVIEW PROCESS; PROVIDED, HOWEVER, THAT TO THE EXTENT SUCH INFORMATION
42 IS PROPRIETARY TO THE HEALTH CARE PLAN, THE PARTICIPATING HEALTH CARE
43 PROVIDER OR PROSPECTIVE HEALTH CARE PROVIDER SHALL ONLY USE THE INFORMA-
44 TION FOR THE PURPOSES OF ASSISTING THE PARTICIPATING HEALTH CARE PROVID-
45 ER IN EVALUATING COVERED SERVICES PROVIDED BY THE ORGANIZATION, AN
46 ADVERSE DETERMINATION OR AN APPEAL OF ADVERSE DETERMINATION.

47 S 8. Paragraph 1 of subsection (b) of section 4901 of the insurance
48 law, as added by chapter 705 of the laws of 1996, is amended to read as
49 follows:

50 (1) The utilization review plan, INCLUDING BUT NOT LIMITED TO THE
51 CLINICAL REVIEW CRITERIA AND STANDARDS AND THE DEFINITION/STANDARDS OF
52 MEDICAL NECESSITY USED UNDER THE UTILIZATION REVIEW PLAN. A UTILIZATION
53 REVIEW AGENT SHALL REPORT ANY AMENDMENT OR CHANGES TO THE UTILIZATION
54 REVIEW PLAN TO THE SUPERINTENDENT WITHIN THIRTY DAYS OF MAKING SUCH
55 AMENDMENT OR CHANGE;

1 S 9. Paragraph 4 of subsection (a) of section 4902 of the insurance
2 law, as added by chapter 705 of the laws of 1996, is amended to read as
3 follows:

4 (4) Establishment of a process for rendering utilization review deter-
5 minations which shall, at a minimum, include: written procedures to
6 assure that utilization reviews and determinations are conducted within
7 the timeframes established herein; procedures to notify an insured, an
8 insured's designee [and/or] AND an insured's health care provider of
9 adverse determinations; and procedures for appeal of adverse determi-
10 nations including the establishment of an expedited appeals process for
11 denials of continued inpatient care or where there is imminent or seri-
12 ous threat to the health of the insured;

13 S 10. The opening paragraph of subsection (d) of section 4905 of the
14 insurance law, as added by chapter 705 of the laws of 1996, is amended
15 to read as follows:

16 A utilization review agent OR THE HEALTH CARE PLAN FOR WHICH THE AGENT
17 PROVIDES UTILIZATION REVIEW shall not, with respect to utilization
18 review activities, permit or provide compensation or anything of value
19 to its employees, agents, or contractors based on:

20 S 11. Subdivision 5 of section 4406-d of the public health law, as
21 added by chapter 705 of the laws of 1996, is amended and a new subdivi-
22 sion 1-a is added to read as follows:

23 5. No health care plan shall terminate, OR THREATEN TO TERMINATE a
24 contract or employment, [or] refuse to renew, OR THREATEN REFUSAL TO
25 RENEW a contract, [solely] because a health care provider has:

- 26 (a) advocated on behalf of an enrollee;
- 27 (b) filed a complaint against the health care plan;
- 28 (c) appealed a decision of the health care plan;
- 29 (d) provided information or filed a report pursuant to section forty-
30 four hundred six-c of this article; [or]
- 31 (e) requested a hearing or review pursuant to this section; OR
- 32 (F) ORDERED OR RENDERED MEDICALLY NECESSARY CARE.

33 1-A. UPON WRITTEN REQUEST BY A PARTICIPATING HEALTH CARE PROFESSIONAL,
34 A HEALTH CARE PLAN SHALL PROVIDE SPECIFIC WRITTEN CLINICAL REVIEW CRITE-
35 RIA RELATING TO A PARTICULAR CONDITION, DISEASE, SERVICE OR PROCEDURE
36 AND, WHERE APPROPRIATE, OTHER CLINICAL INFORMATION WHICH THE HEALTH CARE
37 PLAN OR ITS UTILIZATION REVIEW AGENT MIGHT CONSIDER IN ITS UTILIZATION
38 REVIEW AND THE HEALTH CARE PLAN SHALL INCLUDE WITH THE INFORMATION A
39 DESCRIPTION OF HOW IT WILL BE USED IN THE UTILIZATION REVIEW PROCESS;
40 PROVIDED, HOWEVER, THAT TO THE EXTENT SUCH INFORMATION IS PROPRIETARY TO
41 THE HEALTH CARE PLAN, THE PARTICIPATING HEALTH CARE PROVIDER OR PROSPEC-
42 TIVE HEALTH CARE PROVIDER SHALL ONLY USE THE INFORMATION FOR THE
43 PURPOSES OF ASSISTING THE PARTICIPATING HEALTH CARE PROVIDER IN EVALUAT-
44 ING COVERED SERVICES PROVIDED BY THE ORGANIZATION, AN ADVERSE DETERMI-
45 NATION OR AN APPEAL OF ADVERSE DETERMINATION.

46 S 12. Paragraph (a) of subdivision 2 of section 4901 of the public
47 health law, as added by chapter 705 of the laws of 1996, is amended to
48 read as follows:

49 (a) The utilization review plan, INCLUDING BUT NOT LIMITED TO THE
50 CLINICAL REVIEW CRITERIA AND STANDARDS AND THE DEFINITION/STANDARDS OF
51 MEDICAL NECESSITY USED UNDER THE UTILIZATION REVIEW PLAN. A UTILIZATION
52 REVIEW AGENT SHALL REPORT ANY AMENDMENT OR CHANGES TO THE UTILIZATION
53 REVIEW PLAN TO THE COMMISSIONER WITHIN THIRTY DAYS OF MAKING SUCH AMEND-
54 MENT OR CHANGE;

1 S 13. Paragraph (d) of subdivision 1 of section 4902 of the public
2 health law, as added by chapter 705 of the laws of 1996, is amended to
3 read as follows:

4 (d) Establishment of a process for rendering utilization review deter-
5 minations which shall, at a minimum, include: written procedures to
6 assure that utilization reviews and determinations are conducted within
7 the timeframes established herein; procedures to notify an enrollee, an
8 enrollee's designee [and/or] AND an enrollee's health care provider of
9 adverse determinations; and procedures for appeal of adverse determi-
10 nations including the establishment of an expedited appeals process for
11 denials of continued inpatient care or where there is imminent or seri-
12 ous threat to the health of the enrollee;

13 S 14. The opening paragraph of subdivision 4 of section 4905 of the
14 public health law, as added by chapter 705 of the laws of 1996, is
15 amended to read as follows:

16 A utilization review agent OR THE HEALTH CARE PLAN FOR WHICH THE AGENT
17 PROVIDES UTILIZATION REVIEW shall not, with respect to utilization
18 review activities, permit or provide compensation or anything of value
19 to its employees, agents, or contractors based on:

20 S 15. This act shall take effect on the one hundred eightieth day
21 after it shall have become a law.