

4751

2015-2016 Regular Sessions

I N   S E N A T E

April 15, 2015

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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 health care professional applications and terminations

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

1     Section 1. Section 4406-d of the public health law, as added by chapter 705 of the laws of 1996, subdivision 1 as amended by chapter 237 of the laws of 2009, is amended to read as follows;

2     S 4406-d. Health care professional applications and terminations. 1.  
3     (a) A health care plan shall, upon request, make available and disclose  
4     to health care professionals written application procedures and minimum  
5     qualification requirements which a health care professional must meet in  
6     order to be considered by the health care plan. The plan shall consult  
7     with appropriately qualified health care professionals in developing its  
8     qualification requirements. A health care plan shall complete review of  
9     the health care professional's application to participate in the in-net-  
10    work portion of the health care plan's network and shall, within ninety  
11    days of receiving a health care professional's completed application to  
12    participate in the health care plan's network, notify the health care  
13    professional as to: (i) whether he or she is credentialed; or (ii)  
14    whether additional time is necessary to make a determination in spite of  
15    the health care plan's best efforts or because of a failure of a third  
16    party to provide necessary documentation, or non-routine or unusual  
17    circumstances require additional time for review. In such instances  
18    where additional time is necessary because of a lack of necessary  
19    documentation, a health plan shall make every effort to obtain such  
20    information as soon as possible.

21    (b) If the completed application of a newly-licensed health care  
22    professional or a health care professional who has recently relocated to  
23    this state from another state and has not previously practiced in this  
24    state from another state and has not previously practiced in this  
25    state from another state and has not previously practiced in this

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

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1 state, who joins a group practice of health care professionals each of  
2 whom participates in the in-network portion of a health care plan's  
3 network, is neither approved nor declined within ninety days pursuant to  
4 paragraph (a) of this subdivision, the health care professional shall be  
5 deemed "provisionally credentialed" and may participate in the in-net-  
6 work portion of the health care plan's network; provided, however, that  
7 a provisionally credentialed physician may not be designated as an  
8 enrollee's primary care physician until such time as the physician has  
9 been fully credentialed. The network participation for a provisionally  
10 credentialed health care professional shall begin on the day following  
11 the ninetieth day of receipt of the completed application and shall last  
12 until the final credentialing determination is made by the health care  
13 plan. A health care professional shall only be eligible for provisional  
14 credentialing if the group practice of health care professionals noti-  
15 fies the health care plan in writing that, should the application ulti-  
16 mately be denied, the health care professional or the group practice:  
17 (i) shall refund any payments made by the health care plan for in-net-  
18 work services provided by the provisionally credentialed health care  
19 professional that exceed any out-of-network benefits payable under the  
20 enrollee's contract with the health care plan; and (ii) shall not pursue  
21 reimbursement from the enrollee, except to collect the copayment that  
22 otherwise would have been payable had the enrollee received services  
23 from a health care professional participating in the in-network portion  
24 of a health care plan's network. Interest and penalties pursuant to  
25 section three thousand two hundred twenty-four-a of the insurance law  
26 shall not be assessed based on the denial of a claim submitted during  
27 the period when the health care professional was provisionally creden-  
28 tialed; provided, however, that nothing herein shall prevent a health  
29 care plan from paying a claim from a health care professional who is  
30 provisionally credentialed upon submission of such claim. A health care  
31 plan shall not deny, after appeal, a claim for services provided by a  
32 provisionally credentialed health care professional solely on the ground  
33 that the claim was not timely filed.

34 2. (a) A health care plan shall not terminate OR NOT RENEW a contract  
35 with a health care professional unless the health care plan provides to  
36 the health care professional a written explanation of the reasons for  
37 the proposed contract termination and an opportunity for a review or  
38 hearing as hereinafter provided. This section shall not apply in cases  
39 involving imminent harm to patient care, a determination of fraud, or a  
40 final disciplinary action by a state licensing board or other govern-  
41 mental agency that impairs the health care professional's ability to  
42 practice.

43 (b) The notice of the proposed contract termination OR NON-RENEWAL  
44 provided by the health care plan to the health care professional shall  
45 include:

46 (i) the reasons for the proposed action;

47 (ii) notice that the health care professional has the right to request  
48 a hearing or review, at the professional's discretion, before a panel  
49 [appointed by the health care plan] COMPRISED OF NO FEWER THAN THREE  
50 HEALTH CARE PROFESSIONALS LICENSED TO PRACTICE IN THE STATE OF NEW YORK;

51 (iii) a time limit of not less than thirty days within which a health  
52 care professional may request a hearing; and

53 (iv) a time limit for a hearing date which must be held within thirty  
54 days after the date of receipt of a request for a hearing.

55 (c) The hearing panel shall be comprised of three [persons appointed  
56 by the health care plan] HEALTH CARE PROFESSIONALS LICENSED TO PRACTICE

1 BY THE STATE OF NEW YORK IN THE SAME PROFESSION AS THE SUBJECT OF THE  
2 REVIEW, ONE OF WHOM IS APPOINTED BY THE HEALTH CARE PLAN, ONE OF WHOM IS  
3 APPOINTED BY THE HEALTH CARE PROFESSIONAL WHO IS THE SUBJECT OF THE  
4 HEARING. THE REMAINING MEMBER OF THE PANEL SHALL BE CHOSEN BY THE OTHER  
5 TWO PANEL MEMBERS. At least one person on such panel shall be a clinical  
6 peer in the same discipline and the same or similar specialty as the  
7 health care professional under review. The hearing panel may consist of  
8 more than three persons, provided however that the number of clinical  
9 peers on such panel shall constitute one-third or more of the total  
10 membership of the panel AND PROVIDED FURTHER THAT THE RATIO OF THE  
11 NUMBER OF HEALTH CARE PROFESSIONALS APPOINTED BY THE HEALTH CARE PLAN TO  
12 THE NUMBER OF HEALTH CARE PROFESSIONALS APPOINTED BY THE SUBJECT OF THE  
13 HEARING TO THE NUMBER OF HEALTH CARE PROFESSIONALS CHOSEN BY THE OTHER  
14 PANEL MEMBERS REMAINS ONE TO ONE TO ONE.

15 (d) The hearing panel shall render a decision on the proposed action  
16 in a timely manner. Such decision shall include reinstatement of the  
17 health care professional by the health care plan, provisional rein-  
18 statement subject to conditions set forth by the health care plan or  
19 termination of the health care professional. Such decision shall be  
20 provided in writing to the health care professional.

21 (e) A decision by the hearing panel to terminate OR NOT RENEW a health  
22 care professional shall be effective not less than thirty days after the  
23 receipt by the health care professional of the hearing panel's decision;  
24 provided, however, that the provisions of paragraph (e) of subdivision  
25 six of section [four thousand four] FORTY-FOUR hundred three of this  
26 article shall apply to such termination OR NON-RENEWAL.

27 (f) In no event shall termination be effective earlier than sixty days  
28 from the receipt of the notice of termination.

29 3. [Either party to a contract may exercise a right of non-renewal at  
30 the expiration of the contract period set forth therein or, for a  
31 contract without a specific expiration date, on each January first  
32 occurring after the contract has been in effect for at least one year,  
33 upon sixty days notice to the other party; provided, however, that any  
34 non-renewal shall not constitute a termination for purposes of this  
35 section.

36 4.] A health care plan shall develop and implement policies and proce-  
37 dures to ensure that health care professionals are regularly informed of  
38 information maintained by the health care plan to evaluate the perform-  
39 ance or practice of the health care professional. The health care plan  
40 shall consult with health care professionals in developing methodologies  
41 to collect and analyze health care professional profiling data. Health  
42 care plans shall provide any such information and profiling data and  
43 analysis to health care professionals. Such information, data or analy-  
44 sis shall be provided on a periodic basis appropriate to the nature and  
45 amount of data and the volume and scope of services provided. Any  
46 profiling data used to evaluate the performance or practice of a health  
47 care professional shall be measured against stated criteria and an  
48 appropriate group of health care professionals using similar treatment  
49 modalities serving a comparable patient population. Upon presentation of  
50 such information or data, each health care professional shall be given  
51 the opportunity to discuss the unique nature of the health care profes-  
52 sional's patient population which may have a bearing on the health care  
53 professional's profile and to work cooperatively with the health care  
54 plan to improve performance.

1 [5.] 4. No health care plan shall terminate a contract or employment,  
2 or refuse to renew a contract, solely because a health care provider  
3 has:

- 4 (a) advocated on behalf of an enrollee;
- 5 (b) filed a complaint against the health care plan;
- 6 (c) appealed a decision of the health care plan;
- 7 (d) provided information or filed a report pursuant to section forty-  
8 four hundred six-c of this article; or
- 9 (e) requested a hearing or review pursuant to this section.

10 [6.] 5. Except as provided herein, no contract or agreement between a  
11 health care plan and a health care professional shall contain any  
12 provision which shall supersede or impair a health care professional's  
13 right to notice of reasons for termination OR NON-RENEWAL and the oppor-  
14 tunity for a hearing or review concerning such termination OR NON-RENE-  
15 WAL.

16 [7.] 6. Any contract provision in violation of this section shall be  
17 deemed to be void and unenforceable.

18 [8.] 7. For purposes of this section, "health care plan" shall mean a  
19 health maintenance organization licensed pursuant to article forty-three  
20 of the insurance law or certified pursuant to this article or an inde-  
21 pendent practice association certified or recognized pursuant to this  
22 article.

23 [9.] 8. For purposes of this section, "health care professional" shall  
24 mean a health care professional licensed, registered or certified pursu-  
25 ant to title eight of the education law.

26 S 2. Section 4803 of the insurance law, as added by chapter 705 of the  
27 laws of 1996, subsection (a) as amended by chapter 237 of the laws of  
28 2009, is amended to read as follows:

29 S 4803. Health care professional applications and terminations. (a)  
30 (1) An insurer which offers a managed care product shall, upon request,  
31 make available and disclose to health care professionals written appli-  
32 cation procedures and minimum qualification requirements which a health  
33 care professional must meet in order to be considered by the insurer for  
34 participation in the in-network benefits portion of the insurer's  
35 network for the managed care product. The insurer shall consult with  
36 appropriately qualified health care professionals in developing its  
37 qualification requirements for participation in the in-network benefits  
38 portion of the insurer's network for the managed care product. An insur-  
39 er shall complete review of the health care professional's application  
40 to participate in the in-network portion of the insurer's network and,  
41 within ninety days of receiving a health care professional's completed  
42 application to participate in the insurer's network, will notify the  
43 health care professional as to: (A) whether he or she is credentialed;  
44 or (B) whether additional time is necessary to make a determination in  
45 spite of the insurer's best efforts or because of a failure of a third  
46 party to provide necessary documentation, or non-routine or unusual  
47 circumstances require additional time for review. In such instances  
48 where additional time is necessary because of a lack of necessary  
49 documentation, an insurer shall make every effort to obtain such infor-  
50 mation as soon as possible.

51 (2) If the completed application of a newly-licensed health care  
52 professional or a health care professional who has recently relocated to  
53 this state from another state and has not previously practiced in this  
54 state, who joins a group practice of health care professionals each of  
55 whom participates in the in-network portion of an insurer's network, is  
56 neither approved nor declined within ninety days pursuant to paragraph

1 one of this subsection, such health care professional shall be deemed  
2 "provisionally credentialed" and may participate in the in-network  
3 portion of an insurer's network; provided, however, that a provisionally  
4 credentialed physician may not be designated as an insured's primary  
5 care physician until such time as the physician has been fully creden-  
6 tialed. The network participation for a provisionally credentialed  
7 health care professional shall begin on the day following the ninetieth  
8 day of receipt of the completed application and shall last until the  
9 final credentialing determination is made by the insurer. A health care  
10 professional shall only be eligible for provisional credentialing if the  
11 group practice of health care professionals notifies the insurer in  
12 writing that, should the application ultimately be denied, the health  
13 care professional or the group practice: (A) shall refund any payments  
14 made by the insurer for in-network services provided by the provi-  
15 sionally credentialed health care professional that exceed any out-of-  
16 network benefits payable under the insured's contract with the insurer;  
17 and (B) shall not pursue reimbursement from the insured, except to  
18 collect the copayment or coinsurance that otherwise would have been  
19 payable had the insured received services from a health care profes-  
20 sional participating in the in-network portion of an insurer's network.  
21 Interest and penalties pursuant to section three thousand two hundred  
22 twenty-four-a of this chapter shall not be assessed based on the denial  
23 of a claim submitted during the period when the health care professional  
24 was provisionally credentialed; provided, however, that nothing herein  
25 shall prevent an insurer from paying a claim from a health care profes-  
26 sional who is provisionally credentialed upon submission of such claim.  
27 An insurer shall not deny, after appeal, a claim for services provided  
28 by a provisionally credentialed health care professional solely on the  
29 ground that the claim was not timely filed.

30 (b) (1) An insurer shall not terminate OR NOT RENEW a contract with a  
31 health care professional for participation in the in-network benefits  
32 portion of the insurer's network for a managed care product unless the  
33 insurer provides to the health care professional a written explanation  
34 of the reasons for the proposed contract termination and an opportunity  
35 for a review or hearing as hereinafter provided. This section shall not  
36 apply in cases involving imminent harm to patient care, a determination  
37 of fraud, or a final disciplinary action by a state licensing board or  
38 other governmental agency that impairs the health care professional's  
39 ability to practice.

40 (2) The notice of the proposed contract termination OR NON-RENEWAL  
41 provided by the insurer to the health care professional shall include:

42 (i) the reasons for the proposed action;

43 (ii) notice that the health care professional has the right to request  
44 a hearing or review, at the professional's discretion, before a panel  
45 [appointed by the insurer] COMPRISED OF NO FEWER THAN THREE HEALTH CARE  
46 PROFESSIONALS LICENSED TO PRACTICE BY THE STATE OF NEW YORK;

47 (iii) a time limit of not less than thirty days within which a health  
48 care professional may request a hearing or review; and

49 (iv) a time limit for a hearing date which must be held within not  
50 less than thirty days after the date of receipt of a request for a hear-  
51 ing.

52 (3) The hearing panel shall be comprised of three [persons appointed  
53 by the insurer] HEALTH CARE PROFESSIONALS LICENSED TO PRACTICE BY THE  
54 STATE OF NEW YORK IN THE SAME PROFESSION AS THE SUBJECT OF THE REVIEW,  
55 ONE OF WHOM IS APPOINTED BY THE INSURER, ONE OF WHOM IS APPOINTED BY THE  
56 HEALTH CARE PROFESSIONAL WHO IS THE SUBJECT OF THE HEARING. THE REMAIN-

1 ING MEMBER OF THE PANEL SHALL BE CHOSEN BY THE OTHER TWO PANEL MEMBERS.  
2 At least one person on such panel shall be a clinical peer in the same  
3 discipline and the same or similar specialty as the health care profes-  
4 sional under review. The hearing panel may consist of more than three  
5 persons, provided however that the number of clinical peers on such  
6 panel shall constitute one-third or more of the total membership of the  
7 panel AND PROVIDED FURTHER THAT THE RATIO OF THE NUMBER OF HEALTH CARE  
8 PROFESSIONALS APPOINTED BY THE HEALTH CARE PLAN TO THE NUMBER OF HEALTH  
9 CARE PROFESSIONALS APPOINTED BY THE SUBJECT OF THE HEARING TO THE NUMBER  
10 OF HEALTH CARE PROFESSIONALS CHOSEN BY THE TWO OTHER PANEL MEMBERS  
11 REMAINS ONE TO ONE TO ONE.

12 (4) The hearing panel shall render a decision on the proposed action  
13 in a timely manner. Such decision shall include reinstatement of the  
14 health care professional by the insurer, provisional reinstatement  
15 subject to conditions set forth by the insurer or termination of the  
16 health care professional. Such decision shall be provided in writing to  
17 the health care professional.

18 (5) A decision by the hearing panel to terminate OR NOT RENEW a health  
19 care professional shall be effective not less than thirty days after the  
20 receipt by the health care professional of the hearing panel's decision;  
21 provided, however, that the provisions of subsection (e) of section four  
22 thousand eight hundred four OF THIS ARTICLE shall apply to such termi-  
23 nation.

24 (6) In no event shall termination OR NON-RENEWAL be effective earlier  
25 than sixty days from the receipt of the notice of termination OR NON-RE-  
26 NEWAL.

27 (c) [Either party to a contract for participation in the in-network  
28 benefits portion of an insurer's network for a managed care product may  
29 exercise a right of non-renewal at the expiration of the contract period  
30 set forth therein or, for a contract without a specific expiration date,  
31 on each January first occurring after the contract has been in effect  
32 for at least one year, upon sixty days notice to the other party;  
33 provided, however, that any non-renewal shall not constitute a termi-  
34 nation for purposes of this section.

35 (d)] An insurer shall develop and implement policies and procedures to  
36 ensure that health care providers participating in the the in-network  
37 benefits portion of an insurer's network for a managed care product are  
38 regularly informed of information maintained by the insurer to evaluate  
39 the performance or practice of the health care professional. The insurer  
40 shall consult with health care professionals in developing methodologies  
41 to collect and analyze provider profiling data. Insurers shall provide  
42 any such information and profiling data and analysis to these health  
43 care professionals. Such information, data or analysis shall be provided  
44 on a periodic basis appropriate to the nature and amount of data and the  
45 volume and scope of services provided. Any profiling data used to evalu-  
46 ate the performance or practice of such a health care professional shall  
47 be measured against stated criteria and an appropriate group of health  
48 care professionals using similar treatment modalities serving a compara-  
49 ble patient population. Upon presentation of such information or data,  
50 each such health care professional shall be given the opportunity to  
51 discuss the unique nature of the health care professional's patient  
52 population which may have a bearing on the professional's profile and to  
53 work cooperatively with the insurer to improve performance.

54 [(e)] (D) No insurer shall terminate or refuse to renew a contract for  
55 participation in the in-network benefits portion of an insurer's network  
56 for a managed care product solely because the health care professional

1 has (1) advocated on behalf of an insured; (2) has filed a complaint  
2 against the insurer; (3) has appealed a decision of the insurer; (4)  
3 provided information or filed a report pursuant to section forty-four  
4 hundred six-c of the public health law; or (5) requested a hearing or  
5 review pursuant to this section.

6 [(f)] (E) Except as provided herein, no contract or agreement between  
7 an insurer and a health care professional for participation in the  
8 in-network benefits portion of an insurer's network for a managed care  
9 product shall contain any provision which shall supersede or impair a  
10 health care professional's right to notice of reasons for termination OR  
11 NON-RENEWAL and the opportunity for a hearing concerning such termi-  
12 nation OR NON-RENEWAL.

13 [(g)] (F) Any contract provision in violation of this section shall be  
14 deemed to be void and unenforceable.

15 [(h)] (G) For purposes of this section, "health care professional"  
16 shall mean a health care professional licensed, registered or certified  
17 pursuant to title eight of the education law.

18 S 3. This act shall take effect immediately.