

4922--A

Cal. No. 1062

2015-2016 Regular Sessions

I N   S E N A T E

April 23, 2015

---

Introduced by Sens. HANNON, LARKIN, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public health law and the insurance law, in relation to expedited utilization review of court ordered mental health and/or substance use disorder services

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

1     Section 1. Subdivision 2 of section 4903 of the public health law, as  
2     amended by section 22 of part H of chapter 60 of the laws of 2014, is  
3     amended to read as follows:  
4     2. (A) A utilization review agent shall make a utilization review  
5     determination involving health care services which require pre-authori-  
6     zation and provide notice of a determination to the enrollee or  
7     enrollee's designee and the enrollee's health care provider by telephone  
8     and in writing within three business days of receipt of the necessary  
9     information. To the extent practicable, such written notification to the  
10    enrollee's health care provider shall be transmitted electronically, in  
11    a manner and in a form agreed upon by the parties. The notification  
12    shall identify; [(a)] (I) whether the services are considered in-network  
13    or out-of-network; [(b)] (II) and whether the enrollee will be held  
14    harmless for the services and not be responsible for any payment, other  
15    than any applicable co-payment or co-insurance; [(c)] (III) as applica-  
16    ble, the dollar amount the health care plan will pay if the service is  
17    out-of-network; and [(d)] (IV) as applicable, information explaining how  
18    an enrollee may determine the anticipated out-of-pocket cost for out-of-  
19    network health care services in a geographical area or zip code based  
20    upon the difference between what the health care plan will reimburse for

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

LBD06406-04-5

1 out-of-network health care services and the usual and customary cost for  
2 out-of-network health care services.

3 (B) WITH REGARD TO INDIVIDUAL OR GROUP CONTRACTS AUTHORIZED PURSUANT  
4 TO ARTICLE FORTY-FOUR OF THIS CHAPTER, FOR UTILIZATION REVIEW DETERMI-  
5 NATIONS INVOLVING PROPOSED MENTAL HEALTH AND/OR SUBSTANCE USE DISORDER  
6 SERVICES WHERE THE ENROLLEE OR THE ENROLLEE'S DESIGNEE HAS, IN A FORMAT  
7 PRESCRIBED BY THE SUPERINTENDENT OF FINANCIAL SERVICES, CERTIFIED IN THE  
8 REQUEST THAT THE PROPOSED SERVICES ARE FOR AN INDIVIDUAL WHO WILL BE  
9 APPEARING, OR HAS APPEARED, BEFORE A COURT OF COMPETENT JURISDICTION AND  
10 MAY BE SUBJECT TO A COURT ORDER REQUIRING SUCH SERVICES, THE UTILIZATION  
11 REVIEW AGENT SHALL MAKE A DETERMINATION AND PROVIDE NOTICE OF SUCH  
12 DETERMINATION TO THE ENROLLEE OR THE ENROLLEE'S DESIGNEE BY TELEPHONE  
13 WITHIN SEVENTY-TWO HOURS OF RECEIPT OF THE REQUEST. WRITTEN NOTICE OF  
14 THE DETERMINATION TO THE ENROLLEE OR ENROLLEE'S DESIGNEE SHALL FOLLOW  
15 WITHIN THREE BUSINESS DAYS. WHERE FEASIBLE, SUCH TELEPHONIC AND WRITTEN  
16 NOTICE SHALL ALSO BE PROVIDED TO THE COURT.

17 S 2. Subdivision 2 of section 4904 of the public health law, as  
18 amended by chapter 41 of the laws of 2014, is amended to read as  
19 follows:

20 2. A utilization review agent shall establish an expedited appeal  
21 process for appeal of an adverse determination involving:

22 (a) continued or extended health care services, procedures or treat-  
23 ments or additional services for an enrollee undergoing a course of  
24 continued treatment prescribed by a health care provider home health  
25 care services following discharge from an inpatient hospital admission  
26 pursuant to subdivision three of section forty-nine hundred three of  
27 this [article] TITLE; or

28 (b) an adverse determination in which the health care provider  
29 believes an immediate appeal is warranted except any retrospective  
30 determination[.]; OR

31 (C) POTENTIAL COURT-ORDERED MENTAL HEALTH AND/OR SUBSTANCE USE DISOR-  
32 DER SERVICES PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION  
33 FORTY-NINE HUNDRED THREE OF THIS TITLE. Such process shall include mech-  
34 anisms which facilitate resolution of the appeal including but not  
35 limited to the sharing of information from the enrollee's health care  
36 provider and the utilization review agent by telephonic means or by  
37 facsimile. The utilization review agent shall provide reasonable access  
38 to its clinical peer reviewer within one business day of receiving  
39 notice of the taking of an expedited appeal. Expedited appeals shall be  
40 determined within two business days of receipt of necessary information  
41 to conduct such appeal except, with respect to inpatient substance use  
42 disorder treatment provided pursuant to paragraph (c) of subdivision [3]  
43 THREE of section [four thousand nine] FORTY-NINE hundred three of this  
44 [article] TITLE, expedited appeals shall be determined within twenty-  
45 four hours of receipt of such appeal. Expedited appeals which do not  
46 result in a resolution satisfactory to the appealing party may be  
47 further appealed through the standard appeal process, or through the  
48 external appeal process pursuant to section forty-nine hundred fourteen  
49 of this article as applicable. Provided that the enrollee or the  
50 enrollee's health care provider files an expedited internal and external  
51 appeal within twenty-four hours from receipt of an adverse determination  
52 for inpatient substance use disorder treatment for which coverage was  
53 provided while the initial utilization review determination was pending  
54 pursuant to paragraph (c) of subdivision [3] THREE of section [four  
55 thousand nine] FORTY-NINE hundred three of this [article] TITLE, a  
56 utilization review agent shall not deny on the basis of medical necessi-

ty or lack of prior authorization such substance use disorder treatment while a determination by the utilization review agent or external appeal agent is pending.

S 3. Subsection (b) of section 4903 of the insurance law, as amended by section 12 of part H of chapter 60 of the laws of 2014, is amended to read as follows:

(b) (1) A utilization review agent shall make a utilization review determination involving health care services which require pre-authorization and provide notice of a determination to the insured or insured's designee and the insured's health care provider by telephone and in writing within three business days of receipt of the necessary information. To the extent practicable, such written notification to the enrollee's health care provider shall be transmitted electronically, in a manner and in a form agreed upon by the parties. The notification shall identify: [(1)] (I) whether the services are considered in-network or out-of-network; [(2)] (II) whether the insured will be held harmless for the services and not be responsible for any payment, other than any applicable co-payment, co-insurance or deductible; [(3)] (III) as applicable, the dollar amount the health care plan will pay if the service is out-of-network; and [(4)] (IV) as applicable, information explaining how an insured may determine the anticipated out-of-pocket cost for out-of-network health care services in a geographical area or zip code based upon the difference between what the health care plan will reimburse for out-of-network health care services and the usual and customary cost for out-of-network health care services.

(2) WITH REGARD TO INDIVIDUAL OR GROUP CONTRACTS AUTHORIZED PURSUANT TO ARTICLE THIRTY-TWO, FORTY-THREE OR FORTY-SEVEN OF THIS CHAPTER OR ARTICLE FORTY-FOUR OF THE PUBLIC HEALTH LAW, FOR UTILIZATION AND REVIEW DETERMINATIONS INVOLVING PROPOSED MENTAL HEALTH AND/OR SUBSTANCE USE DISORDER SERVICES WHERE THE INSURED OR THE INSURED'S DESIGNEE HAS, IN A FORMAT PRESCRIBED BY THE SUPERINTENDENT, CERTIFIED IN THE REQUEST THAT THE PROPOSED SERVICES ARE FOR AN INDIVIDUAL WHO WILL BE APPEARING, OR HAS APPEARED, BEFORE A COURT OF COMPETENT JURISDICTION AND MAY BE SUBJECT TO A COURT ORDER REQUIRING SUCH SERVICES, THE UTILIZATION REVIEW AGENT SHALL MAKE A DETERMINATION AND PROVIDE NOTICE OF SUCH DETERMINATION TO THE INSURED OR THE INSURED'S DESIGNEE BY TELEPHONE WITHIN SEVENTY-TWO HOURS OF RECEIPT OF THE REQUEST. WRITTEN NOTICE OF THE DETERMINATION TO THE INSURED OR INSURED'S DESIGNEE SHALL FOLLOW WITHIN THREE BUSINESS DAYS. WHERE FEASIBLE, SUCH TELEPHONIC AND WRITTEN NOTICE SHALL ALSO BE PROVIDED TO THE COURT.

S 4. Subsection (b) of section 4904 of the insurance law, as amended by chapter 41 of the laws of 2014, is amended to read as follows:

(b) A utilization review agent shall establish an expedited appeal process for appeal of an adverse determination involving (1) continued or extended health care services, procedures or treatments or additional services for an insured undergoing a course of continued treatment prescribed by a health care provider or home health care services following discharge from an inpatient hospital admission pursuant to subsection (c) of section four thousand nine hundred three of this [article or] TITLE; (2) an adverse determination in which the health care provider believes an immediate appeal is warranted except any retrospective determination; OR (3) POTENTIAL COURT-ORDERED MENTAL HEALTH AND/OR SUBSTANCE USE DISORDER SERVICES PURSUANT TO PARAGRAPH TWO OF SUBSECTION (B) OF SECTION FOUR THOUSAND NINE HUNDRED THREE OF THIS TITLE. Such process shall include mechanisms which facilitate resolution of the appeal including but not limited to the sharing of information

1 from the insured's health care provider and the utilization review agent  
2 by telephonic means or by facsimile. The utilization review agent shall  
3 provide reasonable access to its clinical peer reviewer within one busi-  
4 ness day of receiving notice of the taking of an expedited appeal. Expe-  
5 dited appeals shall be determined within two business days of receipt of  
6 necessary information to conduct such appeal except, with respect to  
7 inpatient substance use disorder treatment provided pursuant to para-  
8 graph three of subsection (c) of section four thousand nine hundred  
9 three of this [article] TITLE, expedited appeals shall be determined  
10 within twenty-four hours of receipt of such appeal. Expedited appeals  
11 which do not result in a resolution satisfactory to the appealing party  
12 may be further appealed through the standard appeal process, or through  
13 the external appeal process pursuant to section four thousand nine  
14 hundred fourteen of this article as applicable. Provided that the  
15 insured or the insured's health care provider files an expedited inter-  
16 nal and external appeal within twenty-four hours from receipt of an  
17 adverse determination for inpatient substance use disorder treatment for  
18 which coverage was provided while the initial utilization review deter-  
19 mination was pending pursuant to paragraph three of subsection (c) of  
20 section four thousand nine hundred three of this [article] TITLE, a  
21 utilization review agent shall not deny on the basis of medical necessi-  
22 ty or lack of prior authorization such substance use disorder treatment  
23 while a determination by the utilization review agent or external appeal  
24 agent is pending.

25 S 5. This act shall take effect April 1, 2016 and shall apply to poli-  
26 cies issued, renewed, or modified on and after such date.