STATE OF NEW YORK

9865

IN ASSEMBLY

April 19, 2022

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

AN ACT to enact the Health Care Nondiscrimination Act of 2021

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "Health Care Nondiscrimination Act of 2021".

§ 2. Legislative findings. All residents should have freedom to seek the care, treatment and provider of their choosing with respect to their healthcare if treatment of a health condition is within a licensed healthcare provider's scope of practice. Given the historic bias against nonpharmacological-based healthcare in New York, it shall be the policy of the state to redress this imbalance by removing barriers and enhancing access to such services. First, a health insurance plan or health benefit should not discriminate against licensed, nonpharmacological-based healthcare providers regarding fee reimbursement or payment for the provision of similar or like-kind healthcare services. Second, to further reverse this bias and promote the public health, the state should promote licensed, nonpharmacological-based healthcare services to ensure that the public has full and unfettered access to the evidence-based benefits of such services, including the treatment of substance abuse disorders to combat the opioid crisis. Third, all residents should have equal access to nonpharmacological-based healthcare alternatives, whether through self-funded healthcare plans or plans which are fully funded through insurance, or other contracts, when making personal healthcare decisions. Finally, to better ensure compliance and enforcement, the departments of health, financial services and labor should have the ability to impose substantial fines and penalties against insurers, healthcare plans and healthcare organizations that continue to deny patients' freedom of choice regarding their healthcare.

§ 3. Definitions. For the purposes of this act, the following terms shall have the following meanings:

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

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1. "Licensed health care provider or providers" shall mean any person duly licensed under articles 132, 136, 153, 155, 156 or 160 of the education law.

2. "Managed care product" shall mean: (i) a policy which requires that medical or other health care services covered under the policy, other than emergency care services, be provided by, or pursuant to, a referral from a primary care provider and that services provided pursuant to such a referral be rendered by a licensed health care provider participating in the insurer's managed care provider network; (ii) the in-network portion of a contract which requires that medical or other health care services covered under the contract, other than emergency care services, be provided by, or pursuant to, a referral from a primary care provider and that services provided pursuant to such a referral be rendered by a licensed health care provider participating in the insurer's managed care provider network, in order for the insured to be entitled to the maximum reimbursement under the contract; and (iii) other healthcare plans through which each member of an enrolled population is entitled to receive comprehensive in-network and out-of-network health services, in consideration for a basic advance or periodic charge, which may or may not require a referral for such services.

3. "Health services plan provider" shall mean an insurer or any organization or agency that provides health services or benefits under a policy, plan or other contract.

§ 4. Insurance and health plan equality and non-discrimination. 1. Every policy or plan which is a managed care product, as such term is defined in section three of this act, that provides coverage for physician services in a physician's office, every policy or plan which is a managed care product that provides major medical or similar comprehensive-type coverage and every contract issued by a health service corporation or a medical expense indemnity corporation which is a managed care product that includes coverage for physician services in a physician's office, shall include coverage for licensed health care provider services. Licensed health care provider services may be subject to reasonable deductible, co-payment and co-insurance amounts, reasonable fee or benefit limits and reasonable utilization review, provided that any such amounts, limits and review shall not:

(a) function to direct treatment in a manner discriminative against any licensed health care provider;

(b) create underwriting standards that are more restrictive for any licensed health care provider than care provided by other health professionals licensed under title 8 of the education law;

(c) apply cost containment, quality or performance measures to licensed health care providers unequally, as compared with those applied to primary care providers;

(d) impose a co-payment or co-insurance amount on an insured for services provided by any licensed health care provider that is greater than the co-payment or co-insurance amount imposed on an insured for the same or similar services provided by a primary care provider; and

(e) individually and collectively be more restrictive than those applicable under the same policy for care or services provided by other health professionals in the diagnosis, treatment and management of the same or similar conditions, injuries, complaints, disorders or ailments, even if differing nomenclature is used to describe the condition, injury, complaint, disorder or ailment.

2. Every policy or plan which includes coverage for physician services in a physician's office, every policy or plan which provides major

medical or similar comprehensive-type coverage, other than a managed care product as such term is defined in section three of this act, and every contract issued by a health service corporation or medical expense indemnity corporation which includes coverage for physician services in a physician's office other than a managed care product and benefits provided under articles 2 and 3 of the workers' compensation law and article 51 of the insurance law, shall include coverage for licensed health care provider services. Licensed health care provider services may be subject to reasonable deductible, co-payment and co-insurance amounts, reasonable fee or benefit limits, and reasonable utilization review, provided that any such amounts, limits and review shall not:

(a) function to direct treatment in a manner discriminative against any licensed health care provider;

(b) create underwriting standards that are more restrictive for any licensed health care provider than care provided by other health professionals licensed under title 8 of the education law;

(c) apply cost containment, quality or performance measures to licensed health care provider care unequally as compared with those applied to primary care providers;

(d) impose a co-payment or co-insurance amount on an insured for services provided by any licensed health care provider that is greater than the co-payment or co-insurance amount imposed on an insured for the same or similar services provided by a primary care provider; and

(e) individually and collectively be more restrictive than those applicable under the same policy for care or services provided by other health professionals in the diagnosis, treatment and management of the same or similar conditions, injuries, complaints, disorders or ailments, even if differing nomenclature is used to describe the condition, injury, complaint, disorder or ailment.

3. The contract between a health maintenance organization, as such term is defined in article 44 of the public health law and an enrollee, shall be subject to regulation by the superintendent of the department of financial services as if it were a health insurance subscriber contract and shall include, but shall not be limited to, all mandated benefits required by this act.

4. Any person, partnership, corporation, limited liability company or other organization licensed under the laws of the state of New York, which provides or contracts to provide health and accident benefit coverage as a self-insurer for its employees, shareholders, or other persons shall be subject to the provisions of this act.

5. The coverage required by this section shall not be abridged by any regulation promulgated by the superintendent of financial services, the commissioner of health or the chair of the workers' compensation board.

§ 5. Fee parity. 1. A health services plan provider shall not pay a licensed health care provider less for care and services identified under current procedural terminology, as listed in a nationally recognized services and procedures code book, such as the most recent American Medical Association procedural terminology code book, than it pays any other individual licensed under title 8 of the education law, except as provided in subdivisions two and three of this section. A health services plan provider shall not circumvent the requirements of this section by creating a provider-specific code not listed in a nationally recognized code book otherwise used by such health services plan provider for payment, or by creating or using any other provider-specific billing code or policy not listed in a nationally recognized coding system otherwise used by the health services plan provider.

2. This section shall not affect a health service plan's ability to: (a) implement a health care quality improvement program to promote cost effective and clinically efficacious health care services, including but not limited to, pay-for-performance payment methodologies and other programs fairly applied to all individuals licensed under title 8 of the education law, that are designed to promote evidence-based and research-based practices; (b) establish health care network adequacy standards; and (c) pay a licensed health care provider less than another provider licensed under title 8 of the education law for procedures or services under the same code based upon geographic differences in the cost of maintaining a practice.

3. This section shall not expand the scope of practice of any licensed health care provider.

§ 6. Treatment of pain. 1. When a patient seeks treatment for any neuromusculoskeletal condition that causes pain where a health care practitioner considers an opioid treatment, the practitioner shall discuss with the patient and, as appropriate, refer or prescribe non-pharmacological treatment alternatives, before starting a patient on an opioid. For purposes of this section, "non-pharmacological treatment alternatives" shall include chiropractic, acupuncture, massage therapy, physical therapy, psychology, occupational therapy, cognitive behavioral therapy, and non-clinical activities such as exercise. The health care practitioner shall further advise that some treatment options may not be covered by the patient's health insurance plan or coverage.

2. Nothing in this section shall be deemed to require that all non-opioid treatment alternatives set forth in subdivision one of this section must be exhausted prior to the patient receiving an opioid prescription.

3. The requirements of this section shall not apply to patients being treated under any of the following circumstances: cancer; hospice or other end-of-life care; post-surgery treatment immediately following a surgical procedure; or a medical emergency. For purposes of this section, "medical emergency" shall mean an acute injury or illness that poses an immediate risk to a person's life or health.

§ 7. Performing certain services including certifying disability and employment by school districts. 1. To qualify as physically disabled for the purposes of compliance with section 459 of the real property tax law, an individual may also submit to the assessor, as such term is defined in subdivision 3 of section 102 of the real property tax law, a certified statement from any licensed health care provider on a form prescribed and made available by the commissioner of taxation and finance which states that the individual has a physical impairment which substantially limits one or more of such individual's major life activities.

2. The commissioner of motor vehicles may issue license plates to severely disabled persons in accordance with section 404-a of the vehicle and traffic law upon the receipt of proof of an individual's disability or the disability of a family member, as certified by any licensed health care provider.

3. "Health professionals," as such term is defined in section 902 of the education law, with respect to the employment of such individuals by school districts, shall also include any licensed health care provider.

§ 8. Enforcement and penalties. 1. Every health services plan provider shall annually and no later than February first of each year, file a report with the department of health, the department of financial services and the department of labor that demonstrates compliance with

the provisions of this act. The department of health, the department of financial services and the department of labor shall prescribe the manner of filing and the content and format of the report required under this section and shall make such filed reports available to the public on each department's respective website. If a health services plan provider that is required to file a report under this section does not file such report by the time required, the department of health, the department of financial services or the department of labor shall impose a fine against the health services plan provider of not less than one thousand dollars per day for each day such report is overdue.

2. Any person seeking treatment by a licensed health care provider who has suffered loss or injury by reason of any violation of this act by a health services plan provider shall have a private right of action to enjoin such unlawful act or practice and to recover his or her actual damages sustained because of any violation of this act. Actions may be brought by one or more patients or licensed health care providers for and on behalf of themselves, and other persons or licensed health care providers similarly situated. A court of competent jurisdiction may, in its discretion, award punitive damages, if the court finds that the defendant health services plan provider willfully or knowingly violated this act. The court may also award reasonable attorneys' fees to a prevailing plaintiff.

§ 9. This act shall take effect immediately.