

# STATE OF NEW YORK

9908

## IN ASSEMBLY

April 19, 2022

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

AN ACT to amend the public health law, in relation to exemptions from preauthorization requirements in certain circumstances

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

1 Section 1. Section 4902 of the public health law is amended by adding  
2 a new subdivision 5 to read as follows:

3 5. (a) A health care plan that uses a preauthorization process for  
4 health care services shall not require a health care professional to  
5 obtain preauthorization for a particular health care service if, in the  
6 most recent six-month evaluation period, such health care plan has  
7 approved not less than ninety percent of the preauthorization requests  
8 submitted by such healthcare professional for the particular health care  
9 service.

10 (b) A health care plan shall evaluate whether a health care profes-  
11 sional qualifies for an exemption from preauthorization requirements  
12 under paragraph (a) of this subdivision once every six months.

13 (c) A health care plan may continue an exemption under paragraph (a)  
14 of this subdivision without evaluating whether the health care profes-  
15 sional qualifies for the exemption for a particular evaluation period.

16 (d) A health care professional shall not be required to request an  
17 exemption to qualify for such exemption.

18 (e) A health care professional's exemption from preauthorization  
19 requirements under paragraph (a) of this subdivision shall remain in  
20 effect until:

21 (i) the thirtieth day after the health care plan notifies such health  
22 care professional of such health care plan's determination to rescind  
23 such exemption if such health care professional does not appeal such  
24 health care plan's determination; or

25 (ii) if such health care professional appeals such determination, the  
26 fifth day after the independent review organization affirms such health  
27 care plan's determination to rescind such exemption. If a health care  
28 plan does not finalize a rescission determination, then the health care

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

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1 professional shall be considered to have met the criteria to continue to  
2 qualify for the exemption.

3 (f) A health care plan may rescind an exemption from preauthorization  
4 requirements under paragraph (a) of this subdivision only:

5 (i) during January or June of each year;

6 (ii) if such health care plan makes a determination, on the basis of a  
7 retrospective review of a random sample of not fewer than five and no  
8 more than twenty claims submitted by the health care professional during  
9 the most recent evaluation period, that less than ninety percent of such  
10 claims for the particular health care service met the medical necessity  
11 criteria that would have been used by such health care professional when  
12 conducting preauthorization review for such health care service during  
13 the relevant evaluation period; and

14 (iii) if such health care plan complies with other applicable require-  
15 ments specified in this section, including:

16 (1) notifying the health care professional not less than twenty-five  
17 days before the proposed rescission is to take effect; and

18 (2) providing with such notice the sample information used to make the  
19 determination under subparagraph (ii) of this paragraph, and a plain  
20 language explanation of how the health care professional may appeal the  
21 determination.

22 (g) A health care plan may deny an exemption from preauthorization  
23 requirements under paragraph (a) of this subdivision only if:

24 (i) the health care professional does not have such exemption at the  
25 time of the relevant evaluation period; and

26 (ii) such health care plan provides the health care professional with  
27 actual statistics and data for the relevant preauthorization request  
28 evaluation period and detailed information sufficient to demonstrate  
29 that such health care professional does not meet the criteria for an  
30 exemption from preauthorization requirements for the particular health  
31 care service.

32 (h) After a final determination or review affirming the rescission or  
33 denial of an exemption for a specific health care service under para-  
34 graph (a) of this subdivision, a health care professional shall be  
35 eligible for consideration of an exemption for the same health care  
36 service after the six-month evaluation period that follows the evalu-  
37 ation period which formed the basis of the rescission or denial of an  
38 exemption.

39 (i) Not later than five days after qualifying for an exemption from  
40 preauthorization requirements under paragraph (a) of this subdivision, a  
41 health care plan shall provide to the health care professional a notice  
42 that includes:

43 (i) a statement that such health care professional qualifies for an  
44 exemption from preauthorization requirements under paragraph (a) of this  
45 subdivision;

46 (ii) a list of the health care services to which such exemption  
47 applies; and

48 (iii) a statement of the duration of such exemption.

49 (j) If a health care professional submits a preauthorization request  
50 for a health care service under which such health care professional  
51 qualifies for an exemption from preauthorization requirements under  
52 paragraph (a) of this subdivision, such health care plan shall promptly  
53 provide a notice to such health care professional that such health care  
54 professional has qualified for an exemption for preauthorization for  
55 such health care service.

56 (k) Nothing in this subdivision shall be construed to:

1 (i) authorize a health care professional to provide a health care  
2 service outside the scope of such health care professional's applicable  
3 license; or

4 (ii) prohibit a health care plan from performing retrospective review  
5 of a health care service to section forty-nine hundred three of this  
6 title.

7 § 2. This act shall take effect on the one hundred eightieth day after  
8 it shall have become a law.