STATE OF NEW YORK

5400

2021-2022 Regular Sessions

IN SENATE

March 3, 2021

Introduced by Sen. HINCHEY -- 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 providing information to patients and the public on policy-based exclusions

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

Section 1. Legislative findings. The legislature finds that since 2003 more than 40 community hospitals in New York state have closed.

The legislature additionally finds that as a result of hospital consolidation, large health care systems now control more than 70 percent of acute hospital beds in the state and that these systems sometimes remove categories of care from local hospitals, leaving patients in regions of the state without access to particular types of care, including some types of emergency care.

The legislature further finds that patients do not have the ability to determine whether the hospital, or hospitals, in their area provides the care they seek, because information about how hospitals' restrictions impact options for care is too difficult to obtain.

The legislature also finds that denials of care can lead to serious adverse health impacts that jeopardize individuals' lives and wellbeing and that New York needs to understand health care gaps and their impact statewide.

Finally, the legislature finds that some denials of care violate state and federal law.

§ 2. Section 2803 of the public health law is amended by adding a new subdivision 13 to read as follows:

13. (a) The commissioner or his or her designee shall collect from each general hospital a list of its policy-based exclusions on an annual basis.

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

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(b) The commissioner or his or her designee shall publish on the department's website a current list of all of the general hospitals with policy-based exclusions and the policy-based exclusions for each general hospital not later than six months after the effective date of this subdivision. The commissioner or his or her designee shall update this list on an annual basis. The commissioner, in consultation with experts in health care access, patient advocacy, types of health care that are frequently inaccessible, and hospital administration shall promulgate rules and regulations creating standardized language for this list to ensure that it is readily understandable to patients, prospective patients, and members of the public.

(c) Within one year of the effective date of this subdivision and every four years thereafter, the commissioner shall submit a report to the temporary president of the senate and the speaker of the assembly regarding policy-based exclusions in the state and the impact of such policy-based exclusions on patients' ability to access quality, comprehensive, affordable care near their residences and whether and how access to care varies by community, as well as by race, ethnicity, and socioeconomic status, across the state. The report shall be made publicly available on the department's website.

(d) The commissioner or his or her designee shall evaluate and ensure community awareness of policy-based exclusions and the website required pursuant to paragraph (b) of this subdivision.

(e) For the purposes of this subdivision, "policy-based exclusions" shall mean non-clinical criteria, rules, or policies, whether written or unwritten, that restrict medical personnel at that general hospital from providing types of care that the medical personnel are licensed to provide and that the general hospital is licensed to provide or that restrict the provision of care to categories of patients on the basis of any characteristic protected under section two hundred ninety-six of the executive law that the general hospital is licensed to provide. "Policy-based exclusions" shall include, but not be limited to, objections under section twenty-nine hundred ninety-four-n or twenty-nine hundred eighty-four of this chapter and 10 NYCCRR § 405.9(b)(10). "Policy-based exclusions" shall not include restrictions based on lack of equipment, available bed space in the facility, or insurance denial.

(f) The commissioner may promulgate additional rules and regulations as may be necessary and proper to carry out effectively the provisions of this subdivision.

§ 3. Subdivision 1 of section 2803 of the public health law is amended by adding a new paragraph (m) to read as follows:

(m) The statement regarding patient rights and responsibilities, required pursuant to paragraph (g) of this subdivision, shall include a link to the section of the department's website required in paragraph (b) of subdivision twelve of this section. Each general hospital's website shall prominently link to the department's website required in paragraph (b) of subdivision twelve of this section. The commissioner may promulgate rules and regulations as may be necessary and proper to carry out effectively the provisions of this paragraph.

§ 4. Subsection (a) of section 3217-a of the insurance law is amended by adding a new paragraph 22 to read as follows:

(22)(A) an explanation of policy-based exclusions and the fact that some general hospitals may have policy-based exclusions, along with a link to the website required pursuant to subdivision twelve of section twenty-eight hundred three of the public health law.

(B) for the purposes of this paragraph, "policy-based exclusions" shall mean non-clinical criteria, rules, or policies, whether written or unwritten, that restrict medical personnel at that general hospital from providing types of care that the medical personnel are licensed to provide and that the general hospital is licensed to provide or that restrict the provision of care to categories of patients on the basis of any characteristic protected under section two hundred ninety-six of the executive law that the general hospital is licensed to provide. "Policy-based exclusions" shall include, but not be limited to, objections under section twenty-nine hundred ninety-four-n or twenty-nine hundred eighty-four of the public health law and 10 NYCCRR § 405.9(b)(10). "Policy-based exclusions" shall not include restrictions based on lack of equipment, available bed space in the facility, or insurance denial.

§ 5. Subsection (a) of section 4324 of the insurance law is amended by adding a new paragraph 23 to read as follows:

(23)(A) an explanation of policy-based exclusions and the fact that some general hospitals may have policy-based exclusions, along with a link to the website required pursuant to subdivision twelve of section twenty-eight hundred three of the public health law.

(B) for the purposes of this paragraph, "policy-based exclusions" shall mean non-clinical criteria, rules, or policies, whether written or unwritten, that restrict medical personnel at that general hospital from providing types of care that the medical personnel are licensed to provide and that the general hospital is licensed to provide or that restrict the provision of care to categories of patients on the basis of any characteristic protected under section two hundred ninety-six of the executive law that the general hospital is licensed to provide. "Policy-based exclusions" shall include, but not be limited to, objections under section twenty-nine hundred ninety-four-n or twenty-nine hundred eighty-four of the public health law and 10 NYCCRR § 405.9(b)(10). "Policy-based exclusions" shall not include restrictions based on lack of equipment, available bed space in the facility, or insurance denial.

§ 6. Nothing in this act shall be construed to permit or authorize denials of care or discrimination in the provision of health care or health insurance. Compliance with this act does not reduce or limit any liability for general hospitals in connection with policy-based exclusions, including violations of state or federal law.

§ 7. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 8. This act shall take effect six months after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.