STATE OF NEW YORK

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2023-2024 Regular Sessions

IN SENATE

January 24, 2023

Introduced by Sens. BRESLIN, CLEARE, GALLIVAN, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to exempting health care professionals from preauthorization requirements in certain circumstances

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

Section 1. Subsection (a) of section 4902 of the insurance law is amended by adding a new paragraph 14 to read as follows:

(14) Establishment of an exemption from preauthorization requirements for health care professionals providing health care services which shall include that:

(i) an insurer that uses a preauthorization process for health care services shall not require a health care professional to obtain preauthorization for a particular health care service if, in the most recent six-month evaluation period, the insurer has approved not less than ninety percent of the preauthorization requests submitted by such health care professional for the particular health care service;

(ii) the insurer shall evaluate whether a health care professional qualifies for an exemption from preauthorization requirements under subparagraph (i) of this paragraph once every six months;

(iii) the insurer may continue an exemption under subparagraph (i) of this paragraph without evaluating whether the health care professional qualifies for the exemption for a particular evaluation period;

(iv) a health care professional shall not be required to request an exemption to qualify for the exemption;

(v) a health care professional's exemption from preauthorization requirements under subparagraph (i) of this paragraph shall remain in effect until:

(A) the thirtieth day after the date the insurer notifies the health care professional of the insurer's determination to rescind the exemption pursuant to subparagraph (vii) of this paragraph if the health care professional does not appeal such determination; or

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

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(B) where the health care professional appeals the determination and the independent review organization affirms the insurer's determination to rescind the exemption, the fifth day after the affirmation of such determination;

(vi) where an insurer does not finalize a rescission determination as specified in subparagraph (vii) of this paragraph, the health care professional shall be considered to have met the criteria to continue to qualify for the exemption and such exemption shall remain in effect until the following evaluation period;

(vii) an insurer may rescind an exemption from preauthorization requirements under subparagraph (i) of this paragraph only:

(A) during January or June of each year; and

(B) the insurer makes a determination, on the basis of a retrospective review of a random sample of not fewer than five and no more than twenty claims submitted by the health care professional during the most recent evaluation period that less than ninety percent of the claims for the particular health care service met the medical necessity criteria that would have been used by the insurer when conducting preauthorization review for the particular health care service during the relevant evaluation period; and

(C) the insurer complies with all other applicable requirements of this paragraph and the insurer notifies the health care professional not less than twenty days before the proposed rescission is to take effect, together with the sample of claims used to make the determination pursuant to clause (B) of this subparagraph and a plain language explanation of the health care professional's right to appeal such determination and instructions on how to initiate such appeal;

(viii) notwithstanding any contrary provision of subparagraph (i) of this paragraph, an insurer may deny an exemption from preauthorization requirements:

(A) if the health care professional does not have the exemption at the time of the relevant evaluation period; and

(B) the insurer provides the health care professional with actual statistics and data for the relevant preauthorization request evaluation period and detailed information sufficient to demonstrate that the health care professional does not meet the criteria for an exemption pursuant to subparagraph (i) of this paragraph for the particular health care service;

(ix) after a final determination or review affirming the rescission or denial of an exemption for a specific health care service under this paragraph, a health care professional shall be eligible for consideration of an exemption for the same health care service after the evaluation period following the evaluation period which formed the basis of the rescission or denial of an exemption;

(x) the insurer shall, not later than five days after qualifying for an exemption pursuant to subparagraph (i) of this paragraph, provide to a health care professional a notice that shall include:

(A) a statement that the health care professional qualifies for an exemption pursuant to this paragraph;

(B) a description of the health care services to which such exemption applies; and

(C) a statement of the duration that such exemption shall remain in effect; and

(xi) in the event that the health care professional submits a preauthorization request for a health care service for which the health care professional qualifies for an exemption from preauthorization require-

ments under subparagraph (i) of this paragraph, the insurer shall promptly notify such health care professional that such health care professional has qualified for an exemption for such health care service in accordance with the requirements of subparagraph (x) of this paragraph.

(xii) Nothing in this paragraph may be construed to: (A) authorize a health care professional to provide a health care service outside the scope of such health care professional's applicable license; or (B) prohibit a health insurer from performing a retrospective review of the health care service pursuant to section forty-nine hundred three of this title.

§ 2. Subdivision 1 of section 4902 of the public health law is amended by adding a new paragraph (l) to read as follows:

(l) Establishment of an exemption from preauthorization requirements for health care professionals providing certain health care services which shall include that:

(i) a health care plan that uses a preauthorization process for health care services shall not require a health care professional to obtain preauthorization for a particular health care service if, in the most recent six-month evaluation period, the health care plan has approved not less than ninety percent of the preauthorization requests submitted by such health care professional for the particular health care service;

(ii) such health care plan shall evaluate whether a health care professional qualifies for an exemption from preauthorization requirements under subparagraph (i) of this paragraph once every six months;

(iii) the health care plan may continue an exemption under subparagraph (i) of this paragraph without evaluating whether the health care professional qualifies for the exemption for a particular evaluation period;

(iv) a health care professional shall not be required to request an exemption to qualify for the exemption under this paragraph;

(v) a health care professional's exemption from preauthorization requirements under subparagraph (i) of this paragraph shall remain in effect until:

(A) the thirtieth day after the date the health care plan notifies the health care professional of the health care plan's determination to rescind the exemption pursuant to subparagraph (vii) of this paragraph if the health care professional does not appeal such determination; or

(B) where the health care professional appeals the determination and the independent review organization affirms the health care plan's determination to rescind the exemption, the fifth day after the affirmation of such determination;

(vi) where a health care plan does not finalize a rescission determination as specified in subparagraph (vii) of this paragraph, the health care professional shall be considered to have met the criteria to continue to qualify for the exemption and such exemption shall remain in effect until the following evaluation period;

(vii) a health care plan may rescind an exemption from preauthorization requirements under subparagraph (i) of this paragraph only:

(A) during January or June of each year; and

(B) the health care plan makes a determination, on the basis of a retrospective review of a random sample of not fewer than five and no more than twenty claims submitted by the health care professional during the most recent evaluation period that less than ninety percent of the claims for the particular health care service met the medical necessity criteria that would have been used by the health care plan when

conducting preauthorization review for the particular health care service during the relevant evaluation period; and

(C) the health care plan complies with all other applicable requirements of this paragraph and the health care plan notifies the health care professional not less than twenty days before the proposed rescission is to take effect, together with the sample of claims used to make the determination pursuant to clause (B) of this subparagraph and a plain language explanation of the health care professional's right to appeal such determination and instructions on how to initiate such appeal;

(viii) notwithstanding any contrary provision of subparagraph (i) of this paragraph, a health care plan may deny an exemption from preauthorization requirements:

(A) if the health care professional does not have the exemption at the time of the relevant evaluation period; and

(B) the health care plan provides the health care professional with actual statistics and data for the relevant preauthorization request evaluation period and detailed information sufficient to demonstrate that the health care professional does not meet the criteria for an exemption pursuant to subparagraph (i) of this paragraph for the particular health care service;

(ix) after a final determination or review affirming the rescission or denial of an exemption for a specific health care service under this paragraph, a health care professional shall be eligible for consideration of an exemption for the same health care service after the evaluation period following the evaluation period which formed the basis of the rescission or denial of an exemption;

(x) the health care plan shall, not later than five days after qualifying for an exemption pursuant to subparagraph (i) of this paragraph, provide to a health care professional a notice that shall include:

(A) a statement that the health care professional qualifies for an exemption pursuant to this paragraph;

(B) a description of the health care services to which such exemption applies; and

(C) a statement of the duration that such exemption shall remain in effect; and

(xi) in the event that the health care professional submits a preauthorization request for a health care service for which the health care professional qualifies for an exemption from preauthorization requirements under subparagraph (i) of this paragraph, the health care plan shall promptly notify such health care professional that such health care professional has qualified for an exemption for such health care service in accordance with the requirements of subparagraph (x) of this paragraph.

(xii) Nothing in this paragraph shall be construed to: (A) authorize a health care professional to provide a health care service outside the scope of such health care professional's applicable license; or (B) prohibit a health care plan from performing a retrospective review of the health care service pursuant to section forty-nine hundred three of this title.

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