STATE OF NEW YORK

848

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

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

AN ACT to amend the public health law and the insurance law, in relation to requiring providers to share electronic health records with plans

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

Section 1. Subdivision 13 of section 2803 of the public health law, as amended by chapter 19 of the laws of 2022, is renumbered subdivision 14 and a new subdivision 15 is added to read as follows:

15. (a) The commissioner shall require every general hospital subject to this article to timely share electronic medical records to utilization review agents for purposes of article forty-nine of this chapter and article forty-nine of the insurance law. Nothing contained herein shall prohibit a health care plan from entering into an agreement with a health care provider for the sharing and transmission of electronic medical records pursuant to this section.

(b) Records disclosed pursuant to paragraph (a) of this subdivision shall:

(i) be used exclusively for individual claim/care review and adjudication and shall not be used for any auditing function or to detect any historical patterns of billing or abuse;

(ii) include the entire medical record and not exclude data which may limit access to admission, discharge, and treatment information; and

(iii) not be used by health plans to separately request additional information to support a coverage determination if the information is otherwise available in an electronic medical record.

(c) Health plans utilizing electronic medical records under this subdivision shall not seek information that they are not already permitted to receive. Health plans shall prioritize the safeguarding of their insureds' data, including their protected health information and personally identifiable information. To the extent feasible and neces-

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

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sary, health plans shall also seek to be Health Information Trust Alliance (HITRUST) certified, which requires demonstrating and following global standards for data security and privacy compliance.

§ 2. Paragraph (g) of subdivision 1 of section 4902 of the public health law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

(g) Establishment of appropriate policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records, including electronic medical records, are followed;

§ 3. Subdivision 7 of section 4905 of the public health law, as amended by section 6 of subpart C of part AA of chapter 57 of the laws of 2022, is amended to read as follows:

7. When making prospective, concurrent and retrospective determinations, utilization review agents shall collect only such information as is necessary to make such determination and shall not routinely require health care providers to numerically code diagnoses or procedures to be considered for certification or routinely request copies of medical records of all patients reviewed. During prospective or concurrent review, copies of medical records shall only be required when necessary to verify that the health care services subject to such review are medically necessary. In such cases, only the necessary or relevant sections of the medical record shall be required. A utilization review agent may request copies of partial or complete medical records retrospectively. Medical records requested by utilization review agents for purposes of this subdivision shall be made available electronically by health care providers pursuant to subdivision fifteen of section twenty-eight hundred three of this chapter and shall permit utilization review agents direct access to retrieve such records directly.

§ 4. Paragraph 7 of subsection (a) of section 4902 of the insurance law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

(7) Establishment of appropriate policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records, including electronic medical records, are followed;

§ 5. Subsection (g) of section 4905 of the insurance law, as amended by section 5 of subpart C of part AA of chapter 57 of the laws of 2022, is amended to read as follows:

(g) When making prospective, concurrent and retrospective determinations, utilization review agents shall collect only such information as is necessary to make such determination and shall not routinely require health care providers to numerically code diagnoses or procedures to be considered for certification or routinely request copies of medical records of all patients reviewed. During prospective or concurrent review, copies of medical records shall only be required when necessary to verify that the health care services subject to such review are medically necessary. In such cases, only the necessary or relevant sections of the medical record shall be required. A utilization review agent may request copies of partial or complete medical records retrospectively. Medical records requested by utilization review agents for purposes of this subsection shall be made available electronically by health care providers pursuant to subdivision fifteen of section twenty-eight hundred three of the public health law.

§ 6. This act shall take effect immediately.