STATE OF NEW YORK

1003

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. HINCHEY, BRESLIN, HARCKHAM, HOYLMAN, MAY, MYRIE, RIVERA, SALAZAR, SEPULVEDA -- 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 health care facilities in their area provide the care they seek, because information about how facility restrictions impact options for care is too difficult to obtain.

The legislature also finds that denials and poor access to 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. The public health law is amended by adding a new section 2803-bb to read as follows:

§ 2803-bb. Policy-based exclusions.

1. Definitions. As used in this section: (a) "Health care facility" means a general hospital as defined in subdivision ten of section twen-

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

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ty-eight hundred one of this article, public health center, diagnostic treatment center, treatment center, maternity hospital, midwifery birth center, and limited services pregnancy center as defined by section one of chapter two hundred seventeen of the laws of two thousand twenty-two.

(b) "Policy-based exclusions" means any criteria, rules, or policies, whether written or unwritten, formally adopted or drafted, endorsed by the health care facility or followed from an external source, that restrict medical personnel at that health care facility from providing types of care that the medical personnel is licensed to provide and that the health care facility 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 health care facility is licensed to provide. "Policy-based exclusions" shall not include restrictions based on lack of equipment, available bed space in the facility, or insurance denial.

2. (a) The commissioner shall collect from each health care facility a list of its policy-based exclusions on an annual basis.

(b) The commissioner shall publish on the department's website a current list of all of the health care facilities with policy-based exclusions and the policy-based exclusions for each health care facility not later than six months after the effective date of this section. The commissioner 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 section and every five 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, gender, ethnicity, sexual orientation, gender identity or gender expression, and socioeconomic status, across the state. The report shall be made publicly available on the department's website.

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

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

§ 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 two of section twenty-eight hundred three-bb of this article. Each health care facility's website shall prominently link to the department's website required in paragraph (b) of subdivision two of section twenty-eight hundred three-bb of this article. 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 health care facilities may have policy-based exclusions, along with a link to the website required pursuant to subdivision two of section twenty-eight hundred three-bb of the public health law.

(B) for the purposes of this paragraph, "policy-based exclusions" shall have the same meaning as in section twenty-eight hundred three-bb of the public health law.

§ 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 health care facilities may have policy-based exclusions, along with a link to the website required pursuant to subdivision two of section twenty-eight hundred three-bb of the public health law.

(B) for the purposes of this paragraph, "policy-based exclusions" shall have the same meaning as in section twenty-eight hundred three-bb of the public health law.

§ 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 health care facilities in connection with policy-based exclusions, including violations of state or federal law.

§ 7. Severability clause. If any provision of this act, or any application of any provision of this act, is held to be invalid, or ruled to violate or be inconsistent with any applicable federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act. 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 one year 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.