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Introduced by M. of A. McDONALD, WOERNER, STECK, SEAWRIGHT, STIRPE, CUNNINGHAM, RIVERA, KELLES, ALVAREZ, LUPARDO, LEMONDES, BENDETT, SHRESTHA -- Multi-Sponsored by -- M. of A. SIMON -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to requiring insurers and health plans to grant automatic preauthorization approvals to eligible health care professionals in certain circumstances

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

1 Section 1. Subsection (a) of section 4902 of the insurance law is
2 amended by adding a new paragraph 15 to read as follows:

3 (15) Establishment of automatic preauthorization approval requirements
4 for insurers to provide to health care professionals providing health
5 care services which shall include that:

6 (i) an insurer that uses a preauthorization process for health care
7 services shall provide an automatic preauthorization approval to a
8 health care professional for a particular health care service, as
9 defined under this title including but not limited to health care proce-
10 dures, treatments, services, pharmaceutical products, services or dura-
11 ble medical equipment if, in the most recent six-month evaluation peri-
12 od, the insurer has approved not less than ninety percent of the
13 preauthorization requests submitted by such health care professional for
14 the particular health care service. For the purposes of this require-
15 ment, a preauthorization request submitted during the evaluation period
16 shall be considered and counted as a single request and single approval
17 if the request was approved at any point between the date the request
18 was submitted by the health care professional and the final determi-
19 nation by the insurer, including any re-review or appeal process. Each
20 insurer shall complete its initial evaluation and issue its determi-
21 nation to each health care professional in its network no later than one

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

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1 hundred eighty days after the effective date of this paragraph. The
2 automatic preauthorization approval shall become effective two hundred
3 twenty-five days after the effective date of this paragraph;

4 (ii) after the initial evaluation has been completed the insurer shall
5 annually thereafter evaluate whether a health care professional quali-
6 fies for an automatic preauthorization approval under subparagraph (i)
7 of this paragraph for additional health care services. Each year, the
8 evaluation shall review preauthorization determinations made in the
9 first six months of the year. Each insurer shall issue its determination
10 to each health care professional in its network no later than November
11 fifteenth to be effective January first of the following year;

12 (iii) the insurer may continue the automatic preauthorization approval
13 under subparagraph (i) of this paragraph without evaluating whether the
14 health care professional qualifies for automatic preauthorization
15 approval for a particular evaluation period;

16 (iv) a health care professional shall not be required to request an
17 automatic preauthorization approval to qualify for such approval;

18 (v) a health care professional's automatic preauthorization approval
19 under subparagraph (i) of this paragraph shall remain in effect until
20 the thirtieth calendar day after:

21 (A) the date the insurer notifies the health care professional of the
22 insurer's determination to rescind the automatic preauthorization
23 approval pursuant to subparagraph (vii) of this paragraph if the health
24 care professional does not appeal such determination; or

25 (B) where the health care professional appeals the determination, the
26 date the insurer notifies the health care professional that an independ-
27 ent review organization has affirmed the insurer's determination to
28 rescind the automatic preauthorization approval;

29 (vi) where an insurer does not finalize a rescission determination as
30 specified in subparagraph (vii) of this paragraph, the health care
31 professional shall be considered to have met the criteria to continue to
32 qualify for the automatic preauthorization approval, which shall remain
33 in effect until the following evaluation period;

34 (vii) an insurer may rescind an automatic preauthorization approval
35 under subparagraph (i) of this paragraph only:

36 (A) effective January of each year;

37 (B) if the insurer makes a determination on the basis of a retrospec-
38 tive review as specified in subparagraph (ii) of this paragraph for the
39 most recent evaluation period that less than ninety percent of the
40 claims for the particular health care service met the medical necessity
41 criteria that would have been used by the insurer when conducting preau-
42 thorization review for the particular health care service during the
43 relevant evaluation period; and

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

51 (viii) notwithstanding any contrary provision of subparagraph (i) of
52 this paragraph, an insurer may deny an automatic preauthorization
53 approval:

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

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

7 (ix) after a final determination or review affirming the rescission or
8 denial of an automatic preauthorization approval for a specific health
9 care service under this paragraph, a health care professional shall be
10 eligible for consideration of such approval for the same health care
11 service after the evaluation period following the evaluation period
12 which formed the basis of the rescission or denial of such approval;

13 (x) the insurer shall, not later than five business days after deter-
14 mining that a health care professional qualifies for an automatic preau-
15 thorization approval pursuant to subparagraph (i) of this paragraph,
16 provide to a health care professional a notice that shall include:

17 (A) a statement that the health care professional qualifies for an
18 automatic preauthorization approval pursuant to this paragraph;

19 (B) a description of the health care services to which such automatic
20 preauthorization applies; and

21 (C) a statement of the duration that such automatic approval shall
22 remain in effect;

23 (xi) when the health care professional submits a preauthorization
24 request for a health care service for which the health care professional
25 qualifies for an automatic preauthorization approval under subparagraph
26 (i) of this paragraph, the insurer shall promptly issue an automatic
27 preauthorization approval for such health care service;

28 (xii) nothing in this paragraph may be construed to:

29 (A) authorize a health care professional to provide a health care
30 service outside the scope of such health care professional's applicable
31 license; or

32 (B) prohibit a health insurer from performing a retrospective review
33 of the health care service pursuant to section forty-nine hundred three
34 of this title;

35 (xiii) when a health care professional provides a health care service
36 covered by the health care professional's automatic preauthorization
37 approval, the service is deemed medically necessary by virtue of the
38 automatic preauthorization approval. For every claim submitted by a
39 health care professional for such service, each insurer shall promptly
40 pay the full payment to the health care professional. An insurer is
41 prohibited from denying, withholding, or reducing payment to a health
42 care professional for such health care service. An insurer may not
43 retroactively deny, reduce, or recoup payment from a health care profes-
44 sional for such health care service for reasons related to medical
45 necessity or appropriateness of care;

46 (xiv) an insurer may not retroactively deny, reduce, or recoup payment
47 from a health care professional for a health care service for which the
48 health care professional has qualified for an automatic preauthorization
49 approval under subparagraph (i) of this paragraph unless the insurer has
50 proven that the health care professional:

51 (A) knowingly and materially misrepresented the health care service in
52 a request for preauthorization or payment submitted to the insurer with
53 the specific intent to deceive and obtain an unlawful payment from the
54 insurer; or

55 (B) failed to substantially perform the health care service;

1 (xv) an insurer may not retroactively deny, reduce or recoup payment
2 from a health care professional for a health care service for which the
3 health care professional has qualified for an automatic preauthorization
4 approval solely on the basis of the rescission of the health care
5 professional's automatic preauthorization approval. Nothing herein shall
6 limit a health care professional's ability to file a complaint with the
7 department;

8 (xvi) the insurer shall make available and submit to the superinten-
9 dent, at the superintendent's request, documentation that describes the
10 insurer's process for:

11 (A) determining the specific health care service or services for which
12 an individual health care professional is granted an automatic preau-
13 thorization approval; and

14 (B) any other activity, policy, decision, or determination related to
15 automatic preauthorization approvals; and

16 (xvii) the superintendent shall promulgate regulations to implement
17 the requirements of this section and establish additional minimum stand-
18 ards as appropriate.

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

21 (m) Establishment of automatic preauthorization approval requirements
22 for health care plans to provide to health care professionals providing
23 certain health care services which shall include that:

24 (i) a health care plan that uses a preauthorization process for health
25 care services shall provide an automatic preauthorization approval to a
26 health care professional for a particular health care service if, as
27 defined under this title including but not limited to health care proce-
28 dures, treatments, services, pharmaceutical products, services or dura-
29 ble medical equipment, in the most recent six-month evaluation period,
30 the health care plan has approved not less than ninety percent of the
31 preauthorization requests submitted by such health care professional for
32 the particular health care service. For the purposes of this require-
33 ment, a preauthorization request submitted during the evaluation period
34 shall be considered and counted as a single request and single approval
35 if the request was approved at any point between the date the request
36 was submitted by the health care professional and the final determi-
37 nation by the health care plan, including any re-review or appeal proc-
38 ess. Each insurer shall complete its initial evaluation and issue its
39 determination to each health care professional in its network no later
40 than one hundred eighty days after the effective date of this paragraph.
41 The automatic preauthorization approval shall become effective two
42 hundred twenty-five days after the effective date of this paragraph;

43 (ii) after the initial evaluation has been completed the health care
44 plan shall annually thereafter evaluate whether a health care profes-
45 sional qualifies for an automatic preauthorization approval under
46 subparagraph (i) of this paragraph for additional health care services.
47 Each year, the evaluation shall review preauthorization determinations
48 made in the first six months of the year. Each health care plan shall
49 issue its determination to each health care professional in its network
50 no later than November fifteenth to be effective January first of the
51 following year;

52 (iii) the health care plan may continue the automatic preauthorization
53 approval under subparagraph (i) of this paragraph without evaluating
54 whether the health care professional qualifies for the automatic preau-
55 thorization approval for a particular evaluation period;

1 (iv) a health care professional shall not be required to request an
2 automatic preauthorization approval to qualify for such approval;

3 (v) a health care professional's automatic preauthorization approval
4 under subparagraph (i) of this paragraph shall remain in effect until
5 the thirtieth calendar day after:

6 (A) the date the health care plan notifies the health care profes-
7 sional of the health care plan's determination to rescind the automatic
8 preauthorization approval pursuant to subparagraph (vii) of this para-
9 graph if the health care professional does not appeal such determi-
10 nation; or

11 (B) where the health care professional appeals the determination, the
12 date the health care plan notifies the health care professional that an
13 independent review organization has affirmed the health care plan's
14 determination to rescind the automatic preauthorization approval;

15 (vi) where a health care plan does not finalize a rescission determi-
16 nation as specified in subparagraph (vii) of this paragraph, the health
17 care professional shall be considered to have met the criteria to
18 continue to qualify for the automatic preauthorization approval, which
19 shall remain in effect until the following evaluation period;

20 (vii) a health care plan may rescind an exemption from preauthori-
21 zation requirements under subparagraph (i) of this paragraph only:

22 (A) effective January each year;

23 (B) if the health care plan makes a determination on the basis of a
24 retrospective review as specified in subparagraph (ii) of this paragraph
25 for the most recent evaluation period that less than ninety percent of
26 the claims for the particular health care service met the medical neces-
27 sity criteria that would have been used by the health care plan when
28 conducting preauthorization review for the particular health care
29 service during the relevant evaluation period; and

30 (C) the health care plan complies with all other applicable require-
31 ments of this paragraph and the health care plan notifies the health
32 care professional not less than thirty calendar days before the proposed
33 rescission is to take effect, together with the sample of claims used to
34 make the determination pursuant to clause (B) of this subparagraph and a
35 plain language explanation of the health care professional's right to
36 appeal such determination and instructions on how to initiate such
37 appeal;

38 (viii) notwithstanding any contrary provision of subparagraph (i) of
39 this paragraph, a health care plan may deny an automatic preauthori-
40 zation approval:

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

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

49 (ix) after a final determination or review affirming the rescission or
50 denial of an automatic preauthorization approval for a specific health
51 care service under this paragraph, a health care professional shall be
52 eligible for consideration of such approval for the same health care
53 service after the evaluation period following the evaluation period
54 which formed the basis of the rescission or denial of such approval;

55 (x) the health care plan shall, not later than five business days
56 after determining that a health care professional qualifies for an auto-

1 matic preauthorization approval pursuant to subparagraph (i) of this
2 paragraph, provide to a health care professional a notice that shall
3 include:

4 (A) a statement that the health care professional qualifies for an
5 automatic preauthorization approval pursuant to this paragraph;

6 (B) a description of the health care services to which such automatic
7 preauthorization approval applies; and

8 (C) a statement of the duration that such automatic approval shall
9 remain in effect;

10 (xi) when the health care professional submits a preauthorization
11 request for a health care service for which the health care professional
12 qualifies for an automatic preauthorization approval under subparagraph
13 (i) of this paragraph, the health care plan shall promptly issue an
14 automatic preauthorization approval for such health care service;

15 (xii) nothing in this paragraph shall be construed to:

16 (A) authorize a health care professional to provide a health care
17 service outside the scope of such health care professional's applicable
18 license; or

19 (B) prohibit a health care plan from performing a retrospective review
20 of the health care service pursuant to section forty-nine hundred three
21 of this title;

22 (xiii) when a health care professional provides a health care service
23 covered by the health care professional's automatic preauthorization
24 approval, the service is deemed medically necessary by virtue of the
25 automatic preauthorization approval. For every claim submitted by a
26 health care professional for such service, each health care plan shall
27 promptly pay the full payment to the health care professional. A health
28 care plan is prohibited from denying, withholding, or reducing payment
29 to a health care professional for such health care service. A health
30 care plan may not retroactively deny, reduce, or recoup payment from a
31 health care professional for such health care service for reasons
32 related to medical necessity or appropriateness of care;

33 (xiv) a health care plan may not retroactively deny, reduce, or recoup
34 payment from a health care professional for a health care service for
35 which the health care professional has qualified for an automatic preau-
36 thorization approval under subparagraph (i) of this paragraph unless the
37 health care plan has proven that the health care professional:

38 (A) knowingly and materially misrepresented the health care service in
39 a request for preauthorization or payment submitted to the health care
40 plan with the specific intent to deceive and obtain an unlawful payment
41 from the health care plan; or

42 (B) failed to substantially perform the health care service;

43 (xv) a health care plan may not retroactively deny, reduce or recoup
44 payment from a health care professional for a health care service for
45 which the health care professional has qualified for an automatic preau-
46 thorization approval solely on the basis of the rescission of the health
47 care professional's automatic preauthorization approval. Nothing herein
48 shall limit a health care professional's ability to file a complaint
49 with the department;

50 (xvi) the health care plan shall make available and submit to the
51 commissioner, at the commissioner's request, documentation that
52 describes the health care plan's process for:

53 (A) determining the specific health care service or services for which
54 an individual health care professional is granted an automatic preau-
55 thorization approval; and

1 (B) any other activity, policy, decision, or determination related to
2 automatic preauthorization approvals; and
3 (xvii) the commissioner, in consultation with the superintendent,
4 shall promulgate regulations to implement the requirements of this
5 section and establish additional minimum standards as appropriate.

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