§ 4909. Site of service clinical review. 1. For purposes of this section:

(a) "Free-standing ambulatory surgical center" shall mean a diagnostic and treatment center authorized pursuant to article twenty-eight of this chapter and operated independently from a hospital.

(b) "Health care plan" shall mean an insurer, a corporation organized pursuant to article forty-three of the insurance law, a health maintenance organization certified pursuant to article forty-four of this chapter, a municipal cooperative health benefit plan certified pursuant to article forty-seven of the insurance law, and a student health plan established or maintained pursuant to section one thousand one hundred twenty-four of the insurance law, that issues a health insurance policy or contract or that arranges for care and services for members under a contract with the department with a network of health care providers and utilizes site of service clinical review to determine coverage for services delivered by network participating providers.

(c) "Hospital-based outpatient clinic" shall mean a clinic authorized pursuant to article twenty-eight of this chapter and listed on a hospital's operating certificate.

(d) "Site of service clinical review" shall mean clinical criteria applied by a health care plan for the purpose of determining whether non-urgent outpatient medical procedures and surgeries will be covered for a given insured or enrollee when rendered by a network participating provider at a hospital-based outpatient clinic rather than a free-standing ambulatory surgical center.

2. Site of service clinical review shall be deemed utilization review in accordance with and subject to the requirements and protections of this article and article forty-nine of the insurance law, including the right to internal and external appeal of denials related to site of service clinical review.

3. Site of service clinical review shall consider the insured's health and safety, choice of health care provider, and timely access to care and shall not be based solely on cost.

4. A health care plan that utilizes site of service clinical review

that is intended to direct insureds and enrollees to free-standing ambulatory surgical centers shall be able to demonstrate to the department that it has an adequate network of free-standing ambulatory surgical center providers to meet the health needs of insureds and enrollees and to provide an appropriate choice of providers sufficient to render the services covered under the policy or contract. Such network shall be in compliance with network adequacy standards established by the commissioner and article forty-four of this chapter.

5. Except as provided in subdivision seven of this section, starting January first, two thousand twenty-four, a health care plan that utilizes a site of service clinical review shall deliver a notice disclosing and clearly explaining the site of service clinical review to:

(a) policyholders, contract holders, insureds, and enrollees and prospective policyholders, contract holders, insureds, and enrollees at the time of plan and policy or contract selection and at least ninety days prior to the implementation of new site of service clinical review or modification of existing site of service clinical review. Such notice shall include the specific services under the site of service review policy, a statement that site of service clinical review may limit the settings in which services covered under the policy or contract may be provided and render a network participating provider unable to perform a service; shall disclose to insureds or enrollees any quality or cost differential, including differences in out-of-pocket costs, between the hospital-based outpatient clinic and the free-standing ambulatory surgical center when services at a hospital-based outpatient clinic are requested; and shall set forth any rights the insured or enrollee may have to obtain the service at a hospital-based outpatient clinic through a utilization review appeal. Notifications shall also be made at any other time upon the insured's or enrollee's request;

(b) network participating providers at least ninety days prior to implementation. A health care plan shall also inform providers of the process for requesting coverage of a service in a hospital-based outpatient clinic setting, including the right to request a real time clinical peer to peer discussion as part of the authorization process; and

(c) the commissioner, at least forty-five days prior to notifying policyholders, contract holders, insureds and enrollees and prospective policyholders, contract holders, insureds and enrollees and network participating providers in accordance with this subdivision. Such notice to the commissioner shall include (i) draft communications to the foregoing persons for purposes of complying with this subdivision and (ii) an explanation of how the site of service clinical review selected by the health care plan complies with this article and article forty-nine of the insurance law.

6. A health care plan's provider directory shall explain that even though a provider is participating in the network, a site of service clinical review may affect where services will need to be obtained and whether the provider will be available to provide such service, as applicable.

7. A health care plan that has implemented site of service clinical review prior to January first, two thousand twenty-four that is not in compliance with this section shall revise such site of service clinical review to comply with this section and deliver the notices required under subdivision five of this section at the beginning of the open enrollment period for individual health insurance policies and contracts, and for group health insurance policies and contracts, prior to January first, two thousand twenty-four.

8. Starting January first, two thousand twenty-four, at a minimum, a health care plan shall approve a request for authorization for a service covered under the policy or contract and requested to be performed by a network participating provider at a hospital-based outpatient clinic in the following situations:

(a) the procedure cannot be safely performed in a free-standing ambulatory surgical center due to the insured's or enrollee's health condition;

(b) there is no free-standing ambulatory surgical center capacity in the insured's or enrollee's geographic area; or

(c) the provision of health care services at a free-standing ambulatory surgical center would result in undue delay.

9. Starting January first, two thousand twenty-four, site of service clinical review criteria developed by health care plans shall also take into consideration whether:

(a) the insured's or enrollee's treating network participating provider recommends, based on a written clinical justification submitted to the health care plan, that the service be provided at a hospital-based outpatient clinic; or

(b) the insured or enrollee has requested a particular network participating provider who performs the requested service in a hospital-based outpatient clinic because the insured or enrollee is undergoing a continuing course of treatment with the participating provider or because the insured has previously obtained the requested service from the participating provider, and the provider is not credentialed at any free-standing ambulatory surgical center in the service area and is not able to be credentialed within ninety days following the submission of the authorization request to the health care plan.