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AN ACT concerning the transfer and referral of certain patients receiving health care services, designated as the "Patient Protection Act," and supplementing Title 26 of the Revised Statutes.

"Patient Protection Act"; establishes requirements concerning the transfer and referral of certain patients receiving health care services.

PRIME Sponsor _____/_____

CO-Sponsor	District	CO-Sponsor	District

Same as _____ 16/17 Same as A- _____ 18/19

Suggested allocation: ss.1 3 - 26:2H-12.9e et seq.; s.4 – A.P.A.; s.5 – Eff. date to 2019/38

AN ACT concerning the transfer and referral of certain patients receiving health care services, designated as the "Patient Protection Act," and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:

a. Despite existing State and federal laws and regulations to protect consumers from certain surprise out-of-network charges, additional disclosures are needed to ensure transparency when accessing healthcare from out-of-State health care facilities and health care providers.

b. Out-of-network charges continue to pose problems for health care consumers who access health care services in New Jersey but are then transferred or referred to health care facilities or providers located outside the State of New Jersey. Many consumers are surprised to receive bills for hospital procedures or for charges from providers after receiving out-of-State care.

c. Therefore, it is in the public interest to enhance consumer protections by ensuring consumers are empowered to make appropriate health care choices for themselves and their families prior to being transferred or referred to health care facilities or health care providers located outside the State of New Jersey.

2. a. Notwithstanding any provision of law to the contrary, prior to obtaining consent to transfer a patient to a health care facility located outside the State, a health care professional licensed or certified pursuant to Title 45 of the Revised Statutes shall provide the patient, in writing and in a manner that is easily understood, the following information, the provision of which shall be documented in the patient record:

(1) the patient's right to receive medical care at a health care facility of the patient's choosing;

(2) the clinical basis for the patient's proposed transfer to a health care facility located outside the State;

(3) the availability of clinically-appropriate services at health care facilities within the State or a determination no such clinically-appropriate services are available in the State;

(4) the location of the out-of-State facility;

(5) in the case of a:

(a) trauma-related diagnosis, a determination as to why the patient is not being transferred to a Level 1 or Level 2 trauma center in the State;

(b) stroke-related diagnosis, a determination as to why the patient is not being transferred to a designated certified comprehensive or primary stroke center in the State; and

(c) cardiovascular-related diagnosis, a determination as to why the patient is not being transferred to a licensed New Jersey cardiac surgery center; and

(6) if the health care facility is affiliated with the out-of-State facility, the nature of the relationship between the facilities.

b. (1) Prior to transferring the patient to a health care facility outside the State, a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall notify:

(a) the patient's health insurance carrier or self-funded health benefits plan sponsor of the pending transfer and facilitate communication between the patient and the patient's insurance carrier concerning:

(i) the network status of the health care facility located outside the State and whether the specific medical services provided by that health care facility are covered under the patient's health benefits plan; and

(ii) any estimated out-of-pocket costs the patient would incur as the result of being transferred to a health care facility located outside the State; and

(b) the Department of Health, on a quarterly basis and in form and manner to be determined by the department, of each transfer and the clinical necessity or other reason for the transfer.

(2) A health care facility that has been unable to notify a patient's health insurance carrier or self-funded health benefits plan sponsor shall be deemed in compliance with paragraph (1) of this subsection if a health care professional who determines it is necessary to transfer a patient to a health care facility outside the State certifies that the notification required pursuant to subsection a. of this section has been made.

c. Prior to referring a patient to a licensed health care professional not located in the State, a health care professional licensed or certified pursuant to Title 45 of the Revised Statues shall provide the patient, in writing and in a manner that is easily understood, the following information, which shall be documented in the patient record:

(1) the patient's right to receive medical care from a licensed health care professional of the patient's choosing;

(2) the clinical basis for the patient's proposed referral to a health care professional not located in the State, and the location of the out-of-State health care professional's office; and

(3) whether clinically-appropriate services provided by a health care professional licensed or certified pursuant to Title 45 of the Revised States are available in the State;

(4) if the referring health care professional is affiliated with the licensed health care professional not located in the State to whom the patient is to be referred, the nature of the relationship between the professionals.

d. (1) Prior to referring a patient to a health care professional not located in the State, a health care professional licensed or certified pursuant to Title 45 of the Revised Statues shall notify:

(a) the patient's health insurance carrier or self-funded health benefits plan sponsor of the pending referral in a form and manner prescribed by the Department of Banking and Insurance, and facilitate communication between the patient and the insurance carrier concerning:

(i) the network status of the out-of-State health care professional and whether the specific medical services provided by that health care professional are covered under the patient's health benefits plan; and

(ii) any estimated out-of-pocket costs the patient would incur as the result of being referred to the out-of-State health care professional; and

(b) the State licensing board having jurisdiction over the health care professional, on a quarterly basis and in a form and manner to be determined by the licensing board, of each referral and the clinical necessity or other reasons for the referral concerning a referral by the health care professional. The licensing board shall forward the form to the Division of Consumer Affairs in the Department of Law and Public Safety.

e. (1) The Department of Health shall post on its Internet website, at least annually, information on the number of :

(a) patients transferred by each health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) to a health care facility located outside the State, along with the services provided to transferred patients and the clinical basis for such transfers; and

(b) complaints received by the department regarding patient transfers by health care facilities licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) to health care facilities located outside the State.

(2) The Division of Consumer Affairs shall post on its Internet website, at least annually, information on the number of:

(a) patients referrals by health care professionals licensed in the State pursuant to Title 45 of the Revised Statutes to licensed health care professionals not located in the State; and

(b) complaints received by the division regarding patient referrals by health care professionals licensed or certified pursuant to Title 45 of the Revised Statutes to out-of-State health care professionals.

f. In the case of a patient in need of pediatric care, a health care facility or a health care professional providing such services shall be exempt from the requirements of this act.

g. As used in this section, "health benefits plan" means a benefits plan which pays or provides hospital and medical expense benefits and other health care services for covered services, and is delivered or issued for delivery in this State by or through a carrier, or an employer or third party administrator that pays hospital and

medical benefits. For the purposes of this act, "health benefits plan" shall not include the following plans, policies or contracts: Medicaid, Medicare, Medicare Advantage, accident only, credit, disability, long-term care, TRICARE supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), a dental plan as defined pursuant to section 1 of P.L.2014, c.70 (C.26:2S-26), and hospital confinement indemnity coverage.

3. If any provision of this act or any particular application thereof is found to be unconstitutional or invalid, the provision or application shall be deemed severable, and the unconstitutionality or invalidity of such provision or application shall not affect other provisions or applications thereof.

4. The Department of Health, pursuant to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations necessary for the implementation of this act.

5. This act shall take effect immediately.

STATEMENT

This bill, designated as the "Patient Protection Act," requires health care professionals, prior to obtaining consent to transfer a patient to a health care facility located outside the State, to provide the patient, in writing and in a manner that is easily understood, the following information, which is to be documented in the patient record: the patient's right to receive medical care at a health care facility of the patient's choosing; the clinical basis for the patient's proposed transfer to a health care facility located outside the State; the availability of clinically-appropriate services at health care facilities within the State or a determination that no such clinically-appropriate services are available in the State; in the case of a trauma-related, stroke-related, or cardiovascular-related diagnosis, a determination as to why the patient is not being transferred to a Level 1 or Level 2 trauma center, designated certified comprehensive or primary stroke center, or a licensed State cardiac surgery center in the State, as appropriate; and if the health care facility is affiliated with the out-of-State facility, the nature of the relationship between the facilities.

In addition, the health care professional would be required to notify: the patient's health insurance carrier of the pending transfer, and facilitate communication between the patient and the patient's carrier concerning: the network status of the health care facility located outside the State and whether the specific medical services provided by that health care facility are covered under the patient's

health benefits plan; and any estimated out-of-pocket costs the patient would incur as the result of being transferred to a health care facility located outside the State; and the Department of Health (DOH), on a quarterly basis and in form and manner to be determined by the department, of each transfer and the clinical necessity or other reason for the transfer.

The bill also requires that, prior to referring a patient to an out-of-State health care professional, a health care professional licensed or certified in the State pursuant to Title 45 of the Revised Statues would be required to provide the patient, in writing and in a manner that is easily understood, the following information, which would be documented in the patient record: the patient's right to receive medical care from a health care professional of the patient's choosing; the clinical basis for the patient's proposed referral to an out-of-State health care professional; the location of the out-of-State health care professional's office; whether clinically-appropriate services from an in-State health care professional are available; and, if the referring health care professional is affiliated with the out-of-State health care professional to whom the patient is to be referred, the nature of the relationship between the two professionals.

In addition, the health care professional seeking to make the referral would be required to notify: the patient's health insurance carrier of the pending transfer in a form and manner prescribed by Department of Banking and Insurance, and facilitate communication between the patient and the health benefits plan concerning: the network status of the out-of-State health care professional and whether the specific medical services provided by that health care professional are covered under the patient's health benefits plan; any estimated out-of-pocket costs the patient would incur as the result of being referred to an out-of-State health care professional; and the State licensing board having jurisdiction over the professional seeking to make the referral, on a quarterly basis and in form and manner to be determined by the licensing board, of each referral and the clinical necessity or other reasons for the referral. The licensing board would then forward the form to the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety.

Under the bill, a health care professional that transfers a patient to an out-of-State health care facility without an opportunity to notify the patient's health insurance carrier would be required to certify that the referring health care facility is in compliance with the bill's notification provisions. The certification would be included in the patient record and made available to DOH or DCA, as applicable, for inspection upon request.

The bill mandates DOH and DCA, as applicable, to post on their respective Internet websites information, at least annually, on the number of: patients transferred by each health care facility to an out-of-State health care facility and the services provided to those

patients; the number of patients referred by in-State health care professionals to out-of-State health care professionals by specialty and the clinical basis for patient transfers and referrals; and the number of complaints received by DOH or DCA regarding patient transfers to out-of-State health care facilities and professionals.

The bill also stipulates that, in the case of a patient in need of pediatric care, a health care facility or a health care professional providing such services would be exempt from the requirements of the bill.

As defined in the bill, "health benefits plan" means a benefits plan which pays or provides hospital and medical expense benefits and other health care services for covered services, and is delivered or issued for delivery in this State by or through a carrier, or an employer or third party administrator that pays hospital and medical benefits but would not include, Medicare, Medicare Advantage, accident only, credit, disability, long-term care, TRICARE supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), a dental plan as defined pursuant to section 1 of P.L.2014, c.70 (C.26:2S-26), and hospital confinement indemnity coverage.

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