

(House Substitute for
S. B. 217)
(Conference)

(No. 5-2014)

(Approved January 3, 2014)

AN ACT

To amend Section 2.020, add a new subsection I, and renumber current subsections I through CC as subsections J through DD of Section 2.030, and add a new Section 2.090 to Act No. 194-2011, as amended, known as the “Puerto Rico Health Insurance Code”; set forth the public policy of the Commonwealth of Puerto Rico on the interpretation of the provisions of the Health Insurance Code, or when a conflict arises between the provisions of the Health Insurance Code and any other legislation, provide that the interpretation that is most favorable for the patient shall prevail; prohibit any insurer, health services organization, or other authorized health insurance provider in Puerto Rico from denying the appropriate authorization for inpatient hospital care, including the length of said hospital stay, and the payment of billed services for a patient’s treatment, medication, and appropriate healthcare services when a medical recommendation is issued for such purposes based on medical necessity, in cases where these services are covered under an enrollee’s health insurance plan, the services are rendered while the policy is in effect, and the service is among the categories of covered benefits of said policy; establish the definition of the term medical necessity within the Health Insurance Code; add Section 18 to Article VI of Act No. 72-1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” in order to prohibit any health insurance company, insurer, health services organization, or other authorized health insurance provider in Puerto Rico, by itself or through its agents, employees, or contractors, from entering into contracts with the Administration for the management or implementation of the Government Health Plan, from denying the appropriate authorization for inpatient hospital care, including the length of said hospital stay, and the payment of billed services for a patient’s treatment, medication, and appropriate healthcare services when a medical recommendation is issued for such purposes based on medical necessity, in cases where these services are covered by the enrollee’s health insurance plan,

the services are rendered while the policy is in effect, and the service is among the categories of covered benefits of said policy; moreover, no referral to a specialist or a subspecialist shall be denied to an enrollee of or a patient covered by the Government Health Plan when said referral is based on medical necessity; add new subsections (o) and (p) to Section 7 of Act No. 77-2013, better known as the “Commonwealth of Puerto Rico Patient Advocate Act,” in order to establish the jurisdiction and responsibility of the Office of the Healthcare Advocate[sic] to resolve complaints about noncompliance with this Act and to fix penalties; and to provide for the rulemaking authority and effectiveness.

STATEMENT OF MOTIVES

It is an unavoidable duty of the State to continually ensure the quality of healthcare services offered to citizens and eliminate every obstacle they face in seeking to achieve optimal health. In the field of health services, the physician-patient relationship is critical in easing health conditions and preventing diseases, and the physician is the health service professional authorized to determine which medical treatment a patient requires when in need.

Within the framework of health services, insurers use recognized clinical practice guidelines in order to establish utilization review processes. These guidelines are nationally recognized and include recommendations intended to optimize patient care based on standardized medical practices.

One of the main problems currently faced by Puerto Rican patients is that there are daily conflicts between physicians, healthcare facilities, healthcare providers, and insurers when a patient needs medical treatment and said treatment is provided, but then the claims are denied because of issues regarding the length of the hospital stay or the treatment provided as a result of discrepancies with the guidelines of insurers on clinical judgement. Every day, the media reports the complaints of physicians, hospitals, and patients regarding the multiple restrictions and obstacles they believe health insurance companies impose on them, which

renders it burdensome for patients to follow their physician's recommendations. Furthermore, on many occasions, after the healthcare services have been provided and the patient has left the hospital, controversies arise regarding the services rendered based on the clinical practice guidelines used by insurers to establish the utilization review processes of the patients' health insurance plan.

Therefore, this Legislative Assembly deems it necessary to approve this measure in order to establish various important parameters: it is hereby set forth as the public policy of the Commonwealth of Puerto Rico that health is a matter of ethics, social justice, and human rights above the desire to make profit. Moreover, citizens are guaranteed that the criterion of medical necessity may only be applied by physicians without any undue interventions from an insurer or a health insurance provider, particularly pertaining to medical recommendations related to the need for admission to a hospital as well as the payment of billed services for a patient's treatment, medication, and appropriate healthcare services in accordance with this Act. In addition, Section 18 is hereby added to Article VI of Act No. 72-1993, as amended, known as the "Puerto Rico Health Insurance Administration Act," in order to establish similar prohibitions applicable to the Puerto Rico Government Health Plan. Lastly, we deem necessary to grant the Office of the Healthcare Advocate[sic] jurisdiction to intervene and address complaints regarding these issues without any impairment to the powers conferred to the Office of the Insurance Commissioner of the Commonwealth of Puerto Rico to investigate and address complaints.

We believe that this Act strikes a balance between the realities of insurers and of healthcare providers in Puerto Rico. It is true that clinical practice guidelines are a tool used by insurers as a quality control mechanism to ensure that payments issued to healthcare providers in Puerto Rico are based on quality services provided to patients; however, it is also important to establish that such guidelines are mere support tools for making informed decisions based on medical necessity. Medical

necessity is the utmost criterion used by physicians when making a decision about the treatment to be provided to a patient. These guidelines should never be used as the main reason to deny any type of treatment or payment for services rendered. The criterion of medical necessity should always be applied by the physician and every treatment should be evaluated on a case-by-case basis. Furthermore, no insurer shall deny the payment of services rendered to a patient when there is a medical necessity and said determination is supported by clinical evidence, and is duly documented by the physician who treated the patient, regardless of the guidelines used by insurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 2.020 of Act No. 194-2011, as amended, known as the “Puerto Rico Health Insurance Code,” is hereby amended to read as follows:

“Section 2.020.- Declaration of Public Policy.-

It is hereby adopted as the public policy of the Government of the Commonwealth of Puerto Rico to guarantee the most effective and efficient regulation of the health insurance industry, including the regulation of those entities offering group and individual health insurance plans. As part of this public policy, it is vital to adhere by the rules set forth under the Federal Health Reform and implemented through the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act. Likewise, at the state level, it is necessary to standardize to the extent possible, all the legal rules applicable to such an important industry, which has experienced an unprecedented growth in the past years, and compile them into one new body of law to be known as the Puerto Rico Health Insurance Code.

The main purpose of the public policy herein adopted is to provide all Puerto Ricans with access to more and better healthcare services and to promote the maximum growth and development in this industry.

Moreover, it is hereby recognized as the public policy of the Commonwealth of Puerto Rico that health is a matter of ethics, social justice, and human rights above the desire to make profit. Therefore, if the provisions of this Act need to be interpreted or if a conflict arises between the provisions of this Health Insurance Code and any other legislation, the interpretation that is most favorable for the patient shall prevail.”

Section 2.- A new subsection I is hereby added and current subsections I through CC are hereby renumbered as J through DD of Section 2.030 of Act No. 194-2011, as amended, known as the “Puerto Rico Health Insurance Code,” to read as follows:

“Section 2.030.- Definitions.-

For purposes of this Code, except in those Chapters in which a more specific definition is provided, the following terms shall have the meaning stated below:

A. ...

I. “Medical necessity”- means healthcare services or procedures that a licensed physician, exercising prudent clinical judgment, considers medically necessary, and would provide to a patient for the purpose of preventing, diagnosing, or treating an illness, injury, disease, infirmity, or symptom in such a manner that:

1. Is consistent with generally accepted standards of medical practice, in light of modern communication and teaching mediums.

2. Is clinically appropriate, in terms of type, frequency, extent, site, and duration of the healthcare services or procedures.

3. The determination of ‘medical necessity’ is not issued merely for the convenience of the patient or the physician, or for the financial benefit of the insurer, health services organization, or other health insurance or healthcare provider whether for itself or other healthcare provider.

4. It is relevant to the practice and/or specialty of the licensed physician who made a determination of medical necessity; and

5. Such determination of ‘medical necessity’ is based on supporting clinical evidence duly documented by the patient’s attending physician.

J. ...

DD. ...”

Section 3.- A new Section 2.090 is hereby added to Act No. 194-2011, as amended, known as the “Puerto Rico Health Insurance Code,” to read as follows:

“Section 2.090.- Inpatient Hospital Care and Medical Billing Denial.-

It is hereby established that no health insurance company, health services organization, or other authorized health insurance provider in Puerto Rico, by itself or through its agents, employees, or contractors, shall deny the appropriate authorization for inpatient hospital care, including the length of said hospital stay, and the payment of billed services for a patient’s treatment, medication, and appropriate healthcare services when a medical recommendation is issued for such purposes, based on medical necessity as defined in this Code, in cases where these services are covered by the insurer’s health insurance plan, the services are rendered while the policy is in effect, and the service is among the categories of covered benefits of said policy.”

Section 4.- A new Section 18 is hereby added to Article VI of Act No. 72-1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” to read as follows:

“ARTICLE VI.- HEALTH INSURANCE PLAN

Section 1.- ...

Section 18.- Inpatient Hospital Care and Medical Billing Denial.-

It is hereby established that no health insurance company, insurer, health services organization, or other authorized health insurance provider in Puerto Rico,

by itself or through its agents, employees, or contractors, who execute contracts with the Administration to manage or implement the Government Health Plan under this Act, shall deny the appropriate authorization for inpatient hospital care, including the length of said hospital stay, and the payment of billed services for a patient's treatment, medication, and appropriate healthcare services when a medical recommendation is issued for such purposes, based on medical necessity as defined in this Code, in cases where these services are covered by the insurer's health insurance plan, the services are rendered while the policy is in effect, and the service is among the categories of covered benefits of said policy. In the case of healthcare professionals, it is hereby established that no primary care physician referral to specialists or subspecialists shall be denied to a patient covered by the Government Health Plan when deemed medically necessary. For the purposes of this Section, the term 'medical necessity' shall mean healthcare services or procedures that a licensed physician, exercising prudent clinical judgment, considers medically necessary, and would provide to a patient for the purpose of preventing, diagnosing, or treating an illness, injury, disease, infirmity, or symptom in such a manner that:

1. Is consistent with generally accepted standards of medical practice, in light of modern communication and teaching mediums;
2. Is clinically appropriate, in terms of type, frequency, extent, site, and duration of the healthcare services or procedures;
3. The determination of "medical necessity" is not issued merely for the convenience of the patient or the physician, or for the financial benefit of the insurer, health services organization, or other health insurance or health care provider, whether for itself or other healthcare provider;
4. It is relevant to the practice and/or specialty of the licensed physician who made the determination of medical necessity; and

5. Such determination of ‘medical necessity’ is based on supporting clinical evidence duly documented by the patient’s attending physician.”

Section 5.- New subsections (o) and (p) are hereby added to Section 7 of Act No. 77-2013, to read as follows:

“Section 7.- Responsibilities of the Advocate.-

The Advocate shall be responsible for the organization and operation of the Office, for which the following powers and duties are conferred thereto:

(a) ...

...

(o) To have jurisdiction to address complaints relating to denial of inpatient hospital care, including the length of said hospital stay, and the payment of billed services for a patient’s treatment, medication, and appropriate healthcare services by any health insurance company, health services organization, or other authorized health insurance provider in Puerto Rico, by itself or through any of its agents, employees, or contractors; when a medical recommendation is issued for such purposes, based on medical necessity as defined in Act No. 194-2011, as amended, known as the ‘Puerto Rico Health Insurance Code,’ in cases where these services are covered by the insurer’s health insurance plan, the services are rendered while the policy is in effect, and the service is among the categories of covered benefits of said policy.

(p) The Advocate shall be responsible for collaborating and advising the Department of Health, the Health Insurance Administration, the Insurance Commissioner, the Medical Services Administration, and any other entities and instrumentalities of the Government of the Commonwealth of Puerto Rico as to any changes in the healthcare system.”

Section 6.- The Insurance Commissioner, in conjunction and consultation with the Puerto Rico Health Insurance Administration, the Patient Advocate, and the Secretary of the Department of Health, shall adopt regulations as are necessary to comply with the provisions of this Act within a period not to exceed ninety (90) days from the approval thereof.

Section 7.- Severability Clause.-

If any clause, paragraph, article, section, or part of this Act were held to be unconstitutional by a competent court, said holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the clause, paragraph, article, section, or part thereof thus held to be unconstitutional.

Section 8.- This Act shall take effect immediately after its approval.