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2009-2010 Regular Sessions

I N   S E N A T E

April 6, 2009
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Introduced by Sens. DUANE, ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to pharmacy benefit managers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1   Section 1. The public health law is amended by adding a new section
2 279 to read as follows:
3   S 279. PHARMACY BENEFIT MANAGERS. 1. DEFINITIONS. AS USED IN THIS
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5   (A) "HEALTH PLAN OR PROVIDER" MEANS AN ENTITY FOR WHICH A PHARMACY
6 BENEFIT MANAGER PROVIDES PHARMACY BENEFIT MANAGEMENT INCLUDING, BUT NOT
7 LIMITED TO: (I) A HEALTH BENEFIT PLAN OR OTHER ENTITY THAT APPROVES,
8 PROVIDES, ARRANGES FOR, OR PAYS FOR HEALTH CARE ITEMS OR SERVICES, UNDER
9 WHICH PRESCRIPTION DRUGS FOR BENEFICIARIES OF THE ENTITY ARE PURCHASED
10 OR WHICH PROVIDES OR ARRANGES REIMBURSEMENT IN WHOLE OR IN PART FOR THE
11 PURCHASE OF PRESCRIPTION DRUGS; OR (II) A HEALTH CARE PROVIDER OR
12 PROFESSIONAL, INCLUDING A STATE OR LOCAL GOVERNMENT ENTITY, THAT
13 ACQUIRES PRESCRIPTION DRUGS TO USE OR DISPENSE IN PROVIDING HEALTH CARE
14 TO PATIENTS.
15   (B) "PHARMACY BENEFIT MANAGEMENT" MEANS THE SERVICE PROVIDED TO A
16 HEALTH PLAN OR PROVIDER, DIRECTLY OR THROUGH ANOTHER ENTITY, INCLUDING
17 THE PROCUREMENT OF PRESCRIPTION DRUGS TO BE DISPENSED TO PATIENTS, OR
18 THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS, INCLUD-
19 ING BUT NOT LIMITED TO, ANY OF THE FOLLOWING:
20   (I) MAIL SERVICE PHARMACY;
21   (II) CLAIMS PROCESSING, RETAIL NETWORK MANAGEMENT, OR PAYMENT OF
22 CLAIMS TO PHARMACIES FOR DISPENSING PRESCRIPTION DRUGS;
23   (III) CLINICAL OR OTHER FORMULARY OR PREFERRED DRUG LIST DEVELOPMENT
24 OR MANAGEMENT;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.
LBD00359-04-9

1   (IV) NEGOTIATION OR ADMINISTRATION OF REBATES, DISCOUNTS, PAYMENT
2 DIFFERENTIALS, OR OTHER INCENTIVES, FOR THE INCLUSION OF PARTICULAR
3 PRESCRIPTION DRUGS IN A PARTICULAR CATEGORY OR TO PROMOTE THE PURCHASE
4 OF PARTICULAR PRESCRIPTION DRUGS;
5   (V) PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION, OR GENERIC SUBSTI-
6 TUTION PROGRAMS; AND
7   (VI) DISEASE MANAGEMENT.
8   (C) "PHARMACY BENEFIT MANAGER" MEANS ANY ENTITY THAT PERFORMS PHARMACY
9 BENEFIT MANAGEMENT FOR A HEALTH PLAN OR PROVIDER.
10   2. APPLICATION OF SECTION. THIS SECTION APPLIES TO THE PROVIDING OF
11 PHARMACY BENEFIT MANAGEMENT BY A PHARMACY BENEFIT MANAGER TO A PARTIC-
12 ULAR HEALTH PLAN OR PROVIDER.
13   3. DUTY, ACCOUNTABILITY AND TRANSPARENCY. (A) THE PHARMACY BENEFIT
14 MANAGER SHALL HAVE A FIDUCIARY RELATIONSHIP WITH AND OBLIGATION TO THE
15 HEALTH PLAN OR PROVIDER, AND SHALL PERFORM PHARMACY BENEFIT MANAGEMENT
16 WITH CARE, SKILL, PRUDENCE, DILIGENCE, AND PROFESSIONALISM.
17   (B) ALL FUNDS RECEIVED BY THE PHARMACY BENEFIT MANAGER IN RELATION TO
18 PROVIDING PHARMACY BENEFIT MANAGEMENT SHALL BE RECEIVED BY THE PHARMACY
19 BENEFIT MANAGER IN TRUST FOR THE HEALTH PLAN OR PROVIDER AND SHALL BE
20 USED OR DISTRIBUTED ONLY PURSUANT TO THE PHARMACY BENEFIT MANAGER'S
21 CONTRACT WITH THE HEALTH PLAN OR PROVIDER OR APPLICABLE LAW; EXCEPT FOR
22 ANY FEE OR PAYMENT EXPRESSLY PROVIDED FOR IN THE CONTRACT BETWEEN THE
23 PHARMACY BENEFIT MANAGER AND THE HEALTH PLAN OR PROVIDER TO COMPENSATE
24 THE PHARMACY BENEFIT MANAGER FOR ITS SERVICES.
25   (C) THE PHARMACY BENEFIT MANAGER SHALL PERIODICALLY ACCOUNT TO THE
26 HEALTH PLAN OR PROVIDER FOR ALL FUNDS RECEIVED BY THE PHARMACY BENEFIT
27 MANAGER. THE HEALTH PLAN OR PROVIDER SHALL HAVE ACCESS TO ALL FINANCIAL
28 AND UTILIZATION INFORMATION OF THE PHARMACY BENEFIT MANAGER IN RELATION
29 TO PHARMACY BENEFIT MANAGEMENT PROVIDED TO THE HEALTH PLAN OR PROVIDER.
30   (D) THE PHARMACY BENEFIT MANAGER SHALL DISCLOSE IN WRITING TO THE
31 HEALTH PLAN OR PROVIDER THE TERMS AND CONDITIONS OF ANY CONTRACT OR
32 ARRANGEMENT BETWEEN THE PHARMACY BENEFIT MANAGER AND ANY PARTY RELATING
33 TO PHARMACY BENEFIT MANAGEMENT PROVIDED TO THE HEALTH PLAN OR PROVIDER.
34   (E) THE PHARMACY BENEFIT MANAGER SHALL DISCLOSE IN WRITING TO THE
35 HEALTH PLAN OR PROVIDER ANY ACTIVITY, POLICY, PRACTICE, CONTRACT OR
36 ARRANGEMENT OF THE PHARMACY BENEFIT MANAGER THAT DIRECTLY OR INDIRECTLY
37 PRESENTS ANY CONFLICT OF INTEREST WITH THE PHARMACY BENEFIT MANAGER'S
38 RELATIONSHIP WITH OR OBLIGATION TO THE HEALTH PLAN OR PROVIDER.
39   (F) ANY INFORMATION REQUIRED TO BE DISCLOSED BY A PHARMACY BENEFIT
40 MANAGER TO A HEALTH PLAN OR PROVIDER UNDER THIS SECTION THAT IS REASON-
41 ABLY DESIGNATED BY THE PHARMACY BENEFIT MANAGER AS PROPRIETARY OR TRADE
42 SECRET INFORMATION SHALL BE KEPT CONFIDENTIAL BY THE HEALTH PLAN OR
43 PROVIDER, EXCEPT AS REQUIRED OR PERMITTED BY LAW, INCLUDING DISCLOSURE
44 NECESSARY TO PROSECUTE OR DEFEND ANY LEGITIMATE LEGAL CLAIM OR CAUSE OF
45 ACTION.
46   4. PRESCRIPTIONS. A PHARMACY BENEFIT MANAGER MAY NOT SUBSTITUTE OR
47 CAUSE THE SUBSTITUTING OF ONE PRESCRIPTION DRUG FOR ANOTHER IN DISPENS-
48 ING A PRESCRIPTION, OR ALTER OR CAUSE THE ALTERING OF THE TERMS OF A
49 PRESCRIPTION, EXCEPT WITH THE APPROVAL OF THE PRESCRIBER OR AS EXPLICIT-
50 LY REQUIRED OR PERMITTED BY LAW.
51   S 2. Severability. If any provision of this act, or any application
52 of any provision of this act, is held to be invalid, or ruled by any
53 federal agency to violate or be inconsistent with any applicable federal
54 law or regulation, that shall not affect the validity or effectiveness
55 of any other provision of this act, or of any other application of any
56 provision of this act.

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1   S 3. This act shall take effect on the ninetieth day after it shall
2 become a law and shall apply to any contract for providing pharmacy
3 benefit management made or renewed on or after that date; and, provided,
4 that the amendment to article 2-A of the public health law made by
5 section one of this act shall survive the repeal of such article as
6 provided in section 79 of part C of chapter 58 of the laws of 2005, as
7 amended.