

5502--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 22, 2011

Introduced by M. of A. HEASTIE, COLTON, ROSENTHAL, M. MILLER, CYMBROW-ITZ, MOYA, O'DONNELL, THIELE, GALEF, CASTRO, DenDEKKER, BENEDETTO, GUNTHER, SCHROEDER, MAISEL, SPANO, SCHIMEL, V. LOPEZ, WEISENBERG, LAVINE, WEPRIN, PHEFFER, ENGLEBRIGHT, SWEENEY, PAULIN, DINOWITZ, MENG, RODRIGUEZ, HOYT, GABRYSZAK -- Multi-Sponsored by -- M. of A. ABBATE, ABINANTI, BURLING, CASTELLI, CERETTO, CORWIN, CRESPO, CROUCH, DUPREY, GIGLIO, GRAF, HAYES, JACOBS, KATZ, LATIMER, P. LOPEZ, LOSQUADRO, MALLIOTAKIS, J. MILLER, MONTESANO, MURRAY, RA, RAIA, P. RIVERA, ROBERTS, SALADINO, SAYWARD, SMARDZ -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to the purchase of prescription drugs

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

1 Section 1. Subsection (i) of section 3216 of the insurance law is
2 amended by adding a new paragraph 28 to read as follows:
3 (28) ANY POLICY WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL
4 PERMIT EACH PARTICIPANT TO FILL ANY MAIL ORDER COVERED PRESCRIPTION, AT
5 HIS OR HER OPTION, AT ANY MAIL ORDER PHARMACY OR NETWORK PARTICIPATING
6 NON-MAIL ORDER RETAIL PHARMACY IF THE NETWORK PARTICIPATING NON-MAIL
7 ORDER RETAIL PHARMACY OFFERS TO ACCEPT A PRICE THAT IS COMPARABLE TO
8 THAT OF THE MAIL ORDER PHARMACY. ANY POLICY WHICH PROVIDES COVERAGE FOR
9 PRESCRIPTION DRUGS SHALL NOT IMPOSE A CO-PAYMENT FEE OR OTHER CONDITION
10 ON ANY INSURED WHO ELECTS TO PURCHASE DRUGS FROM A NETWORK PARTICIPATING
11 NON-MAIL ORDER RETAIL PHARMACY WHICH IS NOT ALSO IMPOSED ON INSUREDS
12 ELECTING TO PURCHASE DRUGS FROM A DESIGNATED MAIL ORDER PHARMACY;
13 PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SECTION SHALL NOT SUPER-
14 SEDE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A POLICY
15 THAT IS THE RESULT OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN AN
16 EMPLOYER AND A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION. NOTHING IN

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

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1 THIS PARAGRAPH SHALL ALTER ANY PROVISIONS OF SECTIONS THIRTEEN AND THIR-
2 TEEN-O OF THE WORKERS' COMPENSATION LAW REGARDING THE PURCHASE OF
3 PRESCRIPTION DRUGS AND THE USE OF MAIL ORDER PHARMACY.

4 S 2. Subsection (1) of section 3221 of the insurance law is amended by
5 adding a new paragraph 18 to read as follows:

6 (18) ANY INSURER DELIVERING A GROUP OR BLANKET POLICY OR ISSUING A
7 GROUP OR BLANKET POLICY FOR DELIVERY IN THIS STATE WHICH PROVIDES COVER-
8 AGE FOR PRESCRIPTION DRUGS SHALL PERMIT EACH PARTICIPANT TO FILL ANY
9 MAIL ORDER COVERED PRESCRIPTION, AT HIS OR HER OPTION, AT ANY MAIL ORDER
10 PHARMACY OR NETWORK PARTICIPATING NON-MAIL ORDER RETAIL PHARMACY IF THE
11 NETWORK PARTICIPATING NON-MAIL ORDER RETAIL PHARMACY OFFERS TO ACCEPT A
12 PRICE THAT IS COMPARABLE TO THAT OF THE MAIL ORDER PHARMACY. ANY POLICY
13 WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL NOT IMPOSE A
14 CO-PAYMENT FEE OR OTHER CONDITION ON ANY INSURED WHO ELECTS TO PURCHASE
15 DRUGS FROM A NETWORK PARTICIPATING NON-MAIL ORDER RETAIL PHARMACY WHICH
16 IS NOT ALSO IMPOSED ON INSUREDS ELECTING TO PURCHASE DRUGS FROM A DESIG-
17 NATED MAIL ORDER PHARMACY; PROVIDED, HOWEVER, THAT THE PROVISIONS OF
18 THIS SECTION SHALL NOT SUPERSEDE THE TERMS OF A COLLECTIVE BARGAINING
19 AGREEMENT OR APPLY TO A POLICY THAT IS THE RESULT OF A COLLECTIVE
20 BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND A RECOGNIZED OR CERTIFIED
21 EMPLOYEE ORGANIZATION. NOTHING IN THIS PARAGRAPH SHALL ALTER ANY
22 PROVISIONS OF SECTIONS THIRTEEN AND THIRTEEN-O OF THE WORKERS' COMPEN-
23 SATION LAW REGARDING THE PURCHASE OF PRESCRIPTION DRUGS AND THE USE OF
24 MAIL ORDER PHARMACY.

25 S 3. Section 4303 of the insurance law is amended by adding a new
26 subsection (hh) to read as follows:

27 (HH) ANY POLICY ISSUED BY A MEDICAL EXPENSE INDEMNITY CORPORATION, A
28 HOSPITAL SERVICE CORPORATION OR A HEALTH SERVICES CORPORATION WHICH
29 PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL PERMIT EACH PARTICIPANT
30 TO FILL ANY MAIL ORDER COVERED PRESCRIPTION, AT HIS OR HER OPTION, AT
31 ANY MAIL ORDER PHARMACY OR NETWORK PARTICIPATING NON-MAIL ORDER RETAIL
32 PHARMACY IF THE NETWORK PARTICIPATING NON-MAIL ORDER RETAIL PHARMACY
33 OFFERS TO ACCEPT A PRICE THAT IS COMPARABLE TO THAT OF THE MAIL ORDER
34 PHARMACY. ANY POLICY WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS
35 SHALL NOT IMPOSE A COPAYMENT FEE OR OTHER CONDITION ON ANY INSURED WHO
36 ELECTS TO PURCHASE DRUGS FROM A NETWORK PARTICIPATING NON-MAIL ORDER
37 RETAIL PHARMACY WHICH IS NOT ALSO IMPOSED ON INSUREDS ELECTING TO
38 PURCHASE DRUGS FROM A DESIGNATED MAIL ORDER PHARMACY; PROVIDED, HOWEVER,
39 THAT THE PROVISIONS OF THIS SECTION SHALL NOT SUPERSEDE THE TERMS OF A
40 COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A POLICY THAT IS THE RESULT
41 OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND A RECOG-
42 NIZED OR CERTIFIED EMPLOYEE ORGANIZATION. NOTHING IN THIS SUBSECTION
43 SHALL ALTER ANY PROVISIONS OF SECTIONS THIRTEEN AND THIRTEEN-O OF THE
44 WORKERS' COMPENSATION LAW REGARDING THE PURCHASE OF PRESCRIPTION DRUGS
45 AND THE USE OF MAIL ORDER PHARMACY.

46 S 4. The opening paragraph of paragraph 25 of subsection (b) of
47 section 4322 of the insurance law, as amended by chapter 554 of the laws
48 of 2002, is amended to read as follows:

49 Prescription drugs, including contraceptive drugs or devices approved
50 by the federal food and drug administration or generic equivalents
51 approved as substitutes by such food and drug administration and nutri-
52 tional supplements (formulas) for the therapeutic treatment of phenylke-
53 tonuria, branched-chain ketonuria, galactosemia and homocystinuria,
54 obtained at a participating pharmacy under a prescription written by an
55 in-plan or out-of-plan provider. Health maintenance organizations, in
56 addition to providing coverage for prescription drugs at a participating

1 pharmacy, may utilize a mail order prescription drug program. HOWEVER,
2 NO HEALTH MAINTENANCE ORGANIZATION SHALL MANDATE THAT PRESCRIPTION DRUGS
3 BE PURCHASED BY THE INSURED FROM A MAIL ORDER PHARMACY IF A NETWORK
4 PARTICIPATING NON-MAIL ORDER RETAIL PHARMACY OFFERS TO ACCEPT A PRICE
5 THAT IS COMPARABLE TO THAT OF THE MAIL ORDER PHARMACY. NO HEALTH MAIN-
6 TENANCE ORGANIZATION SHALL IMPOSE A CO-PAYMENT FEE OR OTHER CONDITION ON
7 ANY INSURED WHO ELECTS TO PURCHASE DRUGS FROM A NETWORK PARTICIPATING
8 NON-MAIL ORDER RETAIL PHARMACY. THE PROVISIONS OF THIS SECTION SHALL
9 NOT SUPERSEDE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO
10 A POLICY THAT IS THE RESULT OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN
11 AN EMPLOYER AND A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION. NOTHING
12 IN THIS PARAGRAPH SHALL ALTER ANY PROVISIONS OF SECTIONS THIRTEEN AND
13 THIRTEEN-O OF THE WORKERS' COMPENSATION LAW REGARDING THE PURCHASE OF
14 PRESCRIPTION DRUGS AND THE USE OF MAIL ORDER PHARMACY. Health mainte-
15 nance organizations may provide prescription drugs pursuant to a drug
16 formulary; however, health maintenance organizations must implement an
17 appeals process so that the use of non-formulary prescription drugs may
18 be requested by a physician or other provider.

19 S 5. If any clause, subparagraph, subsection, section or other part of
20 this act, or the application thereof be held to be invalid, such hold-
21 ing shall not affect, impair or invalidate the remainder of this act, or
22 the application of such section or part of a section held invalid.

23 S 6. This act shall take effect on the thirtieth day after it shall
24 have become a law and shall apply to all policies and contracts issued,
25 renewed, modified, altered or amended on or after such effective date.