

3749--A

2011-2012 Regular Sessions

I N S E N A T E

March 3, 2011

Introduced by Sens. ROBACH, ADDABBO, JOHNSON, McDONALD -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to prescription prices and pharmacies for injured employees and to repeal section 88 of such law relating thereto

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

1 Section 1. Paragraph 5 of subdivision (i) of section 13 of the work-
2 ers' compensation law, as added by chapter 6 of the laws of 2007 is
3 amended and three new paragraphs 6, 7 and 8 are added to read as
4 follows:
5 (5) [Notwithstanding any other provision of this chapter, if] IF an
6 employer or carrier has contracted with a pharmacy to provide prescribed
7 medicine to claimants, then such employer or carrier may require claim-
8 ants to obtain all prescribed medicines from the pharmacy with which it
9 has contracted, except if a medical emergency occurs and it would not be
10 reasonably possible to obtain immediately required prescribed medicine
11 from the pharmacy with which the employer or carrier has a contract. An
12 employer or carrier that requires claimants to obtain prescribed medi-
13 cines from a pharmacy with which it has a contract must notify claimants
14 of the pharmacy or pharmacies with which it has a contract, the
15 locations and addresses of the pharmacy or pharmacies, if applicable,
16 how to initially fill and refill prescriptions through the mail, inter-
17 net, telephone or other means, and any other required information that
18 must be supplied to the pharmacy or pharmacies. If the pharmacy or phar-
19 macies with which the employer or carrier contracts does not offer mail
20 order service and does not have a physical location within a reasonable
21 distance from the claimant, as defined by regulation of the board, the
22 claimant may obtain prescribed medicines at the pharmacy or pharmacies

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

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1 of his or her choice and the employer or carrier will be liable for such
2 charges in accordance with the fee schedule prescribed in section thir-
3 teen-o of this [chapter] ARTICLE.

4 (6) NOTWITHSTANDING PARAGRAPH FIVE OF THIS SUBDIVISION, AN EMPLOYER OR
5 CARRIER SHALL BE PROHIBITED FROM REFUSING TO ALLOW A CLAIMANT TO UTILIZE
6 A PHARMACY OF HIS OR HER CHOICE TO FURNISH THE PRESCRIBED MEDICATIONS
7 REQUIRED BY THE CLAIMANT AS LONG AS SUCH PHARMACY'S CHARGES COMPLY WITH
8 THE PUBLISHED PRICES.

9 (7) ANY PHARMACY THAT HAS PROVIDED PRESCRIBED MEDICINE TO A CLAIMANT
10 AND HAS NOT BEEN REIMBURSED IN ACCORDANCE WITH THE PROVISIONS OF PARA-
11 GRAPH ONE OF THIS SUBDIVISION SHALL BE ENTITLED TO MAINTAIN AN ACTION
12 AGAINST THE CARRIER TO RECOVER THE AMOUNTS DUE TO SUCH PHARMACY PURSUANT
13 TO THIS SUBDIVISION IN ACCORDANCE WITH REGULATIONS TO BE ESTABLISHED BY
14 THE BOARD OR THE CHAIRMAN. WHERE A PHARMACY BILL HAS BEEN DETERMINED TO
15 BE DUE AND OWING IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION,
16 THE BOARD SHALL INCLUDE IN THE AMOUNT OF THE AWARD INTEREST OF NOT MORE
17 THAN ONE AND ONE-HALF PERCENT PER MONTH PAYABLE TO THE PHARMACY IN
18 ACCORDANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE BOARD.

19 (8) NOTWITHSTANDING ANY OTHER PROVISION IN THIS CHAPTER, THE INITIAL
20 FILL OF A PRESCRIPTION MEDICINE IN CONNECTION WITH A CLAIM FOR BENEFITS
21 UNDER THIS CHAPTER SHALL NOT CONTAIN A SUPPLY OF SUCH MEDICINE FOR A
22 PERIOD OF LONGER THAN FOURTEEN DAYS. FOR THE PURPOSES OF THIS PARAGRAPH,
23 "INITIAL FILL" SHALL BE DEFINED AS A PRESCRIPTION OR A COMBINATION OF
24 PRESCRIPTIONS FOR MEDICATION ISSUED BY AN AUTHORIZED MEDICAL PROVIDER AT
25 THE TIME OF DISCOVERY OF INJURY OR ILLNESS BUT SHALL NOT INCLUDE
26 PRESCRIPTIONS THAT MAY BE WRITTEN SEVENTY-TWO HOURS OR MORE FROM THE
27 TIME OF INITIAL MEDICAL CARE.

28 S 2. Section 88 of the workers' compensation law, as amended by chap-
29 ter 635 of the laws of 1996, is amended to read as follows:

30 S 88. Administration expenses. The entire expense of administering the
31 state insurance fund shall be paid out of such fund which shall not be
32 considered an agency or a fund of the state for the purposes of section
33 four of the state finance law. The portion of such expenses applicable
34 and chargeable to the disability benefits fund shall be determined on an
35 equitable basis with due allowance for the division of overhead
36 expenses. There shall be submitted to the director of the budget quar-
37 terly financial statements on a calendar year basis. In no case shall
38 the amount of administrative expenditures so authorized for an entire
39 year from the workers' compensation fund exceed twenty-five per centum
40 of the earned premiums for such insurance for that year. [In no case
41 shall the amount of administrative expenditures authorized for the disa-
42 bility benefits fund for an entire year exceed twenty-five per centum of
43 the premiums earned by that fund for such insurance for that year.] No
44 payment, expenditure or refund out of the state insurance fund shall be
45 subject to pre-audit by the department of audit and control as provided
46 by section one hundred eleven of the state finance law. All appointments
47 to positions in the state insurance fund shall be made subject to civil
48 service requirements.

49 S 3. Section 88 of the workers' compensation law, as amended by chap-
50 ter 6 of the laws of 2007, is REPEALED.

51 S 4. This act shall take effect immediately.