S T A T E O F N E W Y O R K

3346--B

2015-2016 Regular Sessions

I N S E N A T E

February 5, 2015

Introduced by Sens. HANNON, ADDABBO, AVELLA, BRESLIN, CROCI, DeFRANCISCO, ESPAILLAT, GOLDEN, GRIFFO, KRUEGER, LATIMER, MARCELLINO, MARTINS, O'MARA, PARKER, RANZENHOFER, RITCHIE, STAVISKY, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The public health law is amended by adding a new section 280-a to read as follows:

S 280-A. PHARMACY BENEFIT MANAGERS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PHARMACY BENEFIT MANAGER" MEANS AN ENTITY THAT CONTRACTS WITH PHARMACIES OR PHARMACY CONTRACTING AGENTS ON BEHALF OF A HEALTH PLAN, STATE AGENCY, INSURER, MANAGED CARE ORGANIZATION, OR OTHER THIRD PARTY PAYOR TO PROVIDE PHARMACY HEALTH BENEFIT SERVICES OR ADMINISTRATION.

(B) "MAXIMUM ALLOWABLE COST PRICE" MEANS A MAXIMUM REIMBURSEMENT AMOUNT SET BY THE PHARMACY BENEFIT MANAGER FOR THERAPEUTICALLY EQUIVALENT MULTIPLE SOURCE GENERIC DRUGS.

2. A PHARMACY BENEFIT MANAGER SHALL, WITH RESPECT TO CONTRACTS BETWEEN A PHARMACY BENEFIT MANAGER AND A PHARMACY OR, ALTERNATIVELY, A PHARMACY BENEFIT MANAGER AND A PHARMACY'S CONTRACTING AGENT, SUCH AS A PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION, INCLUDE A REASONABLE PROCESS TO APPEAL, INVESTIGATE AND RESOLVE DISPUTES REGARDING MULTI-SOURCE GENERIC DRUG PRICING. THE APPEALS PROCESS SHALL INCLUDE THE FOLLOWING PROVISIONS:

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

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(A) THE RIGHT TO APPEAL BY THE PHARMACY AND/OR THE PHARMACY'S CONTRACTING AGENT SHALL BE LIMITED TO THIRTY DAYS FOLLOWING THE INITIAL CLAIM SUBMITTED FOR PAYMENT;

(B) A TELEPHONE NUMBER THROUGH WHICH A NETWORK PHARMACY MAY CONTACT THE PHARMACY BENEFIT MANAGER FOR THE PURPOSE OF FILING AN APPEAL AND AN ELECTRONIC MAIL ADDRESS OF THE INDIVIDUAL WHO IS RESPONSIBLE FOR PROCESSING APPEALS;

(C) THE PHARMACY BENEFIT MANAGER SHALL SEND AN ELECTRONIC MAIL MESSAGE ACKNOWLEDGING RECEIPT OF THE APPEAL. THE PHARMACY BENEFIT MANAGER SHALL RESPOND IN AN ELECTRONIC MESSAGE TO THE PHARMACY AND/OR THE PHARMACY'S CONTRACTING AGENT FILING THE APPEAL WITHIN SEVEN BUSINESS DAYS INDICATING ITS DETERMINATION. IF THE APPEAL IS DETERMINED TO BE VALID, THE MAXIMUM ALLOWABLE COST FOR THE DRUG SHALL BE ADJUSTED FOR THE APPEALING PHARMACY EFFECTIVE AS OF THE DATE OF THE ORIGINAL CLAIM FOR PAYMENT. THE PHARMACY BENEFIT MANAGER SHALL REQUIRE THE APPEALING PHARMACY TO REVERSE AND REBILL THE CLAIM IN QUESTION IN ORDER TO OBTAIN THE CORRECTED REIMBURSEMENT;

(D) IF AN UPDATE TO THE MAXIMUM ALLOWABLE COST IS WARRANTED, THE PHARMACY BENEFIT MANAGER OR COVERED ENTITY SHALL ADJUST THE MAXIMUM ALLOWABLE COST OF THE DRUG EFFECTIVE FOR ALL SIMILARLY SITUATED PHARMACIES IN ITS NETWORK IN THE STATE ON THE DATE THE APPEAL WAS DETERMINED TO BE VALID; AND

(E) IF AN APPEAL IS DENIED, THE PHARMACY BENEFIT MANAGER SHALL IDENTIFY THE NATIONAL DRUG CODE OF A THERAPEUTICALLY EQUIVALENT DRUG, AS DETERMINED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION, THAT IS AVAILABLE FOR PURCHASE BY PHARMACIES IN THIS STATE FROM WHOLESALERS REGISTERED PURSUANT TO SUBDIVISION FOUR OF SECTION SIXTY-EIGHT HUNDRED EIGHT OF THE EDUCATION LAW AT A PRICE WHICH IS EQUAL TO OR LESS THAN THE MAXIMUM ALLOWABLE COST FOR THAT DRUG AS DETERMINED BY THE PHARMACY BENEFIT MANAGER.

S 2. This act shall take effect on the ninetieth day after it shall become a law and shall apply to any contract between a pharmacy and/or a pharmacy's contracting agent and a pharmacy benefit manager.