

676--B

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 7, 2015

---

Introduced by M. of A. ROSENTHAL, SIMANOWITZ, BRINDISI, SKOUFIS, CYMBROWITZ, McDONALD, LUPARDO, CUSICK, JAFFEE, PAULIN, DINOWITZ, QUART, BROOK-KRASNY, WEPRIN, TITONE, DAVILA, RUSSELL, CROUCH, GOTTFRIED, BENEDETTO, FAHY, TENNEY, ABINANTI -- Multi-Sponsored by -- M. of A. CLARK, CURRAN, FITZPATRICK, LUPINACCI, MONTESANO, RA, RAIA, WALTER -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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:

1     Section 1. The public health law is amended by adding a new section  
2     280-a to read as follows:  
3     S 280-A. PHARMACY BENEFIT MANAGERS. 1. DEFINITIONS. AS USED IN THIS  
4     SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
5     (A) "PHARMACY BENEFIT MANAGER" MEANS AN ENTITY THAT CONTRACTS WITH  
6     PHARMACIES OR PHARMACY CONTRACTING AGENTS ON BEHALF OF A HEALTH PLAN,  
7     STATE AGENCY, INSURER, MANAGED CARE ORGANIZATION, OR OTHER THIRD PARTY  
8     PAYOR TO PROVIDE PHARMACY HEALTH BENEFIT SERVICES OR ADMINISTRATION.  
9     (B) "MAXIMUM ALLOWABLE COST PRICE" MEANS A MAXIMUM REIMBURSEMENT  
10    AMOUNT SET BY THE PHARMACY BENEFIT MANAGER FOR THERAPEUTICALLY EQUIV-  
11    ALENT MULTIPLE SOURCE GENERIC DRUGS.  
12    2. A PHARMACY BENEFIT MANAGER SHALL, WITH RESPECT TO CONTRACTS BETWEEN  
13    A PHARMACY BENEFIT MANAGER AND A PHARMACY OR, ALTERNATIVELY, A PHARMACY  
14    BENEFIT MANAGER AND A PHARMACY'S CONTRACTING AGENT, SUCH AS A PHARMACY  
15    SERVICES ADMINISTRATIVE ORGANIZATION, INCLUDE A REASONABLE PROCESS TO  
16    APPEAL, INVESTIGATE AND RESOLVE DISPUTES REGARDING MULTI-SOURCE GENERIC

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

LBD04032-05-5

1 DRUG PRICING. THE APPEALS PROCESS SHALL INCLUDE THE FOLLOWING  
2 PROVISIONS:

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

6 (B) A TELEPHONE NUMBER THROUGH WHICH A NETWORK PHARMACY MAY CONTACT  
7 THE PHARMACY BENEFIT MANAGER FOR THE PURPOSE OF FILING AN APPEAL AND AN  
8 ELECTRONIC MAIL ADDRESS OF THE INDIVIDUAL WHO IS RESPONSIBLE FOR PROC-  
9 ESSING APPEALS;

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

20 (D) IF AN UPDATE TO THE MAXIMUM ALLOWABLE COST IS WARRANTED, THE PHAR-  
21 MACY BENEFIT MANAGER OR COVERED ENTITY SHALL ADJUST THE MAXIMUM ALLOW-  
22 ABLE COST OF THE DRUG EFFECTIVE FOR ALL SIMILARLY SITUATED PHARMACIES IN  
23 ITS NETWORK IN THE STATE ON THE DATE THE APPEAL WAS DETERMINED TO BE  
24 VALID; AND

25 (E) IF AN APPEAL IS DENIED, THE PHARMACY BENEFIT MANAGER SHALL IDENTI-  
26 FY THE NATIONAL DRUG CODE OF AN EQUIVALENT DRUG THAT IS AVAILABLE FOR  
27 PURCHASE BY PHARMACIES IN THIS STATE FROM WHOLESALERS REGISTERED PURSU-  
28 ANT TO SUBDIVISION FOUR OF SECTION SIXTY-EIGHT HUNDRED EIGHT OF THE  
29 EDUCATION LAW AT A PRICE WHICH IS EQUAL TO OR LESS THAN THE MAXIMUM  
30 ALLOWABLE COST FOR THAT DRUG AS DETERMINED BY THE PHARMACY BENEFIT  
31 MANAGER.

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