

STATE OF NEW YORK

2661

2017-2018 Regular Sessions

IN ASSEMBLY

January 20, 2017

Introduced by M. of A. GOTTFRIED, ENGLEBRIGHT, GALEF, PAULIN, TITUS, HOOPER, JAFFEE, COLTON, WEPRIN, OTIS, MONTESANO, ROSENTHAL, ABINANTI, SEAWRIGHT, SEPULVEDA -- Multi-Sponsored by -- M. of A. BENEDETTO, COOK, CROUCH, DINOWITZ, FARRELL, GUNTHER, LIFTON, McDONALD, ORTIZ, PEOPLES-STOKES, PERRY, RAMOS -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to pharmacy benefit managers; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 280-a of the public health law is REPEALED and a new section 280-a is added to read as follows:

§ 280-a. Pharmacy benefit managers. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Health plan or provider" means an entity for which a pharmacy benefit manager provides pharmacy benefit management including, but not limited to: (i) a health benefit plan or other entity that approves, provides, arranges for, or pays for health care items or services, under which prescription drugs for beneficiaries of the entity are purchased or which provides or arranges reimbursement in whole or in part for the purchase of prescription drugs; or (ii) a health care provider or professional, including a state or local government entity, that acquires prescription drugs to use or dispense in providing health care to patients.

(b) "Pharmacy benefit management" means the service provided to a health plan or provider, directly or through another entity, including the procurement of prescription drugs to be dispensed to patients, or the administration or management of prescription drug benefits, including but not limited to, any of the following:

(i) mail service pharmacy;

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

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1 (ii) claims processing, retail network management, or payment of
2 claims to pharmacies for dispensing prescription drugs;

3 (iii) clinical or other formulary or preferred drug list development
4 or management;

5 (iv) negotiation or administration of rebates, discounts, payment
6 differentials, or other incentives, for the inclusion of particular
7 prescription drugs in a particular category or to promote the purchase
8 of particular prescription drugs;

9 (v) patient compliance, therapeutic intervention, or generic substi-
10 tution programs; and

11 (vi) disease management.

12 (c) "Pharmacy benefit manager" means any entity that performs pharmacy
13 benefit management for a health plan or provider.

14 (d) "Maximum allowable cost price" means a maximum reimbursement
15 amount set by the pharmacy benefit manager for therapeutically equiv-
16 alent multiple source generic drugs.

17 2. Application of section. This section applies to the providing of
18 pharmacy benefit management by a pharmacy benefit manager to a partic-
19 ular health plan or provider.

20 3. Duty, accountability and transparency. (a) The pharmacy benefit
21 manager shall have a fiduciary relationship with and obligation to the
22 health plan or provider, and shall perform pharmacy benefit management
23 with care, skill, prudence, diligence, and professionalism.

24 (b) All funds received by the pharmacy benefit manager in relation to
25 providing pharmacy benefit management shall be received by the pharmacy
26 benefit manager in trust for the health plan or provider and shall be
27 used or distributed only pursuant to the pharmacy benefit manager's
28 contract with the health plan or provider or applicable law; except for
29 any fee or payment expressly provided for in the contract between the
30 pharmacy benefit manager and the health plan or provider to compensate
31 the pharmacy benefit manager for its services.

32 (c) The pharmacy benefit manager shall periodically account to the
33 health plan or provider for all funds received by the pharmacy benefit
34 manager. The health plan or provider shall have access to all financial
35 and utilization information of the pharmacy benefit manager in relation
36 to pharmacy benefit management provided to the health plan or provider.

37 (d) The pharmacy benefit manager shall disclose in writing to the
38 health plan or provider the terms and conditions of any contract or
39 arrangement between the pharmacy benefit manager and any party relating
40 to pharmacy benefit management provided to the health plan or provider.

41 (e) The pharmacy benefit manager shall disclose in writing to the
42 health plan or provider any activity, policy, practice, contract or
43 arrangement of the pharmacy benefit manager that directly or indirectly
44 presents any conflict of interest with the pharmacy benefit manager's
45 relationship with or obligation to the health plan or provider.

46 (f) Any information required to be disclosed by a pharmacy benefit
47 manager to a health plan or provider under this section that is reason-
48 ably designated by the pharmacy benefit manager as proprietary or trade
49 secret information shall be kept confidential by the health plan or
50 provider, except as required or permitted by law, including disclosure
51 necessary to prosecute or defend any legitimate legal claim or cause of
52 action.

53 4. Prescriptions. A pharmacy benefit manager may not substitute or
54 cause the substituting of one prescription drug for another in dispens-
55 ing a prescription, or alter or cause the altering of the terms of a

1 prescription, except with the approval of the prescriber or as explicit-
2 ly required or permitted by law.

3 5. A pharmacy benefit manager shall, with respect to contracts between
4 a pharmacy benefit manager and a pharmacy or, alternatively, a pharmacy
5 benefit manager and a pharmacy's contracting agent, such as a pharmacy
6 services administrative organization, include a reasonable process to
7 appeal, investigate and resolve disputes regarding multi-source generic
8 drug pricing. The appeals process shall include the following
9 provisions:

10 (a) the right to appeal by the pharmacy and/or the pharmacy's
11 contracting agent shall be limited to thirty days following the initial
12 claim submitted for payment;

13 (b) a telephone number through which a network pharmacy may contact
14 the pharmacy benefit manager for the purpose of filing an appeal and an
15 electronic mail address of the individual who is responsible for proc-
16 essing appeals;

17 (c) the pharmacy benefit manager shall send an electronic mail message
18 acknowledging receipt of the appeal. The pharmacy benefit manager shall
19 respond in an electronic message to the pharmacy and/or the pharmacy's
20 contracting agent filing the appeal within seven business days indicat-
21 ing its determination. If the appeal is determined to be valid, the
22 maximum allowable cost for the drug shall be adjusted for the appealing
23 pharmacy effective as of the date of the original claim for payment. The
24 pharmacy benefit manager shall require the appealing pharmacy to reverse
25 and rebill the claim in question in order to obtain the corrected
26 reimbursement;

27 (d) if an update to the maximum allowable cost is warranted, the phar-
28 macy benefit manager or covered entity shall adjust the maximum allow-
29 able cost of the drug effective for all similarly situated pharmacies in
30 its network in the state on the date the appeal was determined to be
31 valid; and

32 (e) if an appeal is denied, the pharmacy benefit manager shall identi-
33 fy the national drug code of a therapeutically equivalent drug, as
34 determined by the federal Food and Drug Administration, that is avail-
35 able for purchase by pharmacies in this state from wholesalers regis-
36 tered pursuant to subdivision four of section sixty-eight hundred eight
37 of the education law at a price which is equal to or less than the maxi-
38 mum allowable cost for that drug as determined by the pharmacy benefit
39 manager.

40 § 2. Severability. If any provision of this act, or any application
41 of any provision of this act, is held to be invalid, or ruled by any
42 federal agency to violate or be inconsistent with any applicable federal
43 law or regulation, that shall not affect the validity or effectiveness
44 of any other provision of this act, or of any other application of any
45 provision of this act.

46 § 3. This act shall take effect on the ninetieth day after it shall
47 become a law and shall apply to any contract for providing pharmacy
48 benefit management made or renewed on or after that date.