

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

1267--A

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. COLTON, GOTTFRIED, CYMBROWITZ, PERRY, V. LOPEZ, J. RIVERA, GIGLIO, GABRYSZAK, MILLMAN, JAFFEE, BURLING, PHEFFER, DINOWITZ, FIELDS -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BOYLAND, CALHOUN, CHRISTENSEN, CLARK, DESTITO, GLICK, GUNTHER, HAWLEY, HOOPER, JOHN, LANCMAN, MARKEY, MCENENY, MILLER, PAULIN, ROBINSON, ROSENTHAL, SCARBOROUGH, SWEENEY, WALKER, WEISENBERG, WRIGHT -- 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 26 to read as follows:
3 (26) NO POLICY WHICH PROVIDES COVERAGE FOR PRESCRIBED DRUGS SHALL
4 MANDATE THAT THE SAME BE PURCHASED BY THE INSURED FROM A MAIL ORDER
5 PHARMACY, NOR MAY SUCH POLICY IMPOSE A CO-PAYMENT FEE OR OTHER CONDITION
6 ON ANY INSURED WHO ELECTS TO PURCHASE DRUGS FROM OTHER THAN A MAIL ORDER
7 PHARMACY WHICH IS NOT ALSO IMPOSED ON INSURED ELECTING TO PURCHASE
8 DRUGS FROM A DESIGNATED MAIL ORDER PHARMACY; PROVIDED, HOWEVER, THAT THE
9 PROVISIONS OF THIS SECTION SHALL NOT SUPERSEDE THE TERMS OF A COLLECTIVE
10 BARGAINING AGREEMENT OR APPLY TO A POLICY THAT IS THE RESULT OF A
11 COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND A RECOGNIZED OR
12 CERTIFIED EMPLOYEE ORGANIZATION. NOTHING IN THIS PARAGRAPH SHALL ALTER
13 ANY PROVISIONS OF SECTIONS THIRTEEN AND THIRTEEN-O OF THE WORKERS'
14 COMPENSATION LAW REGARDING THE PURCHASE OF PRESCRIPTION DRUGS AND THE
15 USE OF MAIL ORDER PHARMACY.
16 S 2. Subsection (1) of section 3221 of the insurance law is amended by
17 adding a new paragraph 18 to read as follows:

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

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1 (18) NO INSURER DELIVERING A GROUP OR BLANKET POLICY OR ISSUING A
2 GROUP OR BLANKET POLICY FOR DELIVERY IN THIS STATE WHICH PROVIDES COVER-
3 AGE FOR PRESCRIBED DRUGS SHALL MANDATE THAT THE SAME BE PURCHASED BY THE
4 INSURED FROM A MAIL ORDER PHARMACY, NOR MAY SUCH POLICY IMPOSE A CO-PAY-
5 MENT FEE OR OTHER CONDITION ON ANY INSURED WHO ELECTS TO PURCHASE DRUGS
6 FROM OTHER THAN A MAIL ORDER PHARMACY WHICH IS NOT ALSO IMPOSED ON
7 INSUREDS ELECTING TO PURCHASE DRUGS FROM A DESIGNATED MAIL ORDER PHARMA-
8 CY; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SECTION SHALL NOT
9 SUPERSEDE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A
10 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.

15 S 3. Section 4303 of the insurance law is amended by adding a new
16 subsection (ff) to read as follows:

17 (FF) NO POLICY ISSUED BY A MEDICAL EXPENSE INDEMNITY CORPORATION, A
18 HOSPITAL SERVICE CORPORATION OR A HEALTH SERVICES CORPORATION WHICH
19 PROVIDES COVERAGE FOR PRESCRIBED DRUGS SHALL MANDATE THAT THE SAME BE
20 PURCHASED BY THE INSURED FROM A MAIL ORDER PHARMACY, NOR MAY SUCH POLICY
21 IMPOSE A CO-PAYMENT FEE OR OTHER CONDITION ON ANY INSURED WHO ELECTS TO
22 PURCHASE DRUGS FROM OTHER THAN A MAIL ORDER PHARMACY WHICH IS NOT ALSO
23 IMPOSED ON INSUREDS ELECTING TO PURCHASE DRUGS FROM A DESIGNATED MAIL
24 ORDER PHARMACY; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SECTION
25 SHALL NOT SUPERSEDE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR
26 APPLY TO A POLICY THAT IS THE RESULT OF A COLLECTIVE BARGAINING AGREE-
27 MENT BETWEEN AN EMPLOYER AND A RECOGNIZED OR CERTIFIED EMPLOYEE ORGAN-
28 IZATION. NOTHING IN THIS SUBSECTION SHALL ALTER ANY PROVISIONS OF
29 SECTIONS THIRTEEN AND THIRTEEN-O OF THE WORKERS' COMPENSATION LAW
30 REGARDING THE PURCHASE OF PRESCRIPTION DRUGS AND THE USE OF MAIL ORDER
31 PHARMACY.

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

35 Prescription drugs, including contraceptive drugs or devices approved
36 by the federal food and drug administration or generic equivalents
37 approved as substitutes by such food and drug administration and nutri-
38 tional supplements (formulas) for the therapeutic treatment of phenylke-
39 tonuria, branched-chain ketonuria, galactosemia and homocystinuria,
40 obtained at a participating pharmacy under a prescription written by an
41 in-plan or out-of-plan provider. Health maintenance organizations, in
42 addition to providing coverage for prescription drugs at a participating
43 pharmacy, may utilize a mail order prescription drug program. HOWEVER,
44 NO HEALTH MAINTENANCE ORGANIZATION SHALL MANDATE THAT PRESCRIPTION DRUGS
45 BE PURCHASED BY THE INSURED FROM A MAIL ORDER PHARMACY; PROVIDED, HOWEV-
46 ER, THAT THE PROVISIONS OF THIS SECTION SHALL NOT SUPERSEDE THE TERMS OF
47 A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A POLICY THAT IS THE
48 RESULT OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND A
49 RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION. NOTHING IN THIS PARAGRAPH
50 SHALL ALTER ANY PROVISIONS OF SECTIONS THIRTEEN AND THIRTEEN-O OF THE
51 WORKERS' COMPENSATION LAW REGARDING THE PURCHASE OF PRESCRIPTION DRUGS
52 AND THE USE OF MAIL ORDER PHARMACY. Health maintenance organizations may
53 provide prescription drugs pursuant to a drug formulary; however, health
54 maintenance organizations must implement an appeals process so that the
55 use of non-formulary prescription drugs may be requested by a physician
56 or other provider.

1 S 5. If any clause, subparagraph, subsection, section or other part of
2 this act, or the application thereof be held to be invalid, such hold-
3 ing shall not affect, impair or invalidate the remainder of this act, or
4 the application of such section or part of a section held invalid.
5 S 6. This act shall take effect on the thirtieth day after it shall
6 have become a law and shall apply to all policies and contracts issued,
7 renewed, modified, altered or amended on or after such effective date.