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

8278--B

2009-2010 Regular Sessions

I N A S S E M B L Y

May 12, 2009

Introduced by M. of A. KELLNER, GOTTFRIED, REILLY, KOON, JACOBS, CYMBROWITZ, COOK, LANCMAN, ROSENTHAL, BOYLAND, ESPAILLAT, GUNTHER, BENEDETTO, JAFFEE, MENG, CAHILL, V. LOPEZ, GALEF, HOOPER, POWELL, SPANO, CASTRO, MAISEL, PEOPLES-STOKES, P. RIVERA, HEVESI -- Multi-Sponsored by -- M. of A. BRODSKY, BURLING, GLICK, LATIMER, LIFTON, LUPARDO, McDONOUGH, McENENY, J. MILLER, PAULIN, PERRY, PHEFFER, PRETLOW, SCHIMEL, SWEENEY, THIELE, TITONE, TOWNS, WEISENBERG -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- 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 and the insurance law, in relation to cost-sharing, deductible or co-insurance for tier IV prescription drugs; and to amend the executive law, in relation to unlawful discriminatory practice in relation to tier IV prescription drugs

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

Section 1. Legislative findings. The cost-sharing, deductibles and co-insurance obligations for certain drugs are becoming cost prohibitive for persons trying to overcome serious and often life-threatening diseases and conditions such as cancer, multiple sclerosis, rheumatoid arthritis, hepatitis C, hemophilia and psoriasis. These drugs are typically new, produced in lesser quantities than other drugs, and not available as less expensive brand name or generic prescription drugs. Some health insurance plans and policies in other states as well as some self-insured plans in New York have established unique categories or specialty tiers for these drugs, sometimes referred to as Tier IV or Tier V. Patients under these plans are required to pay a percentage of the cost of these high-priced drugs, rather than the traditional co-pay-

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

LBD11409-04-0

ment amounts for generic, preferred brand, and non-preferred brand prescription drugs, often covered by Tier I, Tier II, and Tier III plans and policies, respectively. As a result, patients covered under plans with specialty tiers must pay thousands of dollars in out-of-pocket costs for drugs critical for their treatment.

It is in the public interest to help patients to afford necessary prescription drugs by prohibiting cost-sharing, deductibles and co-insurance obligations by patients that exceed payments for non-preferred brand prescription drugs or the equivalent thereof. It is not the intent of this legislation to preclude plans or policies from categorizing drugs used in the treatment of these common diseases as brand name prescription drugs or generic prescription drug equivalents.

The extraordinary disparity in cost-sharing, deductible and co-insurance burdens imposed on patients whose life and health depend on these drugs constitutes serious and unjustified discrimination based on their disease or disability.

This legislation is intended to provide patients more affordable access to prescription drugs essential for their treatment of cancer, multiple sclerosis, rheumatoid arthritis, hepatitis C, hemophilia, psoriasis, and other diseases.

S 2. Section 4406-c of the public health law is amended by adding a new subdivision 7 to read as follows:

7. NO HEALTH MAINTENANCE ORGANIZATION WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).

S 3. Subsection (i) of section 3216 of the insurance law is amended by adding a new paragraph 27 to read as follows:

(27) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).

S 4. Subsection (a) of section 3221 of the insurance law is amended by adding a new paragraph 16 to read as follows:

(16) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).

S 5. Section 4303 of the insurance law is amended by adding a new subsection (gg) to read as follows:

(GG) NO MEDICAL EXPENSE INDEMNITY CORPORATION, A HOSPITAL SERVICE CORPORATION OR A HEALTH SERVICE CORPORATION WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL

IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).

S 6. Subdivision 20 of section 296 of the executive law, as renumbered by chapter 204 of the laws of 1996, is renumbered subdivision 21 and a new subdivision 20 is added to read as follows:

20. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR ANY EMPLOYER, LABOR ORGANIZATION, INSURER, HEALTH MAINTENANCE ORGANIZATION OR OTHER ENTITY TO LIMIT HEALTH CARE COVERAGE SUCH THAT COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY OTHER PRESCRIPTION DRUG PROVIDED UNDER SUCH HEALTH CARE COVERAGE IN THE CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY); PROVIDED HOWEVER, THIS SUBDIVISION SHALL NOT APPLY TO ANY SELF-INSURED EMPLOYEE WELFARE BENEFIT PLAN, AS DEFINED IN THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED.

S 7. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or ruled by any federal agency to violate or be inconsistent with any applicable federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act.

S 8. This act shall take effect on the thirtieth day after it shall have become a law.