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-payment 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

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.
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-insu-
rance 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-insu-
rance 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-INSU-
RANCE 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, DEDUC-
TIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS
EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATE-
GORY).

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-INSU-
RANCE 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-INSU-
RANCE 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-INSU-
RANCE 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, DEDUC-
TIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS
S. 5000--B

1 EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATE-
2 GORY).

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

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

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

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