

8278--A

2009-2010 Regular Sessions

I N   A S S E M B L Y

May 12, 2009

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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 -- Multi-Sponsored by -- M. of A. BURLING, GLICK, McDONOUGH, McENENY, PERRY, SCHIMEL, SWEENEY, THIELE, TITONE, 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

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:

1     Section 1. Legislative findings. The cost-sharing, deductibles and  
2 co-insurance obligations for certain drugs have become cost prohibitive  
3 for persons trying to overcome serious diseases such as cancer, multiple  
4 sclerosis, rheumatoid arthritis, hepatitis C, and hemophilia. These  
5 drugs are typically new, produced in lesser quantities than other drugs,  
6 and not available as less expensive brand name or generic prescription  
7 drugs. Some health insurance plans and policies have established unique  
8 categories or specialty tiers for these drugs, sometimes referred to as  
9 Tier IV or Tier V. Patients under these plans are required to pay a  
10 percentage of the cost of these high-priced drugs, rather than the  
11 traditional co-payment amounts for generic, preferred brand, and non-  
12 preferred brand prescription drugs, often covered by Tier I, Tier II,  
13 and Tier III plans and policies, respectively. As a result, patients  
14 covered under Tier IV or Tier V plans or policies must pay thousands of  
15 dollars in out-of-pocket costs for drugs critical for their treatment.

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

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

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

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

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

18 7. NO HEALTH CARE PLAN WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS  
19 AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE  
20 DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS INCLUDING, BUT NOT LIMITED  
21 TO, GENERIC DRUGS, PREFERRED BRAND DRUGS AND NON-PREFERRED BRAND DRUGS,  
22 SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR  
23 ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING,  
24 DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY OTHER PRESCRIPTION DRUG  
25 PROVIDED UNDER SUCH COVERAGE IN THE CATEGORY OF NON-PREFERRED BRAND  
26 DRUGS OR ITS EQUIVALENT.

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

29 (27) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH  
30 PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING,  
31 DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF  
32 PRESCRIPTION DRUGS INCLUDING, BUT NOT LIMITED TO, GENERIC DRUGS,  
33 PREFERRED BRAND DRUGS AND NON-PREFERRED BRAND DRUGS, SHALL IMPOSE COST-  
34 SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION  
35 DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR  
36 CO-INSURANCE OBLIGATIONS FOR ANY OTHER PRESCRIPTION DRUG PROVIDED UNDER  
37 SUCH COVERAGE IN THE CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIV-  
38 ALENT.

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

41 (16) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH  
42 PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING,  
43 DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF  
44 PRESCRIPTION DRUGS INCLUDING, BUT NOT LIMITED TO, GENERIC DRUGS,  
45 PREFERRED BRAND DRUGS AND NON-PREFERRED BRAND DRUGS, SHALL IMPOSE COST-  
46 SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION  
47 DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR  
48 CO-INSURANCE OBLIGATIONS FOR ANY OTHER PRESCRIPTION DRUG PROVIDED UNDER  
49 SUCH COVERAGE IN THE CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIV-  
50 ALENT.

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

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

1 INCLUDING, BUT NOT LIMITED TO, GENERIC DRUGS, PREFERRED BRAND DRUGS AND  
2 NON-PREFERRED BRAND DRUGS, SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR  
3 CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE  
4 DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS  
5 FOR ANY OTHER PRESCRIPTION DRUG PROVIDED UNDER SUCH COVERAGE IN THE  
6 CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT.

7 S 6. Section 4321 of the insurance law is amended by adding a new  
8 subsection (g) to read as follows:

9 (G) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH  
10 PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING,  
11 DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF  
12 PRESCRIPTION DRUGS INCLUDING, BUT NOT LIMITED TO, GENERIC DRUGS,  
13 PREFERRED BRAND DRUGS AND NON-PREFERRED BRAND DRUGS, SHALL IMPOSE COST-  
14 SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION  
15 DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR  
16 CO-INSURANCE OBLIGATIONS FOR ANY OTHER PRESCRIPTION DRUG PROVIDED UNDER  
17 SUCH COVERAGE IN THE CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIV-  
18 ALENT.

19 S 7. Subdivision 20 of section 296 of the executive law, as renumbered  
20 by chapter 204 of the laws of 1996, is renumbered subdivision 21 and a  
21 new subdivision 20 is added to read as follows:

22 20. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR ANY EMPLOYER,  
23 LABOR ORGANIZATION, INSURER, HEALTH MAINTENANCE ORGANIZATION OR OTHER  
24 ENTITY TO LIMIT HEALTH CARE COVERAGE SUCH THAT COST-SHARING, DEDUCTIBLES  
25 OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG EXCEEDS THE DOLLAR  
26 AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY  
27 OTHER PRESCRIPTION DRUG PROVIDED UNDER SUCH HEALTH CARE COVERAGE IN THE  
28 CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT.

29 S 8. Severability. If any provision of this act, or any application of  
30 any provision of this act, is held to be invalid, or ruled by any feder-  
31 al agency to violate or be inconsistent with any applicable federal law  
32 or regulation, that shall not affect the validity or effectiveness of  
33 any other provision of this act, or of any other application of any  
34 provision of this act.

35 S 9. This act shall take effect on the thirtieth day after it shall  
36 have become a law.