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

1577

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sens. GOLDEN, BONACIC, DeFRANCISCO, GRIFFO, MAZIARZ, MORAHAN, SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the elder law, in relation to creating the state pharmaceutical local choice program

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

Section 1. Article 2 of the elder law is amended by adding a new title 4 to read as follows:

TITLE 4
MISCELLANEOUS PROVISIONS

SECTION 300. PHARMACEUTICAL LOCAL CHOICE PROGRAM.

S 300. PHARMACEUTICAL LOCAL CHOICE PROGRAM. 1. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, EVERY HEALTH INSURANCE POLICY WHICH PROVIDES COVERAGE FOR PRESCRIBED DRUGS THAT INCLUDES AN OPTION OR A REQUIREMENT THAT INSUREDS PURCHASE PRESCRIPTION DRUGS FROM A NON-RESIDENT ESTABLISHMENT, AS DEFINED IN SECTION SIXTY-EIGHT HUNDRED EIGHT-B OF THE EDUCATION LAW, SHALL ADDITIONALLY PROVIDE THAT AN INSURED MAY PURCHASE SUCH PRESCRIPTION DRUGS FROM A PHARMACY REGISTERED WITH THE STATE DEPARTMENT OF EDUCATION PURSUANT TO SECTION SIXTY-EIGHT HUNDRED EIGHT OF THE EDUCATION LAW WHICH, INSOFAR AS REASONABLE, SHALL BE LOCATED AND ACCESSIBLE IN THE LOCAL COMMUNITY OF THE INSURED. FOR PURPOSES OF THIS SECTION, THE TERM "HEALTH INSURANCE POLICY" SHALL MEAN AND INCLUDE ANY POLICY OF ACCIDENT AND HEALTH INSURANCE DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE, AS DESCRIBED IN SUBSECTION (I) OF SECTION THREE THOUSAND TWO HUNDRED SIXTEEN OF THE INSURANCE LAW, AND ANY GROUP OR BLANKET POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE, AS DESCRIBED IN SECTION THREE THOUSAND TWO HUNDRED TWENTY-ONE OF THE INSURANCE LAW.

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

LBD06211-01-9

2. THERE IS HEREBY CREATED THE CONSUMER PHARMACEUTICAL INSURANCE COVERAGE PANEL, WHOSE PURPOSE SHALL BE TO OVERSEE THE PROGRAM FOR PROVIDING CONSUMER CHOICE IN PURCHASE OF PRESCRIPTION PHARMACEUTICALS WITHIN THEIR OWN COMMUNITIES, AND WHOSE MEMBERSHIP, CHAIRS, AND MEETINGS SHALL BE THE SAME AS THE MEMBERS AND CHAIRS OF THE ELDERLY PHARMACEUTICAL INSURANCE COVERAGE PANEL, AS SUCH MEMBERSHIP IS DESCRIBED IN SECTION TWO HUNDRED FORTY-FOUR OF THIS ARTICLE. PANEL MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES AS PANEL MEMBERS. SUCH PANEL, AND EACH MEMBER THEREOF, AS APPROPRIATE, IS HEREBY AUTHORIZED TO AND SHALL:

(A) PROMULGATE REGULATIONS AS SHALL BE NECESSARY AND IN KEEPING WITHIN THE SCOPE OF POWERS OF THE PANEL AND OF EACH SUCH MEMBER, TO EFFECT THE PURPOSES OF THIS SECTION. SUCH REGULATIONS SHALL INCLUDE REQUIRING ADHERENCE TO THE PROVISIONS OF THIS SECTION BY HEALTH INSURANCE POLICIES, AND APPROPRIATE NOTIFICATION OF INSUREDS OF THE OPTION TO PURCHASE PRESCRIPTION DRUGS AT A PHARMACY RATHER THAN A NON-RESIDENT ESTABLISHMENT; AND

(B) DEVELOP AND IMPLEMENT, IN COOPERATION WITH AREA OFFICES FOR THE AGING OR OTHER UNITS OF LOCAL GOVERNMENT AND NOT FOR PROFIT ORGANIZATIONS, AN OUTREACH PROGRAM TO INFORM THE ELDERLY AND OTHERS OF THE OPTION TO PURCHASE PRESCRIPTION DRUGS AT A PHARMACY RATHER THAN A NON-RESIDENT ESTABLISHMENT.

3. THE PANEL SHALL PREPARE AN ANNUAL REPORT AND SUBMIT SUCH REPORT TO THE GOVERNOR AND THE LEGISLATURE NO LATER THAN THE FIRST DAY OF JANUARY OF EACH YEAR CONCERNING THE EFFECT OF ANY DISPARITY IN CO-PAYMENTS OR OTHER FEES OR CHARGES TO CONSUMERS FOR PURCHASE OF THE SAME OR SIMILAR DRUGS BY OR PURSUANT TO HEALTH INSURANCE POLICIES, INCLUDING THOSE PROVIDING BENEFITS PURSUANT TO TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT (PART D), RELATING TO THE USE OF NON-RESIDENT ESTABLISHMENTS AND PHARMACIES, AS SUCH TERMS ARE DESCRIBED IN SUBDIVISION ONE OF THIS SECTION. SUCH REPORT SHALL INCLUDE ANNUAL STATISTICAL INFORMATION DERIVED BY DATA COLLECTION BY THE PANEL, OR FROM SAMPLING, REGARDING THE NUMBER OF PERSONS AND PLANS AFFECTED, THE AMOUNT OF ANY SUCH DISPARITIES, THE REQUIRED USE OF SUCH NON-RESIDENT ESTABLISHMENTS AND PHARMACIES, AND ANY RECOMMENDATIONS BY THE PANEL CONCERNING THE NEED TO PROHIBIT OR AMELIORATE SUCH DISPARITIES.

4. THERE SHALL BE AN ADVISORY COMMITTEE TO THE PANEL COMPRISED OF TWELVE PERSONS. FOUR MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, THREE MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE, ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE, THREE MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY AND ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY. THE ADVISORY COMMITTEE MEMBERS SHALL BE REPRESENTATIVES OF CONSUMERS AND PHARMACISTS, WITH NO LESS THAN FIFTY PERCENT REPRESENTING CONSUMERS, PROVIDED THAT OF THE MEMBERS APPOINTED, THREE SHALL BE REPRESENTATIVES OF STATEWIDE ORGANIZATIONS REPRESENTING THE ELDERLY AND CONSUMERS, AND TWO SHALL BE REPRESENTATIVES OF STATEWIDE ORGANIZATIONS REPRESENTING PHARMACIES. THE PANEL SHALL CONSULT THE ADVISORY COMMITTEE AND CONSIDER ITS RECOMMENDATIONS CONCERNING THE IMPLEMENTATION OF THIS PROGRAM AND THE POLICIES GOVERNING ITS CONTINUED OPERATION. COMMITTEE MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

5. THE FOREGOING PROVISIONS OF THIS SECTION TO THE CONTRARY NOTWITHSTANDING, SUBDIVISION ONE OF THIS SECTION (A) SHALL NOT APPLY TO HEALTH INSURANCE POLICIES THE PROVISIONS OF WHICH ARE SUBJECT TO COLLECTIVE BARGAINING AGREEMENTS WHICH ARE IN CONTRADICTION TO THE REQUIREMENTS OF

SUCH SECTION; (B) SHALL ONLY APPLY TO POLICIES AND CONTRACTS ISSUED, RENEWED, MODIFIED, ALTERED OR AMENDED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION; AND (C) MAY BE APPLIED IN A MANNER WHICH REQUIRES THE INSURED TO PAY A REASONABLE FEE OR CHARGE THAT REFLECTS THE DIFFERENTIAL IN COST, IF ANY, FOR USE OF A PHARMACY LOCATED AND ACCESSIBLE IN THE LOCAL COMMUNITY OF THE INSURED, PROVIDED THAT SUCH REASONABLE FEE OR CHARGE SHALL BE SUBJECT TO AUDIT BY THE CONSUMER PHARMACEUTICAL PANEL FOR REASONABLENESS, AND FURTHER PROVIDED THAT SUCH HEALTH INSURANCE POLICY SHALL NOT IMPOSE OR REQUIRE ANY OTHER DIFFERENCES IN TREATMENT FOR THE USE OF SUCH LOCAL PHARMACY WITH RESPECT TO CO-PAYMENTS OR QUANTITY LIMITATIONS OR OTHER SIMILAR PAYMENTS OR LIMITATIONS.

S 2. This act shall take effect July 1, 2009.