

2836

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to prohibiting pharmacy benefit managers, health maintenance organizations, insurers and other health plans from offering incentives to health care providers to switch a patient from a specific prescription drug to another specific drug, excluding generic substitution

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

1 Section 1. The public health law is amended by adding a new article
2 2-B to read as follows:

3 ARTICLE 2-B

4 IMPROPER PAYMENTS FOR PRESCRIPTION DRUG
5 SWITCHES PROHIBITED

6 SECTION 281. DEFINITIONS.

7 281-A. UNLAWFUL PAYMENTS WITH RESPECT TO HEALTH CARE PROVIDER
8 PRESCRIBING PRACTICES.

9 281-B. NO RETALIATION AGAINST HEALTH CARE PROVIDERS.

10 281-C. ENFORCEMENT.

11 S 281. DEFINITIONS. FOR THE PURPOSE OF THIS ARTICLE: 1. "HEALTH PLAN"
12 MEANS A NONHOSPITAL OR MEDICAL SERVICE ORGANIZATION, INSURER, HEALTH
13 COVERAGE PLAN OR HEALTH MAINTENANCE ORGANIZATION LICENSED PURSUANT TO
14 THE INSURANCE LAW; ANY ORGANIZATION CERTIFIED OR RECOGNIZED PURSUANT TO
15 ARTICLE FORTY-FOUR OF THIS CHAPTER, INCLUDING AN INDEPENDENT PRACTICE
16 ASSOCIATION; OR AN EMPLOYER, LABOR UNION OR OTHER GROUP OF PERSONS
17 ORGANIZED IN THE STATE THAT PROVIDES HEALTH COVERAGE TO PARTICIPANTS WHO
18 ARE EMPLOYED OR RESIDE IN THE STATE. "HEALTH PLAN" DOES NOT INCLUDE A
19 HEALTH PLAN THAT PROVIDES COVERAGE ONLY FOR ACCIDENTAL INJURY, SPECIFIED
20 DISEASE, HOSPITAL INDEMNITY, MEDICARE SUPPLEMENT, DISABILITY INCOME,
21 LONG-TERM CARE OR OTHER LIMITED BENEFIT HEALTH INSURANCE POLICIES AND
22 CONTRACTS.

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

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1 2. "HEALTH CARE PROVIDER" MEANS A LICENSED HEALTH CARE PROVIDER LEGAL-
2 LY AUTHORIZED TO PRESCRIBE DRUGS UNDER THE PROVISIONS OF THE EDUCATION
3 LAW.

4 3. "PRESCRIPTION DRUG PRODUCT" MEANS ANY PRODUCT SUBJECT TO THE
5 REQUIREMENTS OF SECTION SIXTY-EIGHT HUNDRED ELEVEN-A OF THE EDUCATION
6 LAW.

7 4. "PHARMACY BENEFIT MANAGER" OR "PBM" MEANS A PERSON OR ENTITY THAT
8 PROVIDES PHARMACY BENEFIT MANAGEMENT SERVICES TO A HEALTH PLAN.

9 5. "PHARMACY BENEFIT MANAGEMENT SERVICES" MEANS THE NEGOTIATION OF THE
10 AMOUNT TO BE PAID FOR PRESCRIPTION DRUGS BY THE HEALTH PLAN FOR PARTIC-
11 IPANTS IN THE STATE, THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION
12 DRUG BENEFITS PROVIDED BY A HEALTH PLAN OR INSURER FOR THE BENEFIT OF
13 PARTICIPANTS, OR ANY OF THE SERVICES LISTED IN PARAGRAPHS (A) THROUGH
14 (G) OF THIS SUBDIVISION THAT ARE PROVIDED WITH REGARD TO THE ADMINIS-
15 TRATION OF PARTICIPANTS' PHARMACY BENEFITS:

16 (A) MAIL SERVICE PHARMACY;

17 (B) SPECIALTY PHARMACY;

18 (C) CLAIMS PROCESSING, RETAIN NETWORK MANAGEMENT AND PAYMENT OF CLAIMS
19 TO PHARMACIES FOR PRESCRIPTION DRUGS DISPENSED TO PARTICIPANTS;

20 (D) CLINICAL FORMULARY DEVELOPMENT AND MANAGEMENT SERVICES;

21 (E) REBATE CONTRACTING AND ADMINISTRATION;

22 (F) PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION AND GENERIC SUBSTI-
23 TUTION PROGRAMS; AND

24 (G) DISEASE MANAGEMENT PROGRAMS.

25 6. "PATIENT" MEANS AN INDIVIDUAL WHO RECEIVES PRESCRIPTION DRUG BENE-
26 FITS FROM A HEALTH PLAN OR PBM.

27 7. "THERAPEUTIC ALTERNATIVE PRESCRIPTION DRUG" MEANS A PRESCRIPTION
28 DRUG WITH THE SAME OR SIMILAR INDICATIONS TO ANOTHER PRESCRIPTION DRUG
29 BUT WHICH, WHETHER A SINGLE SOURCE OR MULTIPLE SOURCE PRODUCT, IS NOT A
30 GENERIC OF, OR LISTED AS A THERAPEUTICALLY EQUIVALENT VERSION OF, THE
31 OTHER PRESCRIPTION DRUG ON THE LIST REQUIRED BY PARAGRAPH (O) OF SUBDI-
32 VISION ONE OF SECTION TWO HUNDRED SIX OF THIS CHAPTER.

33 8. "PRESCRIPTION DRUG SWITCH" MEANS AN ATTEMPT BY A HEALTH PLAN OR PBM
34 TO ENCOURAGE HEALTH CARE PROVIDERS WHO HAVE PRESCRIBED A CERTAIN
35 PRESCRIPTION DRUG PRODUCT TO THEIR PATIENTS TO CHANGE THE PRESCRIPTION
36 DRUG PRODUCT: (A) WHEN SUCH AN ATTEMPT IS PART OF A CONCERTED EFFORT TO
37 EFFECT SUCH CHANGE FOR MULTIPLE PATIENTS BASED EITHER ON GENERAL CLIN-
38 ICAL CONSIDERATIONS THAT ARE NOT SPECIFIC TO AN INDIVIDUAL PATIENT OR ON
39 THE ECONOMIC VALUE OF THE CHANGE TO THE HEALTH PLAN OR PBM; AND (B) THE
40 ATTEMPT WOULD SUBSTITUTE A THERAPEUTIC ALTERNATIVE PRESCRIPTION DRUG.

41 S 281-A. UNLAWFUL PAYMENTS WITH RESPECT TO HEALTH CARE PROVIDER
42 PRESCRIBING PRACTICES. (A) IMPROPER PRESCRIPTION DRUG SWITCH PAYMENTS.
43 NO HEALTH PLAN OR PBM SHALL, BY CONTRACT, WRITTEN POLICY OR PROCEDURE OR
44 ANY OTHER AGREEMENT OR COURSE OF CONDUCT, OFFER OR FURNISH PAYMENT OR
45 ANY OTHER INCENTIVE TO A HEALTH CARE PROVIDER TO COMPLY WITH A
46 PRESCRIPTION DRUG SWITCH AS DEFINED IN THIS ARTICLE.

47 (B) OTHER IMPROPER PAYMENTS RELATING TO HEALTH CARE PROVIDER PRESCRIB-
48 ING DECISIONS. NO HEALTH PLAN OR PBM SHALL, BY CONTRACT, WRITTEN POLICY
49 OR PROCEDURE OR ANY OTHER AGREEMENT OR COURSE OF CONDUCT, OFFER OR
50 FURNISH PAYMENT OR ANY OTHER INCENTIVE TO A HEALTH CARE PROVIDER TO
51 COMPLY WITH A DIRECTION TO PRESCRIBE A SPECIFIC PRESCRIPTION DRUG OR
52 WITH FORMULARY OR OTHER GUIDELINES FOR SELECTION OF PRESCRIPTION DRUG
53 PRODUCTS, OR PROVIDE ANY DISINCENTIVE FOR NON-COMPLIANCE.

54 (C) GENERIC SUBSTITUTION EXCEPTED. NOTHING IN THIS SECTION PROHIBITS A
55 HEALTH PLAN OR PBM, BY CONTRACT, WRITTEN POLICY OR PROCEDURE OR ANY
56 OTHER AGREEMENT OR COURSE OF CONDUCT, FROM OFFERING OR FURNISHING

1 PAYMENT OR ANY OTHER INCENTIVE TO A HEALTH CARE PROVIDER FOR EFFECTING
2 GENERIC SUBSTITUTIONS OF PRESCRIPTION DRUG PRODUCTS, OR PROVIDING ANY
3 DISINCENTIVE FOR FAILING TO EFFECT SUCH SUBSTITUTION.

4 S 281-B. NO RETALIATION AGAINST HEALTH CARE PROVIDERS. IT SHALL BE
5 UNLAWFUL FOR ANY HEALTH PLAN OR PBM TO DEPRIVE OR THREATEN TO DEPRIVE
6 ANY HEALTH CARE PROVIDER OF EMPLOYMENT OR TO TERMINATE THE HEALTH CARE
7 PROVIDER'S ENGAGEMENT FOR SERVICES, TAKE OR THREATEN TO TAKE ANY RETALI-
8 ATORY ACTION AGAINST ANY HEALTH CARE PROVIDER, OR DIRECTLY OR INDIRECTLY
9 INTIMIDATE, THREATEN, COERCE, COMMAND OR ATTEMPT TO INTIMIDATE, THREAT-
10 EN, COERCE, OR COMMAND ANY HEALTH CARE PROVIDER BECAUSE SUCH HEALTH CARE
11 PROVIDER HAS MADE PRESCRIBING CHOICES FOR PATIENTS THAT DO NOT CONFORM
12 TO A DIRECTION TO PRESCRIBE A SPECIFIC PRESCRIPTION DRUG OR WITH FORMU-
13 LARY OR OTHER GUIDELINES FOR SELECTION OF PRESCRIPTION DRUG PRODUCTS,
14 PROVIDED THAT SUCH DECISIONS ARE BASED ON THE HEALTH CARE PROVIDER'S
15 INDEPENDENT CLINICAL JUDGMENT REGARDING THE APPROPRIATE PRESCRIPTION
16 DRUG FOR EACH PATIENT FOR WHOM THE NON-CONFORMING CHOICE HAS BEEN MADE.

17 S 281-C. ENFORCEMENT. (A) ANY HEALTH CARE PROVIDER THAT HAS BEEN
18 INJURED BY REASON OF THE VIOLATION BY A HEALTH PLAN OR PBM OF SECTION
19 TWO HUNDRED EIGHTY-ONE-B OF THIS ARTICLE MAY BRING AN ACTION FOR EQUITA-
20 BLE RELIEF AND TO RECOVER THE PROVIDER'S ACTUAL DAMAGES AND A CIVIL
21 PENALTY TO BE PAID TO THE HEALTH CARE PROVIDER NOT TO EXCEED THREE TIMES
22 THE HEALTH CARE PROVIDER'S ACTUAL DAMAGES.

23 (B) THE COMMISSIONER MAY ASSESS A CIVIL PENALTY OF TWENTY-FIVE THOU-
24 SAND DOLLARS FOR EACH VIOLATION OF SECTION TWO HUNDRED EIGHTY-ONE-A OF
25 THIS ARTICLE.

26 S 2. This act shall take effect immediately.