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

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:

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

ARTICLE 2-B

IMPROPER PAYMENTS FOR PRESCRIPTION DRUG SWITCHES PROHIBITED

SECTION 281. DEFINITIONS.
281-A. UNLAWFUL PAYMENTS WITH RESPECT TO HEALTH CARE PROVIDER PRESCRIBING PRACTICES.
281-B. NO RETALIATION AGAINST HEALTH CARE PROVIDERS.
281-C. ENFORCEMENT.

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

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

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2. "HEALTH CARE PROVIDER" MEANS A LICENSED HEALTH CARE PROVIDER LEGALLY AUTHORIZED TO PRESCRIBE DRUGS UNDER THE PROVISIONS OF THE EDUCATION LAW.

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

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

5. "PHARMACY BENEFIT MANAGEMENT SERVICES" MEANS THE NEGOTIATION OF THE AMOUNT TO BE PAID FOR PRESCRIPTION DRUGS BY THE HEALTH PLAN FOR PARTICIPANTS IN THE STATE, THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS PROVIDED BY A HEALTH PLAN OR INSURER FOR THE BENEFIT OF PARTICIPANTS, OR ANY OF THE SERVICES LISTED IN PARAGRAPHS (A) THROUGH (G) OF THIS SUBDIVISION THAT ARE PROVIDED WITH REGARD TO THE ADMINISTRATION OF PARTICIPANTS' PHARMACY BENEFITS:

(A) MAIL SERVICE PHARMACY;

(B) SPECIALTY PHARMACY;

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

(D) CLINICAL FORMULARY DEVELOPMENT AND MANAGEMENT SERVICES;

(E) REBATE CONTRACTING AND ADMINISTRATION;

(F) PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION AND GENERIC SUBSTITUTION PROGRAMS; AND

(G) DISEASE MANAGEMENT PROGRAMS.

6. "PATIENT" MEANS AN INDIVIDUAL WHO RECEIVES PRESCRIPTION DRUG BENEFITS FROM A HEALTH PLAN OR PBM.

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

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

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

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

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

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

S 281-B. NO RETALIATION AGAINST HEALTH CARE PROVIDERS. IT SHALL BE UNLAWFUL FOR ANY HEALTH PLAN OR PBM TO DEPRIVE OR THREATEN TO DEPRIVE ANY HEALTH CARE PROVIDER OF EMPLOYMENT OR TO TERMINATE THE HEALTH CARE PROVIDER'S ENGAGEMENT FOR SERVICES, TAKE OR THREATEN TO TAKE ANY RETALIATORY ACTION AGAINST ANY HEALTH CARE PROVIDER, OR DIRECTLY OR INDIRECTLY INTIMIDATE, THREATEN, COERCE, COMMAND OR ATTEMPT TO INTIMIDATE, THREATEN, COERCE, OR COMMAND ANY HEALTH CARE PROVIDER BECAUSE SUCH HEALTH CARE PROVIDER HAS MADE PRESCRIBING CHOICES FOR PATIENTS THAT DO NOT CONFORM TO A DIRECTION TO PRESCRIBE A SPECIFIC PRESCRIPTION DRUG OR WITH FORMULARY OR OTHER GUIDELINES FOR SELECTION OF PRESCRIPTION DRUG PRODUCTS, PROVIDED THAT SUCH DECISIONS ARE BASED ON THE HEALTH CARE PROVIDER'S INDEPENDENT CLINICAL JUDGMENT REGARDING THE APPROPRIATE PRESCRIPTION DRUG FOR EACH PATIENT FOR WHOM THE NON-CONFORMING CHOICE HAS BEEN MADE.

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

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

S 2. This act shall take effect immediately.