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2009-2010 Regular Sessions

I N S E N A T E

March 9, 2009

Introduced by Sens. LAVALLE, ALESI, DeFRANCISCO, DIAZ, RANZENHOFER, SALAND, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to requiring prescriptions for drugs to be filled in the amount indicated by the prescription; and to amend the public health law and the social services law, in relation to increasing the number of days for which a prescription may be filled

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

1 Section 1. Subsection (i) of section 3216 of the insurance law is  
2 amended by adding a new paragraph 26 to read as follows:

3 (26) EVERY POLICY WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS SHALL  
4 PROVIDE THAT ANY PRESCRIPTION WRITTEN BY AN AUTHORIZED PROVIDER SHALL BE  
5 FILLED IN SUCH EXACT QUANTITY AS INDICATED BY THE PRESCRIPTION WITHIN  
6 AMOUNTS AUTHORIZED BY LAW, PROVIDED THAT NO SUCH QUANTITY SHALL EXCEED A  
7 NINETY DAY SUPPLY. NO POLICY SHALL LIMIT THE QUANTITY OF ANY DRUG  
8 PRESCRIBED NOR SHALL ANY SUCH POLICY PROVIDE FOR A HIGHER CO-PAYMENT FOR  
9 PRESCRIPTIONS WRITTEN AND DISPENSED IN QUANTITIES ABOVE A SET AMOUNT.  
10 WHERE A PHARMACY IS UNABLE TO PROVIDE THE FULL QUANTITY OF ANY DRUG  
11 PRESCRIBED, SUCH PRESCRIPTION SHALL BE FILLED TO THE EXTENT POSSIBLE AND  
12 THE BALANCE OF ANY UNFILLED PRESCRIPTION SHALL BE PROVIDED TO THE  
13 INSURED WHEN IT BECOMES AVAILABLE WITH NO ADDITIONAL CO-PAYMENT  
14 REQUIRED.

15 S 2. Subdivision 3 of section 3332 of the public health law, as  
16 amended by section 7 of part A of chapter 58 of the laws of 2004, is  
17 amended to read as follows:

18 3. No such prescription shall be made for a quantity of controlled  
19 substances which would exceed a [thirty] NINETY day supply if the  
20 controlled substance were used in accordance with the directions for use  
21 specified on the prescription. [A practitioner may, however, issue a

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

LBD08494-01-9

1 prescription for up to a three month supply of a controlled substance  
2 provided that the controlled substance has been prescribed to treat one  
3 of the conditions that have been enumerated by the commissioner pursuant  
4 to regulations as warranting the prescribing of greater than a thirty  
5 day supply of a controlled substance and that the practitioner specifies  
6 the condition on the face of the prescription.] No additional  
7 prescriptions for a controlled substance may be issued by a practitioner  
8 to an ultimate user within [thirty] NINETY days of the date of any  
9 prescription previously issued unless and until the ultimate user has  
10 exhausted all but a seven day supply of the controlled substance  
11 provided by any previously issued prescription. A practitioner may,  
12 however, issue a prescription for up to a six month supply of any  
13 substance listed in subdivision (h) of Schedule II of section three  
14 thousand three hundred six of this article provided that such substance  
15 has been prescribed to treat one of the conditions that have been  
16 enumerated by the commissioner pursuant to regulations as warranting the  
17 prescribing of a six month supply and that the practitioner specifies  
18 the condition on the face of the prescription.

19 S 3. Subdivision 1 of section 3333 of the public health law, as  
20 amended by section 8 of part A of chapter 58 of the laws of 2004, is  
21 amended to read as follows:

22 1. A licensed pharmacist may, in good faith and in the course of his  
23 or her professional practice, sell and dispense to an ultimate user  
24 controlled substances only upon the delivery of an official New York  
25 state prescription to such pharmacist, within thirty days of the date  
26 such prescription was signed by an authorized practitioner; provided,  
27 however, a pharmacist may dispense a part or portion of such  
28 prescription in accordance with regulations of the commissioner in  
29 consultation with the commissioner of education. No pharmacy or pharma-  
30 cist may sell or dispense greater than a [thirty] NINETY day supply of a  
31 controlled substance to an ultimate user unless and until the ultimate  
32 user has exhausted all but a seven day supply of the controlled  
33 substance provided pursuant to any previously issued prescription,  
34 except that a pharmacy or pharmacist may sell or dispense up to a three  
35 month supply of a controlled substance if there appears, on the face of  
36 the official New York state prescription, a statement that the  
37 controlled substance has been prescribed to treat one of the conditions  
38 that have been enumerated by the regulations of the commissioner as  
39 warranting the prescribing of greater than a [thirty] NINETY day supply  
40 of a controlled substance. A pharmacy or pharmacist may sell or dispense  
41 up to a six month supply of any substance listed in subdivision (h) of  
42 Schedule II of section three thousand three hundred six of this article  
43 if there appears, on the face of the official New York state  
44 prescription, a statement that the substance has been prescribed to  
45 treat one of the conditions that have been enumerated by the regulations  
46 of the commissioner as warranting the prescribing of a specified greater  
47 supply.

48 S 4. Subdivision 2 of section 3339 of the public health law, as  
49 amended by section 13 of part A of chapter 58 of the laws of 2004, is  
50 amended to read as follows:

51 2. A prescription, except for a schedule II controlled substance or  
52 those schedule III or schedule IV controlled substances which the  
53 commissioner may require by regulation may be refilled not more than the  
54 number of times specifically authorized by the prescriber upon the  
55 prescription, provided however no such authorization shall be effective  
56 for a period greater than six months from the date the prescription is

1 signed. In the event that the prescription authorizes the dispensing of  
2 more than a [thirty] NINETY day supply of schedule III, schedule IV or  
3 schedule V substances pursuant to regulations of the commissioner  
4 enumerating conditions warranting specified greater supplies, the  
5 prescription may be refilled only once.

6 S 5. Paragraph (g) of subdivision 2 of section 365-a of the social  
7 services law, as amended by section 1 of part F of chapter 497 of the  
8 laws of 2008, is amended to read as follows:

9 (g) sickroom supplies, eyeglasses, prosthetic appliances and dental  
10 prosthetic appliances furnished in accordance with the regulations of  
11 the department, provided that the commissioner of health is authorized  
12 to implement a preferred diabetic supply program wherein the department  
13 of health will receive enhanced rebates from preferred manufacturers of  
14 glucometers and test strips, and may subject non-preferred manufactur-  
15 ers' glucometers and test strips to prior authorization under section  
16 two hundred seventy-three of the public health law; drugs provided on an  
17 in-patient basis, those drugs contained on the list established by regu-  
18 lation of the commissioner of health pursuant to subdivision four of  
19 this section, and those drugs which may not be dispensed without a  
20 prescription as required by section sixty-eight hundred ten of the  
21 education law and which the commissioner of health shall determine to be  
22 reimbursable based upon such factors as the availability of such drugs  
23 or alternatives at low cost if purchased by a medicaid recipient, or the  
24 essential nature of such drugs as described by such commissioner in  
25 regulations, provided, however, that such drugs, exclusive of long-term  
26 maintenance drugs, shall be dispensed in quantities no greater than a  
27 [thirty] NINETY day supply or one hundred doses, whichever is greater;  
28 provided further that the commissioner of health is authorized to  
29 require prior authorization for any refill of a prescription when less  
30 than seventy-five percent of the previously dispensed amount per fill  
31 should have been used were the product used as normally indicated;  
32 medical assistance shall not include any drug provided on other than an  
33 in-patient basis for which a recipient is charged or a claim is made in  
34 the case of a prescription drug, in excess of the maximum reimbursable  
35 amounts to be established by department regulations in accordance with  
36 standards established by the secretary of the United States department  
37 of health and human services, or, in the case of a drug not requiring a  
38 prescription, in excess of the maximum reimbursable amount established  
39 by the commissioner of health pursuant to paragraph (a) of subdivision  
40 four of this section;

41 S 6. This act shall take effect immediately and section one of this  
42 act shall apply to policies issued, reissued, renewed, modified or  
43 amended on and after such date.