

5000--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. DUANE, ESPADA, KRUEGER, MONSERRATE, MONTGOMERY, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- 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.
16 It is in the public interest to help patients to afford necessary
17 prescription drugs by prohibiting cost-sharing, deductibles and co-insu-
18 rance obligations by patients that exceed payments for non-preferred
19 brand prescription drugs or the equivalent thereof. It is not the intent

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

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1 of this legislation to preclude plans or policies from categorizing
2 drugs used in the treatment of these common diseases as brand name
3 prescription drugs or generic prescription drug equivalents.

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

8 This legislation is intended to provide patients more affordable
9 access to prescription drugs essential for their treatment of cancer,
10 multiple sclerosis, rheumatoid arthritis, hepatitis C, hemophilia and
11 other diseases.

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

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

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

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

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

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

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

49 (GG) NO MEDICAL EXPENSE INDEMNITY CORPORATION, A HOSPITAL SERVICE
50 CORPORATION OR A HEALTH SERVICE CORPORATION WHICH PROVIDES COVERAGE FOR
51 PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSU-
52 RANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS
53 INCLUDING, BUT NOT LIMITED TO, GENERIC DRUGS, PREFERRED BRAND DRUGS AND
54 NON-PREFERRED BRAND DRUGS, SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR
55 CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE
56 DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS

1 FOR ANY OTHER PRESCRIPTION DRUG PROVIDED UNDER SUCH COVERAGE IN THE
2 CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT.

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

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

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

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

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

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