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2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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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.