

5000--B

Cal. No. 418

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. DUANE, DILAN, ESPADA, KRUEGER, MONTGOMERY, PERKINS, THOMPSON, 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 -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 are becoming cost prohibitive
3 for persons trying to overcome serious and often life-threatening
4 diseases and conditions such as cancer, multiple sclerosis, rheumatoid
5 arthritis, hepatitis C, hemophilia and psoriasis. These drugs are typi-
6 cally new, produced in lesser quantities than other drugs, and not
7 available as less expensive brand name or generic prescription drugs.
8 Some health insurance plans and policies in other states as well as some
9 self-insured plans in New York have established unique categories or
10 specialty tiers for these drugs, sometimes referred to as Tier IV or
11 Tier V. Patients under these plans are required to pay a percentage of
12 the cost of these high-priced drugs, rather than the traditional co-pay-
13 ment amounts for generic, preferred brand, and non-preferred brand
14 prescription drugs, often covered by Tier I, Tier II, and Tier III plans
15 and policies, respectively. As a result, patients covered under plans

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

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1 with specialty tiers must pay thousands of dollars in out-of-pocket
2 costs for drugs critical for their treatment.

3 It is in the public interest to help patients to afford necessary
4 prescription drugs by prohibiting cost-sharing, deductibles and co-insu-
5 rance obligations by patients that exceed payments for non-preferred
6 brand prescription drugs or the equivalent thereof. It is not the intent
7 of this legislation to preclude plans or policies from categorizing
8 drugs used in the treatment of these common diseases as brand name
9 prescription drugs or generic prescription drug equivalents.

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

14 This legislation is intended to provide patients more affordable
15 access to prescription drugs essential for their treatment of cancer,
16 multiple sclerosis, rheumatoid arthritis, hepatitis C, hemophilia,
17 psoriasis, and other diseases.

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

20 7. NO HEALTH MAINTENANCE ORGANIZATION WHICH PROVIDES COVERAGE FOR
21 PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSU-
22 RANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL
23 IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY
24 PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUC-
25 TIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS
26 EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATE-
27 GORY).

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

30 (27) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH
31 PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING,
32 DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF
33 PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSU-
34 RANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR
35 AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR
36 NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS
37 NO NON-PREFERRED BRAND DRUG CATEGORY).

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

40 (16) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH
41 PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING,
42 DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF
43 PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSU-
44 RANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR
45 AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR
46 NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS
47 NO NON-PREFERRED BRAND DRUG CATEGORY).

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

50 (GG) NO MEDICAL EXPENSE INDEMNITY CORPORATION, A HOSPITAL SERVICE
51 CORPORATION OR A HEALTH SERVICE CORPORATION WHICH PROVIDES COVERAGE FOR
52 PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSU-
53 RANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL
54 IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY
55 PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUC-
56 TIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS

1 EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATE-
2 GORY).

3 S 6. Subdivision 20 of section 296 of the executive law, as renum-
4 bered by chapter 204 of the laws of 1996, is renumbered subdivision 21
5 and a new subdivision 20 is added to read as follows:

6 20. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR ANY EMPLOYER,
7 LABOR ORGANIZATION, INSURER, HEALTH MAINTENANCE ORGANIZATION OR OTHER
8 ENTITY TO LIMIT HEALTH CARE COVERAGE SUCH THAT COST-SHARING, DEDUCTIBLES
9 OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG EXCEEDS THE DOLLAR
10 AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY
11 OTHER PRESCRIPTION DRUG PROVIDED UNDER SUCH HEALTH CARE COVERAGE IN THE
12 CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS
13 IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY); PROVIDED HOWEVER,
14 THIS SUBDIVISION SHALL NOT APPLY TO ANY SELF-INSURED EMPLOYEE WELFARE
15 BENEFIT PLAN, AS DEFINED IN THE EMPLOYEE RETIREMENT INCOME SECURITY ACT
16 OF 1974, AS AMENDED.

17 S 7. Severability. If any provision of this act, or any application of
18 any provision of this act, is held to be invalid, or ruled by any feder-
19 al agency to violate or be inconsistent with any applicable federal law
20 or regulation, that shall not affect the validity or effectiveness of
21 any other provision of this act, or of any other application of any
22 provision of this act.

23 S 8. This act shall take effect on the thirtieth day after it shall
24 have become a law.