

809

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GOTTFRIED, ENGLEBRIGHT, GALEF, PAULIN, JACOBS, TITUS, HOOPER, SCHROEDER, GABRYSZAK, JAFFEE, MILLMAN, COLTON -- Multi-Sponsored by -- M. of A. BENEDETTO, BING, BOYLAND, BURLING, CLARK, COOK, DESTITO, DINOWITZ, FARRELL, GUNTHER, HEASTIE, LATIMER, LAVINE, LIFTON, MAYERSOHN, McENENY, PEOPLES-STOKES, PERRY, PHEFFER, RAMOS, REILLY, ROBINSON, SWEENEY, WEISENBERG, WRIGHT -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to pharmacy benefit managers

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

1 Section 1. The public health law is amended by adding a new section
2 279 to read as follows:
3 S 279. PHARMACY BENEFIT MANAGERS. 1. DEFINITIONS. AS USED IN THIS
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5 (A) "HEALTH PLAN OR PROVIDER" MEANS AN ENTITY FOR WHICH A PHARMACY
6 BENEFIT MANAGER PROVIDES PHARMACY BENEFIT MANAGEMENT INCLUDING, BUT NOT
7 LIMITED TO: (I) A HEALTH BENEFIT PLAN OR OTHER ENTITY THAT APPROVES,
8 PROVIDES, ARRANGES FOR, OR PAYS FOR HEALTH CARE ITEMS OR SERVICES, UNDER
9 WHICH PRESCRIPTION DRUGS FOR BENEFICIARIES OF THE ENTITY ARE PURCHASED
10 OR WHICH PROVIDES OR ARRANGES REIMBURSEMENT IN WHOLE OR IN PART FOR THE
11 PURCHASE OF PRESCRIPTION DRUGS; OR (II) A HEALTH CARE PROVIDER OR
12 PROFESSIONAL, INCLUDING A STATE OR LOCAL GOVERNMENT ENTITY, THAT
13 ACQUIRES PRESCRIPTION DRUGS TO USE OR DISPENSE IN PROVIDING HEALTH CARE
14 TO PATIENTS.
15 (B) "PHARMACY BENEFIT MANAGEMENT" MEANS THE SERVICE PROVIDED TO A
16 HEALTH PLAN OR PROVIDER, DIRECTLY OR THROUGH ANOTHER ENTITY, INCLUDING
17 THE PROCUREMENT OF PRESCRIPTION DRUGS TO BE DISPENSED TO PATIENTS, OR
18 THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS, INCLUD-
19 ING BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

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

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1 (I) MAIL SERVICE PHARMACY;
2 (II) CLAIMS PROCESSING, RETAIL NETWORK MANAGEMENT, OR PAYMENT OF
3 CLAIMS TO PHARMACIES FOR DISPENSING PRESCRIPTION DRUGS;
4 (III) CLINICAL OR OTHER FORMULARY OR PREFERRED DRUG LIST DEVELOPMENT
5 OR MANAGEMENT;
6 (IV) NEGOTIATION OR ADMINISTRATION OF REBATES, DISCOUNTS, PAYMENT
7 DIFFERENTIALS, OR OTHER INCENTIVES, FOR THE INCLUSION OF PARTICULAR
8 PRESCRIPTION DRUGS IN A PARTICULAR CATEGORY OR TO PROMOTE THE PURCHASE
9 OF PARTICULAR PRESCRIPTION DRUGS;
10 (V) PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION, OR GENERIC SUBSTI-
11 TUTION PROGRAMS; AND
12 (VI) DISEASE MANAGEMENT.

13 (C) "PHARMACY BENEFIT MANAGER" MEANS ANY ENTITY THAT PERFORMS PHARMACY
14 BENEFIT MANAGEMENT FOR A HEALTH PLAN OR PROVIDER.

15 2. APPLICATION OF SECTION. THIS SECTION APPLIES TO THE PROVIDING OF
16 PHARMACY BENEFIT MANAGEMENT BY A PHARMACY BENEFIT MANAGER TO A PARTIC-
17 ULAR HEALTH PLAN OR PROVIDER.

18 3. DUTY, ACCOUNTABILITY AND TRANSPARENCY. (A) THE PHARMACY BENEFIT
19 MANAGER SHALL HAVE A FIDUCIARY RELATIONSHIP WITH AND OBLIGATION TO THE
20 HEALTH PLAN OR PROVIDER, AND SHALL PERFORM PHARMACY BENEFIT MANAGEMENT
21 WITH CARE, SKILL, PRUDENCE, DILIGENCE, AND PROFESSIONALISM.

22 (B) ALL FUNDS RECEIVED BY THE PHARMACY BENEFIT MANAGER IN RELATION TO
23 PROVIDING PHARMACY BENEFIT MANAGEMENT SHALL BE RECEIVED BY THE PHARMACY
24 BENEFIT MANAGER IN TRUST FOR THE HEALTH PLAN OR PROVIDER AND SHALL BE
25 USED OR DISTRIBUTED ONLY PURSUANT TO THE PHARMACY BENEFIT MANAGER'S
26 CONTRACT WITH THE HEALTH PLAN OR PROVIDER OR APPLICABLE LAW; EXCEPT FOR
27 ANY FEE OR PAYMENT EXPRESSLY PROVIDED FOR IN THE CONTRACT BETWEEN THE
28 PHARMACY BENEFIT MANAGER AND THE HEALTH PLAN OR PROVIDER TO COMPENSATE
29 THE PHARMACY BENEFIT MANAGER FOR ITS SERVICES.

30 (C) THE PHARMACY BENEFIT MANAGER SHALL PERIODICALLY ACCOUNT TO THE
31 HEALTH PLAN OR PROVIDER FOR ALL FUNDS RECEIVED BY THE PHARMACY BENEFIT
32 MANAGER. THE HEALTH PLAN OR PROVIDER SHALL HAVE ACCESS TO ALL FINANCIAL
33 AND UTILIZATION INFORMATION OF THE PHARMACY BENEFIT MANAGER IN RELATION
34 TO PHARMACY BENEFIT MANAGEMENT PROVIDED TO THE HEALTH PLAN OR PROVIDER.

35 (D) THE PHARMACY BENEFIT MANAGER SHALL DISCLOSE IN WRITING TO THE
36 HEALTH PLAN OR PROVIDER THE TERMS AND CONDITIONS OF ANY CONTRACT OR
37 ARRANGEMENT BETWEEN THE PHARMACY BENEFIT MANAGER AND ANY PARTY RELATING
38 TO PHARMACY BENEFIT MANAGEMENT PROVIDED TO THE HEALTH PLAN OR PROVIDER.

39 (E) THE PHARMACY BENEFIT MANAGER SHALL DISCLOSE IN WRITING TO THE
40 HEALTH PLAN OR PROVIDER ANY ACTIVITY, POLICY, PRACTICE, CONTRACT OR
41 ARRANGEMENT OF THE PHARMACY BENEFIT MANAGER THAT DIRECTLY OR INDIRECTLY
42 PRESENTS ANY CONFLICT OF INTEREST WITH THE PHARMACY BENEFIT MANAGER'S
43 RELATIONSHIP WITH OR OBLIGATION TO THE HEALTH PLAN OR PROVIDER.

44 (F) ANY INFORMATION REQUIRED TO BE DISCLOSED BY A PHARMACY BENEFIT
45 MANAGER TO A HEALTH PLAN OR PROVIDER UNDER THIS SECTION THAT IS REASON-
46 ABLY DESIGNATED BY THE PHARMACY BENEFIT MANAGER AS PROPRIETARY OR TRADE
47 SECRET INFORMATION SHALL BE KEPT CONFIDENTIAL BY THE HEALTH PLAN OR
48 PROVIDER, EXCEPT AS REQUIRED OR PERMITTED BY LAW, INCLUDING DISCLOSURE
49 NECESSARY TO PROSECUTE OR DEFEND ANY LEGITIMATE LEGAL CLAIM OR CAUSE OF
50 ACTION.

51 4. PRESCRIPTIONS. A PHARMACY BENEFIT MANAGER MAY NOT SUBSTITUTE OR
52 CAUSE THE SUBSTITUTING OF ONE PRESCRIPTION DRUG FOR ANOTHER IN DISPENS-
53 ING A PRESCRIPTION, OR ALTER OR CAUSE THE ALTERING OF THE TERMS OF A
54 PRESCRIPTION, EXCEPT WITH THE APPROVAL OF THE PRESCRIBER OR AS EXPLICIT-
55 LY REQUIRED OR PERMITTED BY LAW.

1 S 2. Severability. If any provision of this act, or any application
2 of any provision of this act, is held to be invalid, or ruled by any
3 federal agency to violate or be inconsistent with any applicable federal
4 law or regulation, that shall not affect the validity or effectiveness
5 of any other provision of this act, or of any other application of any
6 provision of this act.

7 S 3. This act shall take effect on the ninetieth day after it shall
8 become a law and shall apply to any contract for providing pharmacy
9 benefit management made or renewed on or after that date; and, provided,
10 that the amendment to article 2-A of the public health law made by
11 section one of this act shall survive the repeal of such article as
12 provided in section 79 of part C of chapter 58 of the laws of 2005, as
13 amended.