S T A T E O F N E W Y O R K

3909

2011-2012 Regular Sessions

I N S E N A T E

March 9, 2011

Introduced by Sen. LAVALLE -- 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:

Section 1. Subsection (i) of section 3216 of the insurance law is amended by adding a new paragraph 28 to read as follows:

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

S 2. Subdivision 3 of section 3332 of the public health law, as amended by chapter 178 of the laws of 2010, is amended to read as follows:

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

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

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provided that the controlled substance has been prescribed to treat one of the conditions that have been enumerated by the commissioner pursuant to regulations as warranting the prescribing of greater than a thirty day supply of a controlled substance and that the practitioner specifies the condition on the face of the prescription.] No additional prescriptions for a controlled substance may be issued by a practitioner to an ultimate user within [thirty] NINETY days of the date of any prescription previously issued unless and until the ultimate user has exhausted all but a seven day supply of the controlled substance provided by any previously issued prescription. A practitioner may, however, issue a prescription for up to a six month supply of any substance listed in subdivision (h) of Schedule II of section thirty-three hundred six of this article provided that such substance has been prescribed to treat one of the conditions that have been enumerated by the commissioner pursuant to regulations as warranting the prescribing of a six month supply and that the practitioner specifies the condition on the prescription or on the electronic prescription.

S 3. Subdivision 1 of section 3333 of the public health law, as amended by chapter 178 of the laws of 2010, is amended to read as follows:

1. A licensed pharmacist may, in good faith and in the course of his or her professional practice, sell and dispense to an ultimate user controlled substances only upon the delivery of an official New York state prescription or the receipt of an electronic prescription to such pharmacist, within thirty days of the date such prescription was signed by an authorized practitioner; provided, however, a pharmacist may dispense a part or portion of such prescription in accordance with regulations of the commissioner in consultation with the commissioner of education. No pharmacy or pharmacist may sell or dispense greater than a [thirty] NINETY day supply of a controlled substance to an ultimate user unless and until the ultimate user has exhausted all but a seven day supply of the controlled substance provided pursuant to any previously issued prescription, except that a pharmacy or pharmacist may sell or dispense up to a three month supply of a controlled substance if there appears, on the official New York state prescription or electronic prescription, a statement that the controlled substance has been prescribed to treat one of the conditions that have been enumerated by the regulations of the commissioner as warranting the prescribing of greater than a [thirty] NINETY day supply of a controlled substance. A pharmacy or pharmacist may sell or dispense up to a six month supply of any substance listed in subdivision (h) of Schedule II of section thirty-three hundred six of this article if there appears, on the official New York state prescription or on an electronic prescription, a statement that the substance has been prescribed to treat one of the conditions that have been enumerated by the regulations of the commissioner as warranting the prescribing of a specified greater supply.

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

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

more than a [thirty] NINETY day supply of schedule III, schedule IV or schedule V substances pursuant to regulations of the commissioner enumerating conditions warranting specified greater supplies, the prescription may be refilled only once.

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

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

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