

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

5646--A

2011-2012 Regular Sessions

I N S E N A T E

June 8, 2011

Introduced by Sens. HANNON, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to requiring managed care providers to provide coverage of medically necessary prescription drugs and medical supplies

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

1 Section 1. Subdivision 1 of section 364-j of the social services law
2 is amended by adding a new paragraph (z) to read as follows:
3 (Z) "PHARMACY AND THERAPEUTICS COMMITTEE". AN INDEPENDENT COMMITTEE
4 USED BY A MANAGED CARE PROVIDER TO DEVELOP AND MANAGE A FORMULARY OR
5 PREFERRED DRUG LIST THAT OPERATES PURSUANT TO THE REQUIREMENTS OF SUBDI-
6 VISION TWENTY-FIVE OF THIS SECTION.
7 S 2. Section 364-j of the social services law is amended by adding two
8 new subdivisions 25 and 26 to read as follows:
9 25. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,
10 MANAGED CARE PROVIDERS SHALL COVER MEDICALLY NECESSARY PRESCRIPTION
11 DRUGS AND MEDICAL SUPPLIES IN ACCORDANCE WITH THE FOLLOWING REQUIRE-
12 MENTS:
13 (A) A MANAGED CARE PROVIDER MAY UTILIZE A FORMULARY OR PREFERRED DRUG
14 LIST IN THE ADMINISTRATION OF THIS BENEFIT PROVIDED THAT SUCH FORMULARY
15 SHALL HAVE BEEN REVIEWED AND APPROVED BY A PHARMACY AND THERAPEUTICS
16 COMMITTEE COMPRISED OF MEMBERS FROM VARIOUS CLINICAL SPECIALTIES THAT
17 ADEQUATELY REPRESENT THE NEEDS OF ENROLLEES INCLUDING, AT A MINIMUM, THE
18 FOLLOWING CATEGORIES OF MEMBERS:
19 (I) NEW YORK STATE LICENSED, BOARD CERTIFIED PHYSICIAN PRACTICING IN
20 THE COMMUNITY AND SERVING THE MEDICAID POPULATION;
21 (II) NEW YORK STATE LICENSED, BOARD CERTIFIED SPECIALTY PHYSICIANS,
22 INCLUDING, AT A MINIMUM:

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

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1 (A) PHYSICIAN WHO IS BOARD CERTIFIED IN CARDIOLOGY, AND

2 (B) PHYSICIAN WHO IS BOARD CERTIFIED IN PSYCHIATRY;

3 (III) NEW YORK STATE LICENSED PHARMACIST PRACTICING IN THE COMMUNITY;
4 AND

5 (IV) AT LEAST ON A CONSULTING BASIS, AN ADEQUATE NUMBER OF HIGH VOLUME
6 SPECIALISTS, INCLUDING, BUT NOT LIMITED TO, AN HIV SPECIALIST, DEFINED
7 AS A PHYSICIAN THAT HAS MET THE CRITERIA OF:

8 (A) THE HIV MEDICINE ASSOCIATION (HIVMA) DEFINITION OF AN HIV-EXPERI-
9 ENCED PROVIDER, OR

10 (B) HIV SPECIALIST STATUS ACCORDED BY THE AMERICAN ACADEMY OF HIV
11 MEDICINE (AAHIVM).

12 (B) THE DEPARTMENT OF HEALTH SHALL DEVELOP STANDARDS TO ENSURE THAT
13 EACH MANAGED CARE PROVIDER'S PHARMACY AND THERAPEUTICS COMMITTEE MEMBERS
14 COME FROM VARIOUS CLINICAL SPECIALTIES AND ADEQUATELY REPRESENT THE
15 NEEDS OF PLAN BENEFICIARIES. A MAJORITY OF MEMBERS SHALL BE PRACTICING
16 PHYSICIANS OR PRACTICING PHARMACISTS LICENSED PURSUANT TO TITLE EIGHT OF
17 THE EDUCATION LAW. SUCH DEPARTMENT SHALL ALSO DEVELOP STANDARDS TO
18 ENSURE A TRANSPARENT PROCESS FOR FORMULARY DEVELOPMENT WHICH SHALL
19 INCLUDE THE OPPORTUNITY FOR PUBLIC COMMENT PRIOR TO ANY CHANGES TO THE
20 FORMULARY. EACH MANAGED CARE PROVIDER'S COMMITTEE SHALL MEET NO LESS
21 FREQUENTLY THAN ON A QUARTERLY BASIS. MINUTES OF THE MEETINGS SHALL BE
22 MADE AVAILABLE TO THE PUBLIC WITHIN TEN BUSINESS DAYS AFTER THE MINUTES
23 ARE APPROVED.

24 (C) A MANAGED CARE PROVIDER THAT ADOPTS A FORMULARY SHALL COVER
25 PRESCRIPTION DRUGS IN ALL CATEGORIES AND CLASSES FOR ALL DISEASE STATES
26 AND PROVIDE A BROAD RANGE OF THERAPEUTIC OPTIONS FOR ALL USP MODEL
27 GUIDELINES FOR FORMULARY KEY DRUG TYPES AND DESIGNATED DRUG CLASSES,
28 INCLUDING ALL OR SUBSTANTIALLY ALL DRUGS IN THE ANTIDEPRESSANT, ATYPICAL
29 ANTIPSYCHOTIC, ANTINEOPLASTIC, ANTICONVULSANT, IMMUNOSUPPRESSANT AND
30 ANTI-RETROVIRAL CLASSES. A MANAGED CARE PROVIDER SHALL ALSO COVER A
31 PRESCRIPTION DRUG WHEN THE PHARMACY AND THERAPEUTICS COMMITTEE DETER-
32 MINES A DRUG IS SIGNIFICANTLY MORE CLINICALLY EFFECTIVE OR SAFE THAN
33 OTHER DRUGS IN THE CLASS.

34 (D) A MANAGED CARE PROVIDER SHALL PROVIDE COVERAGE FOR NOT LESS THAN A
35 NINE MONTH SUPPLY OF NON-PREFERRED/NON-FORMULARY PRESCRIPTION DRUGS THAT
36 WERE PRESCRIBED TO THE PARTICIPANT TO TREAT A CONDITION THAT IS TREATED
37 ON AN ONGOING BASIS, EITHER WITH CONTINUOUS MEDICATION OR A MEDICATION
38 TAKEN AS NEEDED PRIOR TO PRESCRIPTION DRUGS BEING ADDED TO THE MANAGED
39 CARE PROGRAM OR BEING REMOVED FROM THE FORMULARY.

40 (E) THE PRIOR AUTHORIZATION SHALL BE PROCESSED, AND A RESPONSE SENT TO
41 THE REQUESTING PHARMACIST WITHIN TWO BUSINESS DAYS OF SUBMISSION. PRIOR
42 TO THE COMPLETION OF THE PRIOR AUTHORIZATION PROCESS, A PLAN SHALL COVER
43 A MINIMUM SEVENTY-TWO HOUR SUPPLY OF THE PRESCRIBED DRUG AND THE PHARMA-
44 CIST SHALL BE REIMBURSED FOR DISPENSING A SEVENTY-TWO HOUR SUPPLY TO AN
45 ENROLLEE.

46 (F) A MANAGED CARE PROVIDER SHALL ONLY IMPLEMENT REASONABLE AND GENER-
47 ALLY ACCEPTABLE FORMULARY AND UTILIZATION MANAGEMENT INCLUDING, BUT NOT
48 LIMITED TO, PRIOR AUTHORIZATION, STEP THERAPY AND GENERIC SUBSTITUTIONS;
49 PROVIDED SUCH TOOLS ARE REVIEWED AND APPROVED BY THE PHARMACY AND THERA-
50 PEUTICS COMMITTEE BASED ON THE STRENGTH OF SCIENTIFIC EVIDENCE, STAND-
51 ARDS OF PRACTICE AND NATIONALLY ACCEPTED TREATMENT GUIDELINES.

52 (G) PRIOR TO REMOVING A COVERED DRUG FROM ITS FORMULARY, A MANAGED
53 CARE PROVIDER MUST PROVIDE AT LEAST SIXTY DAYS NOTICE TO ENROLLEES,
54 AUTHORIZED PRESCRIBERS, NETWORK PHARMACIES AND PHARMACISTS PRIOR TO THE
55 DATE SUCH CHANGE BECOMES EFFECTIVE.

1 (H) A MANAGED CARE PROVIDER SHALL REVIEW, THROUGH THE PHARMACY AND
2 THERAPEUTICS COMMITTEE, ALL DRUGS THAT RECEIVE APPROVAL FROM THE FEDERAL
3 FOOD AND DRUG ADMINISTRATION WITHIN NINETY DAYS OF THEIR RELEASE IN THE
4 MARKET, AND DECISIONS REGARDING INCLUSION IN ANY FORMULARY OR PREFERRED
5 DRUG LIST SHALL BE MADE WITHIN ONE HUNDRED EIGHTY DAYS OF THEIR RELEASE
6 IN THE MARKET. PROVIDED, HOWEVER, THAT IN THE CASE OF THOSE DRUGS WHICH
7 HAVE RECEIVED PRIORITY EXPEDITED REVIEW AND APPROVAL OF THE FOOD AND
8 DRUG ADMINISTRATION, A DECISION FOR INCLUSION IN THE FORMULARY OR
9 PREFERRED DRUG LIST SHALL BE MADE WITHIN NINETY DAYS OF SUCH APPROVAL BY
10 THE FOOD AND DRUG ADMINISTRATION.

11 (I) A MANAGED CARE PROVIDER SHALL BE SUBJECT TO AND SHALL USE THE
12 GRIEVANCE AND APPEALS PROCESS, INCLUDING THE RIGHT TO EXTERNAL REVIEW,
13 MANDATED BY ARTICLE FORTY-NINE OF THE PUBLIC HEALTH LAW AND TITLE 42 OF
14 THE CODE OF FEDERAL REGULATIONS, PART 438, UPON RECEIPT OF AN APPEAL OF
15 A DENIAL OF A REQUESTED PRESCRIPTION DRUG, INCLUDING A DENIAL BASED ON
16 STEP THERAPY OR FAIL FIRST PROTOCOLS.

17 (J) ON OR BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, THE DEPARTMENT OF
18 HEALTH SHALL DEVELOP STANDARDIZED DRUG PRIOR AUTHORIZATION REQUEST FORMS
19 TO BE UTILIZED BY HEALTHCARE PROVIDERS, AND ACCEPTED BY MANAGED CARE
20 ORGANIZATIONS CONTRACTED BY THE STATE, THROUGH SECURE ELECTRONIC TRANS-
21 MISSIONS. TO THE EXTENT ELECTRONIC PRESCRIBING SYSTEMS ARE USED, ELEC-
22 TRONIC PRIOR AUTHORIZATION CAPABILITIES SHALL BE INCORPORATED INTO THE
23 PROGRAM.

24 26. THE DEPARTMENT OF HEALTH SHALL PREPARE A REPORT NO LATER THAN
25 EIGHTEEN MONTHS AFTER THE IMPLEMENTATION OF ANY EXPANSION OF MANAGED
26 CARE TO A NEW POPULATION AND/OR FOR NEW BENEFITS OR SERVICES. THE
27 DEPARTMENT SHALL POST A DRAFT REPORT ON ITS WEBSITE AND PROVIDE AN
28 OPPORTUNITY FOR PUBLIC COMMENT. THE FINAL REPORT SHALL BE SUBMITTED TO
29 THE GOVERNOR AND THE LEGISLATURE, ALONG WITH A DESCRIPTION OF THE PROC-
30 ESS PROVIDED FOR PUBLIC INPUT. THE REPORT SHALL INCLUDE AN ASSESSMENT OF
31 THE FOLLOWING:

32 (A) THE IMPACT OF MANAGED CARE ON PATIENT ACCESS TO CARE, INCLUDING AN
33 EVALUATION OF ANY BARRIERS TO USE OF SERVICES, INCLUDING PRESCRIPTION
34 DRUGS, CREATED BY THE USE OF MEDICAL MANAGEMENT OR COST CONTAINMENT
35 TOOLS;

36 (B) THE IMPACT OF THE MANAGED CARE EXPANSION ON UTILIZATION OF
37 SERVICES, QUALITY OF CARE AND PATIENT OUTCOMES; AND

38 (C) THE USE OF PRIOR AUTHORIZATION AND OTHER UTILIZATION MANAGEMENT
39 TOOLS, INCLUDING AN ASSESSMENT OF WHETHER THESE TOOLS POSE AN UNDUE
40 ADMINISTRATIVE BURDEN FOR PHYSICIANS AND/OR CREATE BARRIERS TO NEEDED
41 CARE.

42 S 3. This act shall take effect immediately; provided, however, that
43 the amendments to section 364-j of the social services law made by
44 sections one and two of this act shall not affect the repeal of such
45 section and shall be deemed repealed therewith.