

S T A T E   O F   N E W   Y O R K

---

2335--C

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 14, 2013

---

Introduced by M. of A. RODRIGUEZ, ABINANTI, GUNTHER, BRONSON, RIVERA, CYMBROWITZ, BROOK-KRASNY, GOTTFRIED, JACOBS, SCHIMEL, ARROYO, JAFFEE, PERRY, SCARBOROUGH, WEPRIN, DINOWITZ, CAMARA, GOLDFEDER, ROSENTHAL, COLTON, HOOPER, ZEBROWSKI, SIMANOWITZ, MAGNARELLI, BENEDETTO, ABBATE, AUBRY, TITONE, ROBERTS, CRESPO, QUART, WEISENBERG, CAHILL, MILLMAN, SKOUFIS, OTIS, RAIA, PAULIN, MONTESANO -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, COOK, CROUCH, DUPREY, GLICK, HEASTIE, LENTOL, LUPARDO, MAGEE, PEOPLES-STOKES, RUSSELL, SKARTADOS, SWEENEY, THIELE, TITUS, WEINSTEIN, WRIGHT -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law and the public health law, in relation to prescription drugs in Medicaid managed care programs; and to repeal certain provisions of the social services law, relating to payments for prescription drugs

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

1     Section 1. The social services law is amended by adding a new section  
2     365-i to read as follows:  
3     S 365-I. PRESCRIPTION DRUGS IN MEDICAID MANAGED CARE PROGRAMS. 1.  
4     DEFINITIONS. AS USED IN THIS SECTION, UNLESS THE CONTEXT CLEARLY  
5     REQUIRES OTHERWISE:

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

LBD05620-06-4

1 (A) "ARTICLE" MEANS TITLE ELEVEN OF ARTICLE FIVE OF THIS CHAPTER WITH  
2 RESPECT TO THE MEDICAL ASSISTANCE PROGRAM, TITLE ELEVEN-D OF ARTICLE  
3 FIVE OF THIS CHAPTER WITH RESPECT TO THE FAMILY HEALTH PLUS PROGRAM, AND  
4 TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW WITH RESPECT  
5 TO THE CHILD HEALTH INSURANCE PROGRAM.

6 (B) "CLINICAL DRUG REVIEW PROGRAM" MEANS THE CLINICAL DRUG REVIEW  
7 PROGRAM UNDER SECTION TWO HUNDRED SEVENTY-FOUR OF THE PUBLIC HEALTH LAW.

8 (C) "EMERGENCY CONDITION" MEANS A MEDICAL OR BEHAVIORAL CONDITION AS  
9 DETERMINED BY THE PRESCRIBER OR PHARMACIST, THE ONSET OF WHICH IS  
10 SUDDEN, THAT MANIFESTS ITSELF BY SYMPTOMS OF SUFFICIENT SEVERITY,  
11 INCLUDING SEVERE PAIN, AND FOR WHICH DELAY IN BEGINNING TREATMENT  
12 PRESCRIBED BY THE PATIENT'S HEALTH CARE PRACTITIONER WOULD RESULT IN:  
13 (I) PLACING THE HEALTH OR SAFETY OF THE PERSON AFFLICTED WITH SUCH  
14 CONDITION OR OTHER PERSON OR PERSONS IN SERIOUS JEOPARDY;  
15 (II) SERIOUS IMPAIRMENT TO SUCH PERSON'S BODILY FUNCTIONS;  
16 (III) SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR PART OF SUCH PERSON;  
17 (IV) SERIOUS DISFIGUREMENT OF SUCH PERSON; OR  
18 (V) SEVERE DISCOMFORT.

19 (D) "MANAGED CARE PROVIDER" MEANS A MANAGED CARE PROVIDER UNDER  
20 SECTION THREE HUNDRED SIXTY-FOUR-J OF THIS TITLE, A MANAGED LONG TERM  
21 CARE PLAN OR OTHER CARE COORDINATION MODEL UNDER SECTION FORTY-FOUR  
22 HUNDRED THREE-F OF THE PUBLIC HEALTH LAW, A FAMILY HEALTH INSURANCE PLAN  
23 UNDER SECTION THREE HUNDRED SIXTY-NINE-EE OF THIS ARTICLE (FAMILY HEALTH  
24 PLUS PROGRAM), AN APPROVED ORGANIZATION UNDER TITLE ONE-A OF ARTICLE  
25 TWENTY-FIVE OF THE PUBLIC HEALTH LAW (CHILD HEALTH INSURANCE PROGRAM),  
26 OR ANY OTHER ENTITY THAT PROVIDES OR ARRANGES FOR THE PROVISION OF  
27 MEDICAL ASSISTANCE SERVICES AND SUPPLIES TO PARTICIPANTS DIRECTLY OR  
28 INDIRECTLY (INCLUDING BY REFERRAL), INCLUDING CASE MANAGEMENT, INCLUDING  
29 THE MANAGED CARE PROVIDER'S AUTHORIZED AGENTS.

30 (E) "NON-PREFERRED DRUG" MEANS A PRESCRIPTION DRUG THAT REQUIRES PRIOR  
31 AUTHORIZATION UNDER THE PARTICIPANT'S MANAGED CARE PROVIDER.

32 (F) "PARTICIPANT" MEANS A MEDICAL ASSISTANCE RECIPIENT WHO RECEIVES,  
33 IS REQUIRED TO RECEIVE OR ELECTS TO RECEIVE HIS OR HER MEDICAL ASSIST-  
34 ANCE SERVICES FROM A MANAGED CARE PROVIDER.

35 (G) "PREFERRED DRUG" MEANS A PRESCRIPTION DRUG THAT IS NOT A NON-PRE-  
36 FERRED DRUG UNDER THE PATIENT'S MANAGED CARE PROVIDER. "PREFERRED DRUG  
37 LIST" MEANS A LIST OF A MANAGED CARE PROVIDER'S PREFERRED DRUGS.

38 (H) "PREFERRED DRUG PROGRAM" MEANS THE PREFERRED DRUG PROGRAM ESTAB-  
39 LISHED UNDER SECTION TWO HUNDRED SEVENTY-TWO OF THE PUBLIC HEALTH LAW.

40 (I) "PRESCRIBER" MEANS A HEALTH CARE PROFESSIONAL AUTHORIZED TO  
41 PRESCRIBE PRESCRIPTION DRUGS FOR A PARTICIPANT OF THE MANAGED CARE  
42 PROVIDER, ACTING WITHIN HIS OR HER LAWFUL SCOPE OF PRACTICE.

43 (J) "PRESCRIPTION DRUG" OR "DRUG" MEANS A DRUG DEFINED IN SUBDIVISION  
44 SEVEN OF SECTION SIXTY-EIGHT HUNDRED TWO OF THE EDUCATION LAW, FOR WHICH  
45 A PRESCRIPTION IS REQUIRED UNDER THE FEDERAL FOOD, DRUG AND COSMETIC  
46 ACT. ANY DRUG THAT DOES NOT REQUIRE A PRESCRIPTION UNDER SUCH ACT, BUT  
47 WHICH WOULD OTHERWISE BE ELIGIBLE FOR REIMBURSEMENT UNDER THIS ARTICLE  
48 WHEN ORDERED BY A PRESCRIBER AND THE PRESCRIPTION IS SUBJECT TO THE  
49 APPLICABLE PROVISIONS OF THIS ARTICLE AND PARAGRAPH (A) OF SUBDIVISION  
50 FOUR OF SECTION THREE HUNDRED SIXTY-FIVE-A OF THIS TITLE.

51 (K) "PRIOR AUTHORIZATION" MEANS A PROCESS REQUIRING THE PRESCRIBER OR  
52 THE DISPENSER TO VERIFY WITH THE PARTICIPANT'S MANAGED CARE PROVIDER  
53 THAT THE DRUG IS APPROPRIATE FOR THE NEEDS OF THE SPECIFIC PATIENT.

54 (L) "QUALIFIED PRESCRIPTION DRUG SYSTEM" OR "SYSTEM" MEANS A PROCESS  
55 UNDER THIS SECTION, APPROVED BY THE COMMISSIONER, THROUGH WHICH A

1 MANAGED CARE PROVIDER APPROVES PAYMENT FOR A NON-PREFERRED DRUG FOR A  
2 PARTICIPANT BASED ON PRIOR AUTHORIZATION.

3 2. PAYMENT FOR PRESCRIPTION DRUGS UNDER CAPITATION. (A) PAYMENT FOR  
4 PRESCRIPTION DRUGS SHALL BE INCLUDED IN THE CAPITATION PAYMENTS FOR  
5 SERVICES OR SUPPLIES PROVIDED TO A MANAGED CARE PROVIDER'S PARTICIPANTS,  
6 PROVIDED THAT THE MANAGED CARE PROVIDER PAYS FOR PRESCRIPTION DRUGS  
7 UNDER A QUALIFIED PRESCRIPTION DRUG SYSTEM. EVERY PRESCRIPTION DRUG  
8 ELIGIBLE FOR REIMBURSEMENT UNDER THIS ARTICLE PRESCRIBED IN RELATION TO  
9 A SERVICE PROVIDED BY THE MANAGED CARE PROVIDER SHALL BE EITHER A  
10 PREFERRED OR NON-PREFERRED DRUG UNDER THE QUALIFIED PRESCRIPTION DRUG  
11 SYSTEM. THE COMMISSIONER SHALL APPROVE A MANAGED CARE PROVIDER'S QUALI-  
12 FIED PRESCRIPTION DRUG SYSTEM IF IT CONFORMS TO THE PROVISIONS OF THIS  
13 SECTION.

14 (B) IF THE MANAGED CARE PROVIDER DOES NOT PAY FOR PRESCRIPTION DRUGS  
15 UNDER A QUALIFIED PRESCRIPTION DRUG SYSTEM, THEN PAYMENT FOR  
16 PRESCRIPTION DRUGS FOR THE MANAGED CARE PROVIDER'S PATIENTS SHALL NOT BE  
17 INCLUDED IN SUCH CAPITATION PAYMENTS AND PRESCRIPTION DRUGS SHALL BE  
18 PROVIDED FOR THE MANAGED CARE PROVIDER'S PARTICIPANTS UNDER THE  
19 PREFERRED DRUG PROGRAM.

20 3. QUALIFIED PRESCRIPTION DRUG SYSTEM; CRITERIA. (A) A QUALIFIED  
21 PRESCRIPTION DRUG SYSTEM SHALL PROMOTE ACCESS TO THE MOST EFFECTIVE  
22 PRESCRIPTION DRUGS WHILE REDUCING THE COST OF PRESCRIPTION DRUGS UNDER  
23 THIS ARTICLE. THIS SUBDIVISION AND SUBDIVISION FOUR OF THIS SECTION  
24 APPLY TO QUALIFIED PRESCRIPTION DRUG SYSTEMS.

25 (B) WHEN A PRESCRIBER PRESCRIBES A NON-PREFERRED DRUG FOR A PARTIC-  
26 IPANT, REIMBURSEMENT MAY BE DENIED UNLESS PRIOR AUTHORIZATION IS  
27 OBTAINED, UNLESS NO PRIOR AUTHORIZATION IS REQUIRED UNDER THIS SECTION.  
28 WHEN A PRESCRIBER PRESCRIBES A PREFERRED DRUG FOR A PARTICIPANT, NO  
29 PRIOR AUTHORIZATION SHALL BE REQUIRED FOR REIMBURSEMENT, UNLESS PRIOR  
30 AUTHORIZATION IS REQUIRED UNDER THE CLINICAL DRUG REVIEW PROGRAM.

31 (C) THE COMMISSIONER SHALL ESTABLISH PERFORMANCE STANDARDS FOR SYSTEMS  
32 THAT, AT A MINIMUM, ENSURE THAT SYSTEMS PROVIDE SUFFICIENT TECHNICAL  
33 SUPPORT AND TIMELY RESPONSES TO CONSUMERS, PRESCRIBERS AND PHARMACISTS.

34 (D) THE COMMISSIONER SHALL ADOPT CRITERIA FOR QUALIFIED PRESCRIPTION  
35 DRUG SYSTEMS AFTER CONSIDERING RECOMMENDATIONS AND COMMENTS RECEIVED  
36 FROM PRESCRIBERS, PHARMACISTS, PARTICIPANTS, AND ORGANIZATIONS REPRES-  
37 ENTING THEM.

38 (E) THE MANAGED CARE PROVIDER SHALL DEVELOP ITS PREFERRED DRUG LIST  
39 BASED INITIALLY ON AN EVALUATION OF THE CLINICAL EFFECTIVENESS, SAFETY,  
40 AND PATIENT OUTCOMES, FOLLOWED BY CONSIDERATION OF THE COST-EFFECTIVE-  
41 NESS OF THE DRUGS. IN EACH THERAPEUTIC CLASS, THE MANAGED CARE PROVIDER  
42 SHALL DETERMINE WHETHER THERE IS ONE DRUG THAT IS SIGNIFICANTLY MORE  
43 CLINICALLY EFFECTIVE AND SAFE, AND THAT DRUG SHALL BE INCLUDED ON THE  
44 PREFERRED DRUG LIST WITHOUT CONSIDERATION OF COST. IF, AMONG TWO OR MORE  
45 DRUGS IN A THERAPEUTIC CLASS, THE DIFFERENCE IN CLINICAL EFFECTIVENESS  
46 AND SAFETY IS NOT CLINICALLY SIGNIFICANT, THEN COST-EFFECTIVENESS MAY  
47 ALSO BE CONSIDERED IN DETERMINING WHICH DRUG OR DRUGS SHALL BE INCLUDED  
48 ON THE PREFERRED DRUG LIST.

49 4. PRIOR AUTHORIZATION. (A) A QUALIFIED PRESCRIPTION DRUG SYSTEM SHALL  
50 MAKE AVAILABLE A TWENTY-FOUR HOUR PER DAY, SEVEN DAYS PER WEEK TELEPHONE  
51 CALL CENTER THAT INCLUDES A TOLLFREE TELEPHONE LINE AND DEDICATED  
52 FACSIMILE LINE TO RESPOND TO REQUESTS FOR PRIOR AUTHORIZATION. THE CALL  
53 CENTER SHALL INCLUDE QUALIFIED HEALTH CARE PROFESSIONALS WHO SHALL BE  
54 AVAILABLE TO CONSULT WITH PRESCRIBERS CONCERNING PRESCRIPTION DRUGS THAT  
55 ARE NON-PREFERRED DRUGS. A PRESCRIBER SEEKING PRIOR AUTHORIZATION SHALL  
56 CONSULT WITH THE PROGRAM CALL LINE TO REASONABLY PRESENT HIS OR HER

1 JUSTIFICATION FOR THE PRESCRIPTION AND GIVE THE PROGRAM'S QUALIFIED  
2 HEALTH CARE PROFESSIONAL A REASONABLE OPPORTUNITY TO RESPOND.

3 (B) WHEN A PATIENT'S HEALTH CARE PROVIDER PRESCRIBES A NON-PREFERRED  
4 DRUG, THE PRESCRIBER SHALL CONSULT WITH THE SYSTEM TO CONFIRM THAT IN  
5 HIS OR HER REASONABLE PROFESSIONAL JUDGMENT, THE PATIENT'S CLINICAL  
6 CONDITION IS CONSISTENT WITH THE CRITERIA FOR APPROVAL OF THE NON-PRE-  
7 FERRED DRUG. SUCH CRITERIA SHALL INCLUDE:

8 (I) THE PREFERRED DRUG HAS BEEN TRIED BY THE PATIENT AND HAS FAILED TO  
9 PRODUCE THE DESIRED HEALTH OUTCOMES;

10 (II) THE PATIENT HAS TRIED THE PREFERRED DRUG AND HAS EXPERIENCED  
11 UNACCEPTABLE SIDE EFFECTS;

12 (III) THE PATIENT HAS BEEN STABILIZED ON A NON-PREFERRED DRUG AND  
13 TRANSITION TO THE PREFERRED DRUG WOULD BE MEDICALLY CONTRAINDICATED; OR

14 (IV) OTHER CLINICAL INDICATIONS IDENTIFIED BY THE COMMISSIONER OR THE  
15 MANAGED CARE PROVIDER FOR THE PATIENT'S USE OF THE NON-PREFERRED DRUG,  
16 WHICH SHALL INCLUDE CONSIDERATION OF THE MEDICAL NEEDS OF SPECIAL POPU-  
17 LATIONS, INCLUDING CHILDREN, ELDERLY, CHRONICALLY ILL, PERSONS WITH  
18 MENTAL HEALTH CONDITIONS, AND PERSONS AFFECTED BY HIV/AIDS OR HEPATITIS  
19 C.

20 (C) IN THE EVENT THAT THE PATIENT DOES NOT MEET THE CRITERIA IN PARA-  
21 GRAPH (B) OF THIS SUBDIVISION, THE PRESCRIBER MAY PROVIDE ADDITIONAL  
22 INFORMATION TO THE MANAGED CARE PROVIDER TO JUSTIFY THE USE OF A  
23 NON-PREFERRED DRUG. THE SYSTEM SHALL PROVIDE A REASONABLE OPPORTUNITY  
24 FOR A PRESCRIBER TO REASONABLY PRESENT HIS OR HER JUSTIFICATION OF PRIOR  
25 AUTHORIZATION. IF, AFTER CONSULTATION WITH THE MANAGED CARE PROVIDER,  
26 THE PRESCRIBER, IN HIS OR HER REASONABLE PROFESSIONAL JUDGMENT, DETER-  
27 MINES THAT THE USE OF A NON-PREFERRED DRUG IS WARRANTED, THE  
28 PRESCRIBER'S DETERMINATION SHALL BE FINAL.

29 (D) IF A PRESCRIBER MEETS THE REQUIREMENTS OF PARAGRAPH (B) OR (C) OF  
30 THIS SUBDIVISION, THE PRESCRIBER SHALL BE GRANTED PRIOR AUTHORIZATION  
31 UNDER THIS SECTION.

32 (E) IN THE INSTANCE WHERE A PRIOR AUTHORIZATION DETERMINATION IS NOT  
33 COMPLETED WITHIN TWENTY-FOUR HOURS OF THE ORIGINAL REQUEST, SOLELY AS  
34 THE RESULT OF A FAILURE OF THE SYSTEM (WHETHER BY ACTION OR INACTION),  
35 PRIOR AUTHORIZATION SHALL BE IMMEDIATELY AND AUTOMATICALLY GRANTED WITH  
36 NO FURTHER ACTION BY THE PRESCRIBER AND THE PRESCRIBER SHALL BE NOTIFIED  
37 OF THIS DETERMINATION. IN THE INSTANCE WHERE A PRIOR AUTHORIZATION  
38 DETERMINATION IS NOT COMPLETED WITHIN TWENTY-FOUR HOURS OF THE ORIGINAL  
39 REQUEST FOR ANY OTHER REASON, A SEVENTY-TWO HOUR SUPPLY OF THE MEDICA-  
40 TION SHALL BE APPROVED BY THE SYSTEM AND THE PRESCRIBER SHALL BE NOTI-  
41 FIED OF THIS DETERMINATION.

42 (F) WHEN, IN THE JUDGMENT OF THE PRESCRIBER OR THE PHARMACIST, AN  
43 EMERGENCY CONDITION EXISTS, AND THE PRESCRIBER OR PHARMACIST NOTIFIES  
44 THE MANAGED CARE PROVIDER THAT AN EMERGENCY CONDITION EXISTS, A SEVEN-  
45 TY-TWO HOUR EMERGENCY SUPPLY OF THE DRUG PRESCRIBED SHALL BE IMMEDIATELY  
46 AUTHORIZED BY THE MANAGED CARE PROVIDER.

47 (G) IN THE EVENT THAT A PATIENT PRESENTS A PRESCRIPTION TO A PHARMA-  
48 CIST FOR A PRESCRIPTION DRUG THAT IS A NON-PREFERRED DRUG AND FOR WHICH  
49 THE PRESCRIBER HAS NOT OBTAINED A PRIOR AUTHORIZATION, THE PHARMACIST  
50 SHALL, WITHIN A PROMPT PERIOD BASED ON PROFESSIONAL JUDGMENT, NOTIFY THE  
51 PRESCRIBER. THE PRESCRIBER SHALL, WITHIN A PROMPT PERIOD BASED ON  
52 PROFESSIONAL JUDGMENT, EITHER SEEK PRIOR AUTHORIZATION OR SHALL CONTACT  
53 THE PHARMACIST AND AMEND OR CANCEL THE PRESCRIPTION. THE PHARMACIST  
54 SHALL, WITHIN A PROMPT PERIOD BASED ON PROFESSIONAL JUDGMENT, NOTIFY THE  
55 PATIENT WHEN PRIOR AUTHORIZATION HAS BEEN OBTAINED OR DENIED OR WHEN THE  
56 PRESCRIPTION HAS BEEN AMENDED OR CANCELLED.

1 (H) ONCE PRIOR AUTHORIZATION OF A PRESCRIPTION FOR A DRUG THAT IS NOT  
2 ON THE PREFERRED DRUG LIST IS OBTAINED, PRIOR AUTHORIZATION SHALL NOT BE  
3 REQUIRED FOR ANY REFILL OF THE PRESCRIPTION.

4 (I) NO PRIOR AUTHORIZATION UNDER A QUALIFIED PRESCRIPTION DRUG SYSTEM  
5 SHALL BE REQUIRED FOR: (I) ATYPICAL ANTI-PSYCHOTICS; (II) ANTI-DEPRES-  
6 SANTS; (III) ANTI-RETROVIRALS USED IN THE TREATMENT OF HIV/AIDS OR HEPA-  
7 TITIS C; (IV) ANTI-REJECTION DRUGS USED IN THE TREATMENT OF ORGAN AND  
8 TISSUE TRANSPLANTS; AND (V) ANY OTHER THERAPEUTIC CLASS FOR THE TREAT-  
9 MENT OF MENTAL ILLNESS, HIV/AIDS OR HEPATITIS C, APPROVED BY THE COMMIS-  
10 SIONER.

11 5. CLINICAL DRUG REVIEW PROGRAM. IN THE CASE OF A DRUG FOR WHICH PRIOR  
12 AUTHORIZATION IS REQUIRED UNDER THE CLINICAL DRUG REVIEW PROGRAM, PRIOR  
13 AUTHORIZATION SHALL BE OBTAINED UNDER THE CLINICAL DRUG REVIEW PROGRAM  
14 AND NOT UNDER THIS SECTION.

15 6. PRESCRIBER CONDUCT. THE MANAGED CARE PROVIDER AND THE DEPARTMENT  
16 SHALL MONITOR THE PRIOR AUTHORIZATION PROCESS UNDER A QUALIFIED  
17 PRESCRIPTION DRUG SYSTEM FOR PRESCRIBING PATTERNS WHICH ARE SUSPECTED OF  
18 ENDANGERING THE HEALTH AND SAFETY OF THE PATIENT OR WHICH DEMONSTRATE A  
19 LIKELIHOOD OF FRAUD OR ABUSE. THE MANAGED CARE PROVIDER AND THE DEPART-  
20 MENT SHALL TAKE ANY AND ALL ACTIONS OTHERWISE PERMITTED BY LAW TO INVES-  
21 TIGATE SUCH PRESCRIBING PATTERNS, TO TAKE REMEDIAL ACTION AND TO ENFORCE  
22 APPLICABLE FEDERAL AND STATE LAWS.

23 7. USE OF PREFERRED DRUG PROGRAM. THE COMMISSIONER MAY CONTRACT WITH A  
24 MANAGED CARE PROVIDER FOR THE PROVIDER TO USE THE PREFERRED DRUG PROGRAM  
25 TO PROVIDE PRIOR AUTHORIZATION UNDER THE MANAGED CARE PROVIDER'S QUALI-  
26 FIED PRESCRIPTION DRUG SYSTEM. THE CONTRACT SHALL INCLUDE TERMS REQUIRED  
27 BY THE COMMISSIONER TO MAXIMIZE SAVINGS TO THE MEDICAID PROGRAM AND  
28 PROTECT THE HEALTH AND INTERESTS OF THE MANAGED CARE PROVIDER'S PARTIC-  
29 IPANTS. THE CONTRACT SHALL PROVIDE WHETHER THE PREFERRED DRUG PROGRAM  
30 SHALL USE THE MANAGED CARE PROVIDER'S LISTS OF PREFERRED AND NON-PRE-  
31 FERRED DRUGS OR THE PREFERRED DRUG LIST UNDER THE PREFERRED DRUG  
32 PROGRAM, WITH RESPECT TO WHETHER PRIOR AUTHORIZATION IS REQUIRED.

33 S 2. Subdivisions 25 and 25-a of section 364-j of the social services  
34 law are REPEALED.

35 S 3. Subdivision 2-b of section 369-ee of the social services law is  
36 REPEALED and a new subdivision 2-b is added to read as follows:

37 2-B. PAYMENT FOR PRESCRIPTION DRUGS. PAYMENT FOR PRESCRIPTION DRUGS  
38 SHALL BE INCLUDED IN THE CAPITATED PAYMENTS FOR SERVICES OR SUPPLIES  
39 PROVIDED UNDER A FAMILY HEALTH INSURANCE PLAN OR PROVIDED BY AN EMPLOYER  
40 PARTNERSHIP FOR FAMILY HEALTH PLUS PLAN AUTHORIZED BY SECTION THREE  
41 HUNDRED SIXTY-NINE-EE OF THIS TITLE, PROVIDED THAT THE PLAN PAYS FOR  
42 PRESCRIPTION DRUGS UNDER A QUALIFIED PRESCRIPTION DRUG SYSTEM UNDER  
43 SECTION THREE HUNDRED SIXTY-FIVE-I OF THIS ARTICLE. EVERY PRESCRIPTION  
44 DRUG ELIGIBLE FOR REIMBURSEMENT UNDER THIS ARTICLE PRESCRIBED IN  
45 RELATION TO A SERVICE PROVIDED BY THE PLAN SHALL BE EITHER A PREFERRED  
46 OR NON-PREFERRED DRUG UNDER THE QUALIFIED PRESCRIPTION DRUG SYSTEM. IF  
47 THE PLAN DOES NOT PAY FOR PRESCRIPTION DRUGS UNDER A QUALIFIED  
48 PRESCRIPTION DRUG SYSTEM, THEN PAYMENT FOR PRESCRIPTION DRUGS FOR THE  
49 PLAN'S PATIENTS SHALL NOT BE INCLUDED IN SUCH CAPITATION PAYMENTS AND  
50 PRESCRIPTION DRUGS SHALL BE PROVIDED FOR THE APPROVED ORGANIZATION'S  
51 PARTICIPANTS UNDER THE PREFERRED DRUG PROGRAM.

52 S 4. Section 2511 of the public health law is amended by adding a new  
53 subdivision 22 to read as follows:

54 22. PAYMENT FOR PRESCRIPTION DRUGS. PAYMENT FOR PRESCRIPTION DRUGS  
55 SHALL BE INCLUDED IN THE PAYMENTS FOR SERVICES OR SUPPLIES PROVIDED BY  
56 THE APPROVED ORGANIZATION, PROVIDED THAT THE PLAN PAYS FOR PRESCRIPTION

1 DRUGS UNDER A QUALIFIED PRESCRIPTION DRUG SYSTEM UNDER SECTION THREE  
2 HUNDRED SIXTY-FIVE-I OF THE SOCIAL SERVICES LAW. EVERY PRESCRIPTION DRUG  
3 ELIGIBLE FOR REIMBURSEMENT UNDER THIS ARTICLE PRESCRIBED IN RELATION TO  
4 A SERVICE PROVIDED BY THE APPROVED ORGANIZATION SHALL BE EITHER A  
5 PREFERRED OR NON-PREFERRED DRUG UNDER THE QUALIFIED PRESCRIPTION DRUG  
6 SYSTEM. IF THE APPROVED ORGANIZATION DOES NOT PAY FOR PRESCRIPTION DRUGS  
7 UNDER A QUALIFIED PRESCRIPTION DRUG SYSTEM, THEN PAYMENT FOR  
8 PRESCRIPTION DRUGS FOR THE APPROVED ORGANIZATION'S PATIENTS SHALL NOT BE  
9 INCLUDED IN SUCH PAYMENTS AND PRESCRIPTION DRUGS SHALL BE PROVIDED FOR  
10 THE APPROVED ORGANIZATION'S PARTICIPANTS UNDER THE PREFERRED DRUG  
11 PROGRAM.

12 S 5. Subdivision 11 of section 270 of the public health law, as  
13 amended by section 2-a of part C of chapter 58 of the laws of 2008, is  
14 amended to read as follows:

15 11. "State public health plan" means the medical assistance program  
16 established by title eleven of article five of the social services law  
17 (referred to in this article as "Medicaid"), the elderly pharmaceutical  
18 insurance coverage program established by title three of article two of  
19 the elder law (referred to in this article as "EPIC"), [and] the family  
20 health plus program established by section three hundred sixty-nine-ee  
21 of the social services law [to the extent that section provides that the  
22 program shall be subject to this article], AND THE CHILD HEALTH INSUR-  
23 ANCE PROGRAM UNDER TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THIS CHAPTER.

24 S 6. Section 272 of the public health law is amended by adding a new  
25 subdivision 12 to read as follows:

26 12. NO PRIOR AUTHORIZATION SHALL BE REQUIRED UNDER THE PREFERRED DRUG  
27 PROGRAM FOR:

28 (A) ATYPICAL ANTI-PSYCHOTICS; (B) ANTI-DEPRESSANTS; (C) ANTI-RETROVI-  
29 RALS USED IN THE TREATMENT OF HIV/AIDS OR HEPATITIS C; (D) ANTI-REJEC-  
30 TION DRUGS USED IN THE TREATMENT OF ORGAN AND TISSUE TRANSPLANTS; AND  
31 (E) ANY OTHER THERAPEUTIC CLASS FOR THE TREATMENT OF MENTAL ILLNESS,  
32 HIV/AIDS OR HEPATITIS C, RECOMMENDED BY THE BOARD AND APPROVED BY THE  
33 COMMISSIONER UNDER THIS SECTION.

34 S 7. This act shall take effect on the one hundred eightieth day after  
35 it shall become a law; provided, however, that section two of this act  
36 shall take effect one year after this act shall become a law; and  
37 provided further, that the amendments to section 369-ee of the social  
38 services law made by section three of this act shall not affect the  
39 repeal of such section and shall be deemed to expire therewith and  
40 provided further, that the commissioner of health is immediately author-  
41 ized and directed to take actions necessary to implement this act when  
42 it takes effect.