

5214--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 21, 2013

Introduced by M. of A. TITONE, RODRIGUEZ, ROBERTS, GUNTHER, ZEBROWSKI, QUART, PEOPLES-STOKES, MONTESANO, CUSICK, BRINDISI, TEDISCO -- Multi-Sponsored by -- M. of A. FAHY, GALEF, McLAUGHLIN, PERRY, RIVERA, SCHIMMEL, SEPULVEDA, WEISENBERG -- read once and referred to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to the regulation of step therapy and first fail policies

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

1 Section 1. The insurance law is amended by adding a new article 33 to  
2 read as follows:

3 ARTICLE 33

4 REGULATION OF STEP THERAPY AND  
5 FIRST FAIL POLICIES

6 SECTION 3301. DEFINITIONS.

7 3302. PRESCRIPTION DRUG RESTRICTION OVERRIDES.

8 S 3301. DEFINITIONS. AS USED IN THIS ARTICLE:

9 (A) "INSURER" SHALL MEAN ANY PERSON OR ENTITY WHO OFFERS A POLICY OF  
10 ACCIDENT AND/OR HEALTH INSURANCE PURSUANT TO SECTION THREE THOUSAND TWO  
11 HUNDRED SIXTEEN, THREE THOUSAND TWO HUNDRED TWENTY-ONE, OR FOUR THOUSAND  
12 THREE HUNDRED THREE OF THIS CHAPTER OR ARTICLE FORTY-FOUR OF THE PUBLIC  
13 HEALTH LAW.

14 (B) "PHARMACY BENEFIT MANAGEMENT" OR "PBM" SHALL MEAN THE SERVICE  
15 PROVIDED TO AN INSURER, DIRECTLY OR THROUGH ANOTHER ENTITY; INCLUDING  
16 THE PROCUREMENT OF PRESCRIPTION DRUGS TO BE DISPENSED TO COVERED  
17 PERSONS, OR THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENE-  
18 FITS INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:  
19 (1) A MAIL ORDER PHARMACY;

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

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1 (2) CLAIMS PROCESSING, RETAIL NETWORK MANAGEMENT AND PAYMENT OF CLAIMS  
2 TO PHARMACIES FOR DISPENSING PRESCRIPTION DRUGS;

3 (3) CLINICAL OR OTHER FORMULARY, OR PREFERRED DRUG LIST DEVELOPMENT OR  
4 MANAGEMENT;

5 (4) NEGOTIATION OR ADMINISTRATION OF REBATES, DISCOUNTS, PAYMENT  
6 DIFFERENTIALS OR OTHER INCENTIVES FOR THE INCLUSION OF PARTICULAR  
7 PRESCRIPTION DRUGS IN A PARTICULAR CATEGORY OR TO PROMOTE THE PURCHASE  
8 OF PARTICULAR PRESCRIPTION DRUGS;

9 (5) PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION AND GENERIC SUBSTI-  
10 TUTION PROGRAMS; AND

11 (6) DISEASE MANAGEMENT.

12 S 3302. PRESCRIPTION DRUG RESTRICTION OVERRIDES. (A) WHEN MEDICATIONS  
13 FOR THE TREATMENT OF ANY MEDICAL CONDITION ARE RESTRICTED FOR USE BY AN  
14 INSURER OR PBM BY A STEP THERAPY OR FAIL FIRST PROTOCOL, A PRESCRIBER  
15 SHALL HAVE ACCESS TO A CLEAR AND CONVENIENT PROCESS AT NO CHARGE TO SUCH  
16 PRESCRIBER AND/OR PATIENT TO OVERRIDE SUCH RESTRICTIONS FROM THE INSURER  
17 AND MAY EXPEDITIOUSLY OVERRIDE SUCH RESTRICTION IF:

18 (1) SUCH PRESCRIBER, IN HIS OR HER PROFESSIONAL JUDGMENT, BELIEVES  
19 THAT THE PREFERRED TREATMENT BY THE INSURER OR THE PBM HAS BEEN INEFFECTIVE  
20 IN THE TREATMENT OF THE COVERED PERSON'S DISEASE OR MEDICAL CONDI-  
21 TION; OR

22 (2) BASED ON SOUND CLINICAL EVIDENCE AND MEDICAL AND SCIENTIFIC  
23 EVIDENCE:

24 (A) SUCH PRESCRIBER, IN HIS OR HER PROFESSIONAL JUDGMENT, BELIEVES  
25 THAT THE PREFERRED TREATMENT IS EXPECTED TO BE INEFFECTIVE BASED ON THE  
26 KNOWN RELEVANT PHYSICAL OR MENTAL CHARACTERISTICS OF THE COVERED PERSON  
27 AND KNOWN CHARACTERISTICS OF THE DRUG REGIMEN, AND IS LIKELY TO BE INEF-  
28 FECTIVE OR ADVERSELY AFFECT THE DRUG'S EFFECTIVENESS OR PATIENT COMPLI-  
29 ANCE; OR

30 (B) SUCH PRESCRIBER, IN HIS OR HER PROFESSIONAL JUDGMENT, BELIEVES  
31 THAT THE PREFERRED TREATMENT HAS CAUSED OR IS LIKELY TO CAUSE AN ADVERSE  
32 REACTION OR OTHER HARM TO THE COVERED PERSON.

33 (B) THE DURATION OF ANY STEP THERAPY OR FAIL FIRST PROTOCOL SHALL NOT  
34 BE LONGER THAN EITHER (1) THE PERIOD DEEMED NECESSARY BY THE PRESCRIBING  
35 PHYSICIAN OR HEALTH CARE PROFESSIONAL TO DETERMINE THE TREATMENT'S CLIN-  
36 ICAL EFFECTIVENESS, OR (2) A PERIOD OF THIRTY DAYS.

37 (C) NOTHING IN THIS SECTION SHALL REQUIRE COVERAGE FOR AN ADDITIONAL  
38 CONDITION NOT ALREADY COVERED BY THE POLICY OR CONTRACT, OR WHICH IS NOT  
39 OTHERWISE COVERED BY LAW.

40 S 2. This act shall take effect on the one hundred twentieth day after  
41 it shall have become a law.