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

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, SCHIMEL, 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:

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

ARTICLE 33

REGULATION OF STEP THERAPY AND FIRST FAIL POLICIES

SECTION 3301. DEFINITIONS.

3302. PRESCRIPTION DRUG RESTRICTION OVERRIDES.

S 3301. DEFINITIONS. AS USED IN THIS ARTICLE:

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

(B) "PHARMACY BENEFIT MANAGEMENT" OR "PBM" SHALL MEAN THE SERVICE PROVIDED TO AN INSURER, DIRECTLY OR THROUGH ANOTHER ENTITY; INCLUDING THE PROCUREMENT OF PRESCRIPTION DRUGS TO BE DISPENSED TO COVERED PERSONS, OR THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

(1) A MAIL ORDER PHARMACY;

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

LBD05355-02-4

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

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

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

(5) PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION AND GENERIC SUBSTITUTION PROGRAMS; AND

(6) DISEASE MANAGEMENT.

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

(1) SUCH PRESCRIBER, IN HIS OR HER PROFESSIONAL JUDGMENT, BELIEVES THAT THE PREFERRED TREATMENT BY THE INSURER OR THE PBM HAS BEEN INEFFECTIVE IN THE TREATMENT OF THE COVERED PERSON'S DISEASE OR MEDICAL CONDITION; OR

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

(A) SUCH PRESCRIBER, IN HIS OR HER PROFESSIONAL JUDGMENT, BELIEVES THAT THE PREFERRED TREATMENT IS EXPECTED TO BE INEFFECTIVE BASED ON THE KNOWN RELEVANT PHYSICAL OR MENTAL CHARACTERISTICS OF THE COVERED PERSON AND KNOWN CHARACTERISTICS OF THE DRUG REGIMEN, AND IS LIKELY TO BE INEFFECTIVE OR ADVERSELY AFFECT THE DRUG'S EFFECTIVENESS OR PATIENT COMPLIANCE; OR

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

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

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

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