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

4466--A

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I N A S S E M B L Y

February 5, 2013

Introduced by M. of A. GOTTFRIED, DINOWITZ, ENGLEBRIGHT, GALEF, PAULIN, CUSICK, KAVANAGH, ROSENTHAL, TITONE -- Multi-Sponsored by -- M. of A. AUBRY, BRENNAN, COLTON, COOK, CYMBROWITZ, GLICK, GUNTHER, HEASTIE, HOOPER, JACOBS, KELLNER, LIFTON, PERRY, RIVERA, ROBINSON, SCARBOROUGH, SWEENEY, WEISENBERG -- read once and referred to the Committee on Health -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public health law and the insurance law, in relation to certain contracts or agreements by health maintenance organizations

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

Section 1. Subdivision 7 of section 4406-c of the public health law as added by chapter 705 of the laws of 1996 and as renumbered by chapter 487 of the laws of 2010, is renumbered subdivision 13 and four new subdivisions 9, 10, 11 and 12 are added to read as follows:

9. NO CONTRACT OR AGREEMENT BETWEEN A HEALTH CARE PLAN AND A HEALTH CARE PROVIDER SHALL CONTAIN ANY CLAUSE WHICH ENTITLES SUCH HEALTH CARE PLAN TO REIMBURSE THE HEALTH CARE PROVIDER AT THE LOWEST PRICE OR RATE THAT SUCH HEALTH CARE PROVIDER HAS CHARGED ANOTHER PERSON OR ENTITY FOR RENDERING THE SAME TREATMENT OR PERFORMING THE SAME PROCEDURE.

10. NO HEALTH CARE PLAN SHALL BY CONTRACT, WRITTEN POLICY OR WRITTEN PROCEDURE PROHIBIT ANY HEALTH CARE PROVIDER FROM REFERRING A PATIENT OR ENROLLEE TO A HEALTH CARE PROVIDER BASED SOLELY UPON SUCH HEALTH CARE PROVIDER'S PARTICIPATION STATUS WITH THE MANAGED CARE PRODUCT SUBSCRIBED TO BY THE PATIENT OR ENROLLEE.

11. NO HEALTH CARE PLAN SHALL BY CONTRACT, WRITTEN POLICY OR WRITTEN PROCEDURE REQUIRE THE DISCLOSURE OF AN ENROLLEE'S DIAGNOSIS ON A PRESCRIPTION AS A CONDITION FOR DISPENSING OF A PHARMACEUTICAL DRUG OR AGENT, UNLESS OTHERWISE REQUIRED BY LAW.

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

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12. NO HEALTH CARE PLAN SHALL BY CONTRACT, WRITTEN POLICY OR PROCEDURE PROVIDE FOR OR ALLOW THE SUBSTITUTION OF A PHARMACEUTICAL DRUG OR AGENT (OTHER THAN A GENERIC SUBSTITUTION) BY ANY PERSON OTHER THAN THE PRESCRIBING HEALTH CARE PROFESSIONAL.

S 2. Subsections (h) and (i) of section 3217-b of the insurance law, as relettered by chapter 237 of the laws of 2009, are relettered subsections (m) and (n) and four new subsections (h), (i), (k) and (l) are added to read as follows:

(H) NO CONTRACT OR AGREEMENT BETWEEN AN INSURER AND A HEALTH CARE PROVIDER SHALL CONTAIN ANY CLAUSE WHICH ENTITLES SUCH INSURER TO REIMBURSE THE HEALTH CARE PROVIDER AT THE LOWEST PRICE OR RATE THAT SUCH HEALTH CARE PROVIDER HAS CHARGED ANOTHER PERSON OR ENTITY FOR RENDERING THE SAME TREATMENT OR PERFORMING THE SAME PROCEDURE.

(I) NO INSURER SHALL BY CONTRACT, WRITTEN POLICY OR WRITTEN PROCEDURE PROHIBIT ANY HEALTH CARE PROVIDER FROM REFERRING AN INSURED TO A PHYSICIAN BASED SOLELY UPON SUCH PHYSICIAN'S PARTICIPATION STATUS WITH THE INSURANCE PRODUCT SUBSCRIBED TO BY THE INSURED.

(K) NO INSURER SHALL BY CONTRACT, WRITTEN POLICY OR WRITTEN PROCEDURE REQUIRE THE DISCLOSURE OF AN INSURED'S DIAGNOSIS ON A PRESCRIPTION AS A CONDITION FOR AUTHORIZING THE COVERAGE FOR OR PAYMENT OR DISPENSING OF A PHARMACEUTICAL DRUG OR AGENT, UNLESS OTHERWISE REQUIRED BY LAW.

(L) NO INSURER WHICH MAINTAINS A DRUG FORMULARY, OR WHICH CONTRACTS WITH ANOTHER ENTITY TO MAINTAIN A DRUG FORMULARY, SHALL BY CONTRACT, WRITTEN POLICY OR PROCEDURE PROVIDE FOR OR ALLOW THE SUBSTITUTION OF A PHARMACEUTICAL DRUG OR AGENT (OTHER THAN A GENERIC SUBSTITUTION) BY ANY PERSON OTHER THAN THE PRESCRIBING HEALTH CARE PROFESSIONAL.

S 3. Subsections (i) and (j) of section 4325 of the insurance law, as relettered by chapter 487 of the laws of 2010, are relettered subsections (n) and (o) and four new subsections (i), (j), (l) and (m) are added to read as follows:

(I) NO CONTRACT OR AGREEMENT BETWEEN AN INSURER AND A HEALTH CARE PROVIDER SHALL CONTAIN ANY CLAUSE WHICH ENTITLES SUCH INSURER TO REIMBURSE THE HEALTH CARE PROVIDER AT THE LOWEST PRICE OR RATE THAT SUCH HEALTH CARE PROVIDER HAS CHARGED ANOTHER PERSON OR ENTITY FOR RENDERING THE SAME TREATMENT OR PERFORMING THE SAME PROCEDURE.

(J) NO INSURER SHALL BY CONTRACT, WRITTEN POLICY OR WRITTEN PROCEDURE PROHIBIT ANY HEALTH CARE PROVIDER FROM REFERRING AN INSURED TO A PHYSICIAN BASED SOLELY UPON SUCH PHYSICIAN'S PARTICIPATION STATUS WITH THE INSURANCE PRODUCT SUBSCRIBED TO BY THE INSURED.

(L) NO INSURER SHALL BY CONTRACT, WRITTEN POLICY OR WRITTEN PROCEDURE REQUIRE THE DISCLOSURE OF AN INSURED'S DIAGNOSIS ON A PRESCRIPTION AS A CONDITION FOR AUTHORIZING THE COVERAGE FOR OR PAYMENT OR DISPENSING OF A PHARMACEUTICAL DRUG OR AGENT, UNLESS OTHERWISE REQUIRED BY LAW.

(M) NO INSURER WHICH MAINTAINS A DRUG FORMULARY, OR WHICH CONTRACTS WITH ANOTHER ENTITY TO MAINTAIN A DRUG FORMULARY, SHALL BY CONTRACT, WRITTEN POLICY OR PROCEDURE PROVIDE FOR OR ALLOW THE SUBSTITUTION OF A PHARMACEUTICAL DRUG OR AGENT (OTHER THAN A GENERIC SUBSTITUTION) BY ANY PERSON OTHER THAN THE PRESCRIBING HEALTH CARE PROFESSIONAL.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided that the relettering of subsection (n) of section 3217-b and the relettering of subsection (o) of section 4325 of the insurance law made by sections two and three of this act, respectively, shall not affect the repeal of such subsections and shall be deemed repealed therewith.