

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.