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

2312--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 15, 2015

Introduced by M. of A. GOTTFRIED, ENGLEBRIGHT, GALEF, PAULIN, TITUS, HOOPER, JAFFEE, COLTON, WEPRIN, OTIS, MONTESANO, ROSENTHAL -- Multi-Sponsored by -- M. of A. ABINANTI, BENEDETTO, CLARK, COOK, CROUCH, DINOWITZ, DUPREY, FARRELL, GUNTHER, LAVINE, LIFTON, McDONALD, ORTIZ, PEOPLES-STOKES, PERRY, RAMOS, ROBINSON, WRIGHT -- read once and referred to the Committee on Health -- recommitted to the Committee on Health 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 public health law, in relation to pharmacy benefit managers; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 280-a of the public health law is REPEALED and a new section 280-a is added to read as follows:

S 280-A. PHARMACY BENEFIT MANAGERS. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "HEALTH PLAN OR PROVIDER" MEANS AN ENTITY FOR WHICH A PHARMACY BENEFIT MANAGER PROVIDES PHARMACY BENEFIT MANAGEMENT INCLUDING, BUT NOT LIMITED TO: (I) A HEALTH BENEFIT PLAN OR OTHER ENTITY THAT APPROVES, PROVIDES, ARRANGES FOR, OR PAYS FOR HEALTH CARE ITEMS OR SERVICES, UNDER WHICH PRESCRIPTION DRUGS FOR BENEFICIARIES OF THE ENTITY ARE PURCHASED OR WHICH PROVIDES OR ARRANGES REIMBURSEMENT IN WHOLE OR IN PART FOR THE PURCHASE OF PRESCRIPTION DRUGS; OR (II) A HEALTH CARE PROVIDER OR PROFESSIONAL, INCLUDING A STATE OR LOCAL GOVERNMENT ENTITY, THAT ACQUIRES PRESCRIPTION DRUGS TO USE OR DISPENSE IN PROVIDING HEALTH CARE TO PATIENTS.

(B) "PHARMACY BENEFIT MANAGEMENT" MEANS THE SERVICE PROVIDED TO A HEALTH PLAN OR PROVIDER, DIRECTLY OR THROUGH ANOTHER ENTITY, INCLUDING THE PROCUREMENT OF PRESCRIPTION DRUGS TO BE DISPENSED TO PATIENTS, OR

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

LBD02697-02-6

THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS, INCLUDING BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

(I) MAIL SERVICE PHARMACY;

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

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

(IV) 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;

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

(VI) DISEASE MANAGEMENT.

(C) "PHARMACY BENEFIT MANAGER" MEANS ANY ENTITY THAT PERFORMS PHARMACY BENEFIT MANAGEMENT FOR A HEALTH PLAN OR PROVIDER.

(D) "MAXIMUM ALLOWABLE COST PRICE" MEANS A MAXIMUM REIMBURSEMENT AMOUNT SET BY THE PHARMACY BENEFIT MANAGER FOR THERAPEUTICALLY EQUIVALENT MULTIPLE SOURCE GENERIC DRUGS.

2. APPLICATION OF SECTION. THIS SECTION APPLIES TO THE PROVIDING OF PHARMACY BENEFIT MANAGEMENT BY A PHARMACY BENEFIT MANAGER TO A PARTICULAR HEALTH PLAN OR PROVIDER.

3. DUTY, ACCOUNTABILITY AND TRANSPARENCY. (A) THE PHARMACY BENEFIT MANAGER SHALL HAVE A FIDUCIARY RELATIONSHIP WITH AND OBLIGATION TO THE HEALTH PLAN OR PROVIDER, AND SHALL PERFORM PHARMACY BENEFIT MANAGEMENT WITH CARE, SKILL, PRUDENCE, DILIGENCE, AND PROFESSIONALISM.

(B) ALL FUNDS RECEIVED BY THE PHARMACY BENEFIT MANAGER IN RELATION TO PROVIDING PHARMACY BENEFIT MANAGEMENT SHALL BE RECEIVED BY THE PHARMACY BENEFIT MANAGER IN TRUST FOR THE HEALTH PLAN OR PROVIDER AND SHALL BE USED OR DISTRIBUTED ONLY PURSUANT TO THE PHARMACY BENEFIT MANAGER'S CONTRACT WITH THE HEALTH PLAN OR PROVIDER OR APPLICABLE LAW; EXCEPT FOR ANY FEE OR PAYMENT EXPRESSLY PROVIDED FOR IN THE CONTRACT BETWEEN THE PHARMACY BENEFIT MANAGER AND THE HEALTH PLAN OR PROVIDER TO COMPENSATE THE PHARMACY BENEFIT MANAGER FOR ITS SERVICES.

(C) THE PHARMACY BENEFIT MANAGER SHALL PERIODICALLY ACCOUNT TO THE HEALTH PLAN OR PROVIDER FOR ALL FUNDS RECEIVED BY THE PHARMACY BENEFIT MANAGER. THE HEALTH PLAN OR PROVIDER SHALL HAVE ACCESS TO ALL FINANCIAL AND UTILIZATION INFORMATION OF THE PHARMACY BENEFIT MANAGER IN RELATION TO PHARMACY BENEFIT MANAGEMENT PROVIDED TO THE HEALTH PLAN OR PROVIDER.

(D) THE PHARMACY BENEFIT MANAGER SHALL DISCLOSE IN WRITING TO THE HEALTH PLAN OR PROVIDER THE TERMS AND CONDITIONS OF ANY CONTRACT OR ARRANGEMENT BETWEEN THE PHARMACY BENEFIT MANAGER AND ANY PARTY RELATING TO PHARMACY BENEFIT MANAGEMENT PROVIDED TO THE HEALTH PLAN OR PROVIDER.

(E) THE PHARMACY BENEFIT MANAGER SHALL DISCLOSE IN WRITING TO THE HEALTH PLAN OR PROVIDER ANY ACTIVITY, POLICY, PRACTICE, CONTRACT OR ARRANGEMENT OF THE PHARMACY BENEFIT MANAGER THAT DIRECTLY OR INDIRECTLY PRESENTS ANY CONFLICT OF INTEREST WITH THE PHARMACY BENEFIT MANAGER'S RELATIONSHIP WITH OR OBLIGATION TO THE HEALTH PLAN OR PROVIDER.

(F) ANY INFORMATION REQUIRED TO BE DISCLOSED BY A PHARMACY BENEFIT MANAGER TO A HEALTH PLAN OR PROVIDER UNDER THIS SECTION THAT IS REASONABLY DESIGNATED BY THE PHARMACY BENEFIT MANAGER AS PROPRIETARY OR TRADE SECRET INFORMATION SHALL BE KEPT CONFIDENTIAL BY THE HEALTH PLAN OR PROVIDER, EXCEPT AS REQUIRED OR PERMITTED BY LAW, INCLUDING DISCLOSURE NECESSARY TO PROSECUTE OR DEFEND ANY LEGITIMATE LEGAL CLAIM OR CAUSE OF ACTION.

4. PRESCRIPTIONS. A PHARMACY BENEFIT MANAGER MAY NOT SUBSTITUTE OR CAUSE THE SUBSTITUTING OF ONE PRESCRIPTION DRUG FOR ANOTHER IN DISPENSING A PRESCRIPTION, OR ALTER OR CAUSE THE ALTERING OF THE TERMS OF A PRESCRIPTION, EXCEPT WITH THE APPROVAL OF THE PRESCRIBER OR AS EXPLICITLY REQUIRED OR PERMITTED BY LAW.

5. A PHARMACY BENEFIT MANAGER SHALL, WITH RESPECT TO CONTRACTS BETWEEN A PHARMACY BENEFIT MANAGER AND A PHARMACY OR, ALTERNATIVELY, A PHARMACY BENEFIT MANAGER AND A PHARMACY'S CONTRACTING AGENT, SUCH AS A PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION, INCLUDE A REASONABLE PROCESS TO APPEAL, INVESTIGATE AND RESOLVE DISPUTES REGARDING MULTI-SOURCE GENERIC DRUG PRICING. THE APPEALS PROCESS SHALL INCLUDE THE FOLLOWING PROVISIONS:

(A) THE RIGHT TO APPEAL BY THE PHARMACY AND/OR THE PHARMACY'S CONTRACTING AGENT SHALL BE LIMITED TO THIRTY DAYS FOLLOWING THE INITIAL CLAIM SUBMITTED FOR PAYMENT;

(B) A TELEPHONE NUMBER THROUGH WHICH A NETWORK PHARMACY MAY CONTACT THE PHARMACY BENEFIT MANAGER FOR THE PURPOSE OF FILING AN APPEAL AND AN ELECTRONIC MAIL ADDRESS OF THE INDIVIDUAL WHO IS RESPONSIBLE FOR PROCESSING APPEALS;

(C) THE PHARMACY BENEFIT MANAGER SHALL SEND AN ELECTRONIC MAIL MESSAGE ACKNOWLEDGING RECEIPT OF THE APPEAL. THE PHARMACY BENEFIT MANAGER SHALL RESPOND IN AN ELECTRONIC MESSAGE TO THE PHARMACY AND/OR THE PHARMACY'S CONTRACTING AGENT FILING THE APPEAL WITHIN SEVEN BUSINESS DAYS INDICATING ITS DETERMINATION. IF THE APPEAL IS DETERMINED TO BE VALID, THE MAXIMUM ALLOWABLE COST FOR THE DRUG SHALL BE ADJUSTED FOR THE APPEALING PHARMACY EFFECTIVE AS OF THE DATE OF THE ORIGINAL CLAIM FOR PAYMENT. THE PHARMACY BENEFIT MANAGER SHALL REQUIRE THE APPEALING PHARMACY TO REVERSE AND REBILL THE CLAIM IN QUESTION IN ORDER TO OBTAIN THE CORRECTED REIMBURSEMENT;

(D) IF AN UPDATE TO THE MAXIMUM ALLOWABLE COST IS WARRANTED, THE PHARMACY BENEFIT MANAGER OR COVERED ENTITY SHALL ADJUST THE MAXIMUM ALLOWABLE COST OF THE DRUG EFFECTIVE FOR ALL SIMILARLY SITUATED PHARMACIES IN ITS NETWORK IN THE STATE ON THE DATE THE APPEAL WAS DETERMINED TO BE VALID; AND

(E) IF AN APPEAL IS DENIED, THE PHARMACY BENEFIT MANAGER SHALL IDENTIFY THE NATIONAL DRUG CODE OF A THERAPEUTICALLY EQUIVALENT DRUG, AS DETERMINED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION, THAT IS AVAILABLE FOR PURCHASE BY PHARMACIES IN THIS STATE FROM WHOLESALERS REGISTERED PURSUANT TO SUBDIVISION FOUR OF SECTION SIXTY-EIGHT HUNDRED EIGHT OF THE EDUCATION LAW AT A PRICE WHICH IS EQUAL TO OR LESS THAN THE MAXIMUM ALLOWABLE COST FOR THAT DRUG AS DETERMINED BY THE PHARMACY BENEFIT MANAGER.

S 2. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or ruled by any federal agency to violate or be inconsistent with any applicable federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act.

S 3. This act shall take effect on the ninetieth day after it shall become a law and shall apply to any contract for providing pharmacy benefit management made or renewed on or after that date.