

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:

1 Section 1. Section 280-a of the public health law is REPEALED and a  
2 new section 280-a is added to read as follows:  
3 S 280-A. PHARMACY BENEFIT MANAGERS. 1. DEFINITIONS. AS USED IN THIS  
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
5 (A) "HEALTH PLAN OR PROVIDER" MEANS AN ENTITY FOR WHICH A PHARMACY  
6 BENEFIT MANAGER PROVIDES PHARMACY BENEFIT MANAGEMENT INCLUDING, BUT NOT  
7 LIMITED TO: (I) A HEALTH BENEFIT PLAN OR OTHER ENTITY THAT APPROVES,  
8 PROVIDES, ARRANGES FOR, OR PAYS FOR HEALTH CARE ITEMS OR SERVICES, UNDER  
9 WHICH PRESCRIPTION DRUGS FOR BENEFICIARIES OF THE ENTITY ARE PURCHASED  
10 OR WHICH PROVIDES OR ARRANGES REIMBURSEMENT IN WHOLE OR IN PART FOR THE  
11 PURCHASE OF PRESCRIPTION DRUGS; OR (II) A HEALTH CARE PROVIDER OR  
12 PROFESSIONAL, INCLUDING A STATE OR LOCAL GOVERNMENT ENTITY, THAT  
13 ACQUIRES PRESCRIPTION DRUGS TO USE OR DISPENSE IN PROVIDING HEALTH CARE  
14 TO PATIENTS.  
15 (B) "PHARMACY BENEFIT MANAGEMENT" MEANS THE SERVICE PROVIDED TO A  
16 HEALTH PLAN OR PROVIDER, DIRECTLY OR THROUGH ANOTHER ENTITY, INCLUDING  
17 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.

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1 THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS, INCLUD-  
2 ING BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

3 (I) MAIL SERVICE PHARMACY;

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

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

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

12 (V) PATIENT COMPLIANCE, THERAPEUTIC INTERVENTION, OR GENERIC SUBSTI-  
13 TUTION PROGRAMS; AND

14 (VI) DISEASE MANAGEMENT.

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

17 (D) "MAXIMUM ALLOWABLE COST PRICE" MEANS A MAXIMUM REIMBURSEMENT  
18 AMOUNT SET BY THE PHARMACY BENEFIT MANAGER FOR THERAPEUTICALLY EQUIV-  
19 ALENT MULTIPLE SOURCE GENERIC DRUGS.

20 2. APPLICATION OF SECTION. THIS SECTION APPLIES TO THE PROVIDING OF  
21 PHARMACY BENEFIT MANAGEMENT BY A PHARMACY BENEFIT MANAGER TO A PARTIC-  
22 ULAR HEALTH PLAN OR PROVIDER.

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

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

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

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

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

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

1 4. PRESCRIPTIONS. A PHARMACY BENEFIT MANAGER MAY NOT SUBSTITUTE OR  
2 CAUSE THE SUBSTITUTING OF ONE PRESCRIPTION DRUG FOR ANOTHER IN DISPENS-  
3 ING A PRESCRIPTION, OR ALTER OR CAUSE THE ALTERING OF THE TERMS OF A  
4 PRESCRIPTION, EXCEPT WITH THE APPROVAL OF THE PRESCRIBER OR AS EXPLICIT-  
5 LY REQUIRED OR PERMITTED BY LAW.

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

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

16 (B) A TELEPHONE NUMBER THROUGH WHICH A NETWORK PHARMACY MAY CONTACT  
17 THE PHARMACY BENEFIT MANAGER FOR THE PURPOSE OF FILING AN APPEAL AND AN  
18 ELECTRONIC MAIL ADDRESS OF THE INDIVIDUAL WHO IS RESPONSIBLE FOR PROC-  
19 ESSING APPEALS;

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

30 (D) IF AN UPDATE TO THE MAXIMUM ALLOWABLE COST IS WARRANTED, THE PHAR-  
31 MACY BENEFIT MANAGER OR COVERED ENTITY SHALL ADJUST THE MAXIMUM ALLOW-  
32 ABLE COST OF THE DRUG EFFECTIVE FOR ALL SIMILARLY SITUATED PHARMACIES IN  
33 ITS NETWORK IN THE STATE ON THE DATE THE APPEAL WAS DETERMINED TO BE  
34 VALID; AND

35 (E) IF AN APPEAL IS DENIED, THE PHARMACY BENEFIT MANAGER SHALL IDENTI-  
36 FY THE NATIONAL DRUG CODE OF A THERAPEUTICALLY EQUIVALENT DRUG, AS  
37 DETERMINED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION, THAT IS AVAIL-  
38 ABLE FOR PURCHASE BY PHARMACIES IN THIS STATE FROM WHOLESALERS REGIS-  
39 TERED PURSUANT TO SUBDIVISION FOUR OF SECTION SIXTY-EIGHT HUNDRED EIGHT  
40 OF THE EDUCATION LAW AT A PRICE WHICH IS EQUAL TO OR LESS THAN THE MAXI-  
41 MUM ALLOWABLE COST FOR THAT DRUG AS DETERMINED BY THE PHARMACY BENEFIT  
42 MANAGER.

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

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