

3346--B

2015-2016 Regular Sessions

I N S E N A T E

February 5, 2015

Introduced by Sens. HANNON, ADDABBO, AVELLA, BRESLIN, CROCI, DeFRANCIS-CO, ESPAILLAT, GOLDEN, GRIFFO, KRUEGER, LATIMER, MARCELLINO, MARTINS, O'MARA, PARKER, RANZENHOFER, RITCHIE, STAVISKY, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- 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

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

1 Section 1. The public health law is amended by adding a new section
2 280-a 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) "PHARMACY BENEFIT MANAGER" MEANS AN ENTITY THAT CONTRACTS WITH
6 PHARMACIES OR PHARMACY CONTRACTING AGENTS ON BEHALF OF A HEALTH PLAN,
7 STATE AGENCY, INSURER, MANAGED CARE ORGANIZATION, OR OTHER THIRD PARTY
8 PAYOR TO PROVIDE PHARMACY HEALTH BENEFIT SERVICES OR ADMINISTRATION.
9 (B) "MAXIMUM ALLOWABLE COST PRICE" MEANS A MAXIMUM REIMBURSEMENT
10 AMOUNT SET BY THE PHARMACY BENEFIT MANAGER FOR THERAPEUTICALLY EQUIV-
11 ALENT MULTIPLE SOURCE GENERIC DRUGS.
12 2. A PHARMACY BENEFIT MANAGER SHALL, WITH RESPECT TO CONTRACTS BETWEEN
13 A PHARMACY BENEFIT MANAGER AND A PHARMACY OR, ALTERNATIVELY, A PHARMACY
14 BENEFIT MANAGER AND A PHARMACY'S CONTRACTING AGENT, SUCH AS A PHARMACY
15 SERVICES ADMINISTRATIVE ORGANIZATION, INCLUDE A REASONABLE PROCESS TO
16 APPEAL, INVESTIGATE AND RESOLVE DISPUTES REGARDING MULTI-SOURCE GENERIC
17 DRUG PRICING. THE APPEALS PROCESS SHALL INCLUDE THE FOLLOWING
18 PROVISIONS:

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

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

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

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

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

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

31 S 2. This act shall take effect on the ninetieth day after it shall
32 become a law and shall apply to any contract between a pharmacy and/or a
33 pharmacy's contracting agent and a pharmacy benefit manager.