STATE OF NEW YORK

5586--A

2017-2018 Regular Sessions

IN SENATE

April 18, 2017

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, the public health law, and the education law, in relation to prescription drugs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subsection (i) of section 3216 of the insurance law is amended by adding two new paragraphs 28-a and 28-b to read as follows:

(28-a) (A) Any policy that provides coverage for prescription drugs and also provides coverage for cancer chemotherapy treatment shall permit each insured to fill any covered prescription under paragraph twelve-a of this subsection that may be obtained at a network participating mail order or other non-retail pharmacy, at the insured's option, from a network participating oncologist providing services in accordance with section sixty-eight hundred seven of the education law. Any policy providing such coverage shall not impose a co-payment fee or other condition on any insured who elects to purchase oral anticancer medications from a prescribing network participating oncologist which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail pharmacy. The policy shall not exclude from network participation any oncologist dispensing or involved in the provision of pharmacy services in accordance with section sixty-eight hundred seven of the education law due to their dispensing or the provision of said pharmacy services. This paragraph shall also apply to any pharmacy benefits manager as defined in section two hundred eighty-a of the public health law.

(B) For the purposes of this paragraph, "oncologist" shall mean a licensed or registered physician who is board certified or board eligi-

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

LBD10670-02-8

ble in medical oncology, radiation oncology, hematology, or another oncology specialty recognized by the American board of medical specialties, or a surgeon who consults predominantly with patients who have a cancer diagnosis.

(28-b) (A) Any policy that provides coverage for prescription drugs and also provides coverage for human immunodeficiency virus infection and acquired immune deficiency syndrome treatment shall permit each insured to fill any covered prescription that may be obtained at a network participating mail order or other non-retail pharmacy, at the insured's option, from a network participating physician providing services in accordance with section sixty-eight hundred seven of the education law. Any policy providing such coverage shall not impose a co-payment fee or other condition on any insured who elects to purchase antiretroviral medications from a prescribing network participating physician which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail pharmacy. The policy shall not exclude from network participation any physician dispensing or involved in the provision of pharmacy services in accordance with section sixty-eight hundred seven of the education law due to their dispensing or the provision of said pharmacy services. This paragraph shall also apply to any pharmacy benefits manager as defined in section two hundred eighty-a of the public health law.

(B) For the purposes of this paragraph, "antiretroviral medication" shall mean a drug used in the treatment of human immunodeficiency virus infection and acquired immune deficiency syndrome.

§ 2. Subsection (l) of section 3221 of the insurance law is amended by adding two new paragraphs 18-a and 18-b to read as follows:

(18-a) (A) Any policy that provides coverage for prescription drugs and also provides coverage for cancer chemotherapy treatment shall permit each insured to fill any covered prescription under paragraph twelve-a of this subsection that may be obtained at a network participating mail order or other non-retail pharmacy, at the insured's option, from a network participating oncologist providing services in accordance with section sixty-eight hundred seven of the education law. Any policy providing such coverage shall not impose a co-payment fee or other condition on any insured who elects to purchase oral anticancer medications from a prescribing network participating oncologist which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail pharmacy. The policy shall not exclude from network participation any oncologist dispensing or involved in the provision of pharmacy services in accordance with section sixty-eight hundred seven of the education law due to their dispensing or the provision of said pharmacy services. This paragraph shall also apply to any pharmacy benefits manager as defined in section two hundred eighty-a of the public health law.

(B) For the purposes of this paragraph, "oncologist" shall mean a licensed or registered physician who is board certified or board eligible in medical oncology, radiation oncology, hematology, or another oncology specialty recognized by the American board of medical specialties, or a surgeon who consults predominantly with patients who have a cancer diagnosis.

(18-b) (A) Any policy that provides coverage for prescription drugs and also provides coverage for human immunodeficiency virus infection and acquired immune deficiency syndrome treatment shall permit each insured to fill any covered prescription that may be obtained at a network participating mail order or other non-retail pharmacy, at the

insured's option, from a network participating physician providing services in accordance with section sixty-eight hundred seven of the education law. Any policy providing such coverage shall not impose a co-payment fee or other condition on any insured who elects to purchase antiretroviral medications from a prescribing network participating physician which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail pharmacy. The policy or a pharmacy benefit manager, as defined in section two hundred eighty-a of the public health law, shall not exclude from network participation any physician dispensing or involved in the provision of pharmacy services in accordance with section sixty-eight hundred seven of the education law due to their dispensing or the provision of said pharmacy services. This paragraph shall also apply to any pharmacy benefits manager as defined in section two hundred eighty-a of the public health law.

(B) For the purposes of this paragraph, "antiretroviral medication" shall mean a drug used in the treatment of human immunodeficiency virus infection and acquired immune deficiency syndrome.

§ 3. Section 4303 of the insurance law is amended by adding two new subsections (kk-1) and (kk-2) to read as follows:

(kk-1) (A) Any contract that provides coverage for prescription drugs and also provides coverage for cancer chemotherapy treatment shall permit each insured to fill any covered prescription under subsection (q-1) of this section that may be obtained at a network participating mail order or other non-retail pharmacy, at the insured's option, from a network participating oncologist providing services in accordance with section sixty-eight hundred seven of the education law. Any policy providing such coverage shall not impose a co-payment fee or other condition on any insured who elects to purchase oral anticancer medications from a prescribing network participating oncologist which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail pharmacy. The policy shall not exclude from network participation any oncologist dispensing or involved in the provision of pharmacy services in accordance with section sixty-eight hundred seven of the education law due to their dispensing or the provision of said pharmacy services. This paragraph shall also apply to any pharmacy benefits manager as defined in section two hundred eighty-a of the public health law.

(B) For the purposes of this paragraph, "oncologist" shall mean a licensed or registered physician who is board certified or board eligible in medical oncology, radiation oncology, hematology, or another oncology specialty recognized by the American board of medical specialties, or a surgeon who consults predominantly with patients who have a cancer diagnosis.

(kk-2) (A) Any contract that provides coverage for prescription drugs and also provides coverage for human immunodeficiency virus infection and acquired immune deficiency syndrome treatment shall permit each insured to fill any covered prescription that may be obtained at a network participating mail order or other non-retail pharmacy, at the insured's option, from a network participating physician providing services in accordance with section sixty-eight hundred seven of the education law. Any contract providing such coverage shall not impose a co-payment fee or other condition on any insured who elects to purchase antiretroviral medications from a prescribing network participating physician which is not also imposed on insureds electing to purchase drugs from a network participating mail order or other non-retail phar-

macy. The contract or a pharmacy benefit manager, as defined in section two hundred eighty-a of the public health law, shall not exclude from network participation any physician dispensing or involved in the provision of pharmacy services in accordance with section sixty-eight hundred seven of the education law due to their dispensing or the provision of said pharmacy services. This paragraph shall also apply to any pharmacy benefits manager as defined in section two hundred eighty-a of the public health law.

(B) For the purposes of this paragraph, "antiretroviral medication" shall mean a drug used in the treatment of human immunodeficiency virus infection and acquired immune deficiency syndrome.

§ 4. Subdivisions 11, 12, 13, 14, 15, 16, and 17 of section 238 of the public health law are renumbered subdivisions 13, 14, 15, 16, 17, 18, and 19 and two new subdivisions 11 and 12 are added to read as follows:

11. "Oncologist" shall mean a licensed or registered physician who is board certified or board eligible in medical oncology, radiation oncology, hematology, or another oncology specialty recognized by the American board of medical specialties, or a surgeon who consults predominantly with patients who have a cancer diagnosis.

12. "Oncology group practice" shall mean a group practice in which each practitioner who is a member of the group is an oncologist.

§ 5. Subdivision 4 of section 238-a of the public health law, as added by chapter 803 of the laws of 1992, paragraphs (a), (b), and (c) as amended by chapter 591 of the laws of 2000, and paragraph (d) as amended by chapter 443 of the laws of 1993, is amended to read as follows:

4. An ownership interest or an investment interest shall not be subject to subdivision one of this section if:

(a) the health care provider authorized to provide clinical laboratory services, pharmacy services, radiation therapy services, physical therapy services or x-ray or imaging services is in a rural area and the referring practitioner or the patient is in such rural area; or

(b) the clinical laboratory services, pharmacy services, radiation therapy services, physical therapy services or x-ray or imaging services are provided by a general hospital, the referring practitioner is authorized to perform services at such general hospital and the ownership or investment interest is in the general hospital itself and not merely in a subdivision thereof; or

(c) the clinical laboratory services, pharmacy services, radiation therapy services, physical therapy services or x-ray or imaging services are provided by an ambulatory surgical center issued an operating certificate pursuant to article twenty-eight of this chapter in conjunction with a surgical procedure performed by the referring practitioner at the ambulatory surgical center; or

(d) the pharmacy services are provided to a cancer patient of an oncology group practice by a pharmacy licensed under subdivision two of section sixty-eight hundred eight of the education law, the ownership or investment interest of which is held exclusively by practitioners of the oncology group practice, of which the prescribing practitioner is a member; or

(e) the pharmacy services are provided to a human immunodeficiency virus infection or acquired immune deficiency syndrome patient of a group practice by a pharmacy licensed under subdivision two of section sixty-eight hundred eight of the education law, the ownership or investment interest of which is held exclusively by practitioners of the group practice, of which the prescribing practitioner is a member;

[~~(d)~~] **(f)** and if each practitioner who is an interested investor in a health care provider within a category specified in paragraph (a), (b) [~~or~~], (c)**, (d) or (e)** of this subdivision and who makes a referral of a patient to such health care provider discloses to the patient, in a brief and reasonable form and manner specified in regulations proposed by the commissioner after consultation with representatives of consumer and physician organizations and adopted by the public health council, subject to approval by the commissioner, the practitioner's, or family member's ownership interest or investment interest in the health care provider and the patient's right to utilize a specifically identified alternative health care provider if any such alternative is reasonably available.

§ 6. Section 6509-a of the education law, as amended by chapter 555 of the laws of 1993, is amended to read as follows:

§ 6509-a. Additional definition of professional misconduct; limited application. Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license or registration of a person subject to the provisions of articles one hundred thirty-two, one hundred thirty-three, one hundred thirty-six, one hundred thirty-seven, one hundred thirty-nine, one hundred forty-one, one hundred forty-three, one hundred forty-four, one hundred fifty-six, one hundred fifty-nine and one hundred sixty-four of this chapter may be revoked, suspended or annulled or such person may be subject to any other penalty provided in section sixty-five hundred eleven of this article in accordance with the provisions and procedure of this article for the following:

That any person subject to the above enumerated articles, has directly or indirectly requested, received or participated in the division, transference, assignment, rebate, splitting or refunding of a fee for, or has directly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of professional care, or service, including x-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory services or supplies, x-ray laboratory services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies or any other goods, services or supplies prescribed for medical diagnosis, care or treatment under this chapter, except payment, not to exceed thirty-three and one-third per centum of any fee received for x-ray examination, diagnosis or treatment, to any hospital furnishing facilities for such examination, diagnosis or treatment. Nothing contained in this section shall prohibit such persons from practicing as partners, in groups or as a professional corporation or as a university faculty practice corporation nor from pooling fees and moneys received, either by the partnerships, professional corporations, university faculty practice corporations or groups by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations or groups be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement; provided that no such practice as partners, corporations or in

groups or pooling of fees or moneys received or shared, division or apportionment of fees shall be permitted with respect to care and treatment under the workers' compensation law except as expressly authorized by the workers' compensation law. Nothing contained in this chapter shall prohibit a medical or dental expense indemnity corporation pursuant to its contract with the subscriber from prorationing a medical or dental expense indemnity allowance among two or more professionals in proportion to the services rendered by each such professional at the request of the subscriber, provided that prior to payment thereof such professionals shall submit both to the medical or dental expense indemnity corporation and to the subscriber statements itemizing the services rendered by each such professional and the charges therefor. **Nothing in this section shall prohibit any person subject to the above enumerated articles from participating in an arrangement permitted in section two hundred thirty-eight-a of the public health law.**

§ 7. Subdivision 18 of section 6530 of the education law, as added by chapter 606 of the laws of 1991, is amended to read as follows:

18. Directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or in connection with the performance of professional services**. This prohibition shall not include arrangements permitted in section two hundred thirty-eight-a of the public health law**;

§ 8. Section 6802 of the education law is amended by adding three new subdivisions 29, 30, and 31 to read as follows:

29. "Oncologist" shall mean a licensed or registered physician who is board certified or board eligible in medical oncology, radiation oncology, hematology, or another oncology specialty recognized by the American board of medical specialties, or a surgeon who consults predominantly with patients who have a cancer diagnosis.

30. "Oncology group practice" shall mean a group practice in which each practitioner who is a member of the group is an oncologist.

31. "Group practice" shall mean a group of two or more practitioners organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan or similar association.

§ 9. Section 6807 of the education law, as amended by chapter 881 of the laws of 1972, the section heading as amended and subdivision 3 as added by chapter 573 of the laws of 1999, subdivision 1 as designated and subdivision 2 as added by chapter 18 of the laws of 1990, paragraph b of subdivision 1 and paragraph a of subdivision 2 as amended by chapter 538 of the laws of 2001, is amended to read as follows:

§ 6807. Exempt persons; special provisions. 1. This article shall not be construed to affect or prevent:

a. Unlicensed assistants from being employed in licensed pharmacies for purposes other than the practice of pharmacy;

b. Any physician, dentist, veterinarian or other licensed health care provider legally authorized to prescribe drugs under this title [~~**who is not the owner of a pharmacy or who is not in the employ of such owner**~~], from supplying his patients with such drugs as the physician, dentist, veterinarian or other licensed health care provider legally authorized to prescribe drugs under this title deems proper in connection with his practice, provided, however, that all such drugs shall be dispensed in a container labeled with the name and address of the dispenser and patient, directions for use, and date of delivery, and in addition, such drug shall bear a label containing the proprietary or brand name of the drug and, if applicable, the strength of the contents, unless the person

issuing the prescription specifically states on the prescription in his own handwriting, that the name of the drug and the strength thereof should not appear on the label; provided further that if such drugs are controlled substances, they shall be dispensed pursuant to the requirements of article thirty-three of the public health law;

c. Any merchant from selling proprietary medicines, except those which are poisonous, deleterious or habit forming, or materials and devices specifically exempted by regulations of the department or by the public health law;

d. Any personnel in an institution of higher learning from using prescription-required drugs on the premises for authorized research, experiments or instruction, in accordance with the department's regulations and, if such drugs are controlled substances, in accordance with title III of article thirty-three of the public health law; or

e. The necessary and ordinary activities of manufacturers and wholesalers, subject to the provisions of article thirty-three of the public health law.

2. a. Notwithstanding the provisions of paragraph b of subdivision one of this section, [~~no~~] **a** prescriber [~~who is not the owner of a pharmacy or who is not in the employ of such owner, may~~] **shall not** dispense more than a seventy-two hour supply of drugs, except for:

(1) persons practicing in hospitals as defined in section twenty-eight hundred one of the public health law;

(2) the dispensing of drugs at no charge to their patients;

(3) persons whose practices are situated ten miles or more from a registered pharmacy;

(4) the dispensing of drugs in a clinic, infirmary or health service that is operated by or affiliated with a post-secondary institution;

(5) persons licensed pursuant to article one hundred thirty-five of this title;

(6) the dispensing of drugs in a medical emergency as defined in subdivision six of section sixty-eight hundred ten of this article;

(7) the dispensing of drugs that are diluted, reconstituted or compounded by a prescriber;

(8) the dispensing of allergenic extracts; or

(9) the dispensing of drugs pursuant to an oncological or AIDS protocol.

b. **This subdivision shall not be construed to affect or prevent:**

(1) An oncology group practice from holding an ownership or investment interest in a pharmacy licensed under subdivision two of section sixty-eight hundred eight of this article, the ownership or investment interest of which is held exclusively by practitioners of the oncology group practice, to dispense drugs, pursuant to an oncological protocol, to a patient of the oncology group practice; or

(2) A group practice from holding an ownership or investment interest in a pharmacy licensed under subdivision two of section sixty-eight hundred eight of this article, the ownership or investment interest of which is held exclusively by practitioners of the group practice, to dispense drugs, pursuant to a human immunodeficiency virus infection and acquired immune deficiency syndrome protocol, to a patient of the group practice.

c. The commissioner, in consultation with the commissioner of health, may promulgate regulations to implement this subdivision and may, by regulation, establish additional renewable exemptions for a period not to exceed one year from the provisions of paragraph a of this subdivision.

3. A pharmacist may dispense drugs and devices to a registered professional nurse, and a registered professional nurse may possess and administer, drugs and devices, pursuant to a non-patient specific regimen prescribed or ordered by a licensed physician or certified nurse practitioner, pursuant to regulations promulgated by the commissioner and the public health law.

§ 10. This act shall take effect immediately.