STATE OF NEW YORK

9893

IN ASSEMBLY

February 20, 2018

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Insurance

AN ACT to amend the public health law and the insurance law, in relation to contracts between pharmacies and pharmacy benefit managers

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

Section 1. The public health law is amended by adding a new section 280-c to read as follows:

§ 280-c. Contracts between pharmacies and pharmacy benefit managers. 1. On and after January first, two thousand nineteen, no contract for pharmacy services entered into in the state between a health insurance carrier or a pharmacy benefit manager, as defined in section two hundred eighty-a of this article, and a pharmacy, pharmacist or a pharmacy's contracting agent, such as a pharmacy services administrative organization, shall contain a provision prohibiting or penalizing, including through increased utilization review, reduced payments or other financial disincentives, a pharmacist's disclosure to an individual purchasing prescription medication of information regarding (a) the cost of the prescription medication to the individual, or (b) the availability of any therapeutically equivalent alternative medications or alternative methods of purchasing the prescription medication, including, but not limited to, paying a cash price, that are less expensive than the cost of the prescription medication to the individual.

2. On and after January first, two thousand nineteen, no health insurance carrier or pharmacy benefit manager shall require an individual to make a payment at the point of sale for a covered prescription medication in an amount greater than the lesser of (a) the applicable copayment for such prescription medication, (b) the allowable claim amount for the prescription medication, or (c) the amount an individual would pay for the prescription medication if the individual purchased the prescription medication without using a health benefit plan or any other source of prescription medication benefits or discounts. For the purposes of this section, "allowable claim amount" means the amount the

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

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health insurance carrier or pharmacy benefit manager has agreed to pay the pharmacy for the prescription medication.

3. Any provision of a contract that violates the provisions of this section shall be void and unenforceable. Any general business practice that violates the provisions of this section shall constitute an unfair trade practice pursuant to section three hundred forty of the general business law. The invalidity or unenforceability of any contract provision under this subsection shall not affect any other provision of such contract.

4. The superintendent, as defined in section one hundred seven of the insurance law, may enforce the provisions of this section, and upon request, audit a contract for pharmacy services for compliance with the provisions of this section.

5. In any action brought under section three hundred forty of the general business law, a defendant that sells, distributes or otherwise disposes of any drug or device, as defined in 21 USC 321 may not assert as a defense that the defendant did not deal directly with the person on whose behalf the action is brought and may, in order to avoid duplicative liability, prove, as a partial or complete defense against a damage claim, that all or any part of an alleged overcharge for a drug or device ultimately was passed on to another person by a purchaser or a seller in the chain of manufacture, production or distribution of the drug or device that paid the alleged overcharge.

§ 2. Section 3217-b of the insurance law is amended by adding a new subsection (l) to read as follows:

(l) (1) No insurer subject to this article shall by contract, written policy or written procedure prohibit or restrict any health care provider from disclosure of (i) billed or allowed amounts, reimbursement rates or out-of-pocket costs, or (ii) any data to the all payor database (APD). Such information may be used to assist consumers and institutional purchasers in making informed decisions regarding their health care and informed choices among health care providers and allow comparisons between prices paid by various health carriers to health care providers.

(2) No contract entered into under this article between a health care provider, or any agent or vendor retained by the health care provider to provide data or analytical services to evaluate and manage health care services provided to the insurer's plan participants, and the insurer shall contain a provision prohibiting disclosure of (i) billed or allowed amounts, reimbursement rates or out-of-pocket costs, or (ii) any data to the all payor database (APD). Such information may be used to assist consumers and institutional purchasers in making informed decisions regarding their health care and informed choices among health care providers and allow comparisons between prices paid by various health carriers to health care providers.

(3) If a contract described in paragraph one or two of this subsection, whichever is applicable, contains a provision prohibited under the applicable paragraphs, such provision shall be void and unenforceable. The invalidity or unenforceability of any contract provision under this subsection shall not affect any other provision of such contract.

§ 3. Section 4325 of the insurance law is amended by adding a new subsection (m) to read as follows:

(m) (1) No corporation organized under this article shall by contract, written policy or written procedure prohibit or restrict any health care provider from disclosure of (i) billed or allowed amounts, reimbursement

rates or out-of-pocket costs, or (ii) any data to the all payor database (APD). Such information may be used to assist consumers and institutional purchasers in making informed decisions regarding their health care and informed choices among health care providers and allow comparisons between prices paid by various health carriers to health care providers.

(2) No contract or agreement entered into under this article between a health care provider, or any agent or vendor retained by the health care provider to provide data or analytical services to evaluate and manage health care services provided to the insurer's plan participants, and the insurer shall contain a provision prohibiting disclosure of (A) billed or allowed amounts, reimbursement rates or out-of-pocket costs, or (B) any data to the all payor database (APD). Such information may be used to assist consumers and institutional purchasers in making informed decisions regarding their health care and informed choices among health care providers and allow comparisons between prices paid by various health carriers to health care providers.

(3) If a contract described in paragraph one or two of this subsection, whichever is applicable, contains a provision prohibited under the applicable paragraphs, such provision shall be void and unenforceable. The invalidity or unenforceability of any policy provision under this subsection shall not affect any other provision of such contract.

§ 4. This act shall take effect immediately and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date.