

# 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:

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

3 (28-a) (A) Any policy that provides coverage for prescription drugs  
4 and also provides coverage for cancer chemotherapy treatment shall  
5 permit each insured to fill any covered prescription under paragraph  
6 twelve-a of this subsection that may be obtained at a network partic-  
7 ipating mail order or other non-retail pharmacy, at the insured's  
8 option, from a network participating oncologist providing services in  
9 accordance with section sixty-eight hundred seven of the education law.  
10 Any policy providing such coverage shall not impose a co-payment fee or  
11 other condition on any insured who elects to purchase oral anticancer  
12 medications from a prescribing network participating oncologist which is  
13 not also imposed on insureds electing to purchase drugs from a network  
14 participating mail order or other non-retail pharmacy. The policy shall  
15 not exclude from network participation any oncologist dispensing or  
16 involved in the provision of pharmacy services in accordance with  
17 section sixty-eight hundred seven of the education law due to their  
18 dispensing or the provision of said pharmacy services. This paragraph  
19 shall also apply to any pharmacy benefits manager as defined in section  
20 two hundred eighty-a of the public health law.

21 (B) For the purposes of this paragraph, "oncologist" shall mean a  
22 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

1 ble in medical oncology, radiation oncology, hematology, or another  
2 oncology specialty recognized by the American board of medical special-  
3 ties, or a surgeon who consults predominantly with patients who have a  
4 cancer diagnosis.

5 (28-b) (A) Any policy that provides coverage for prescription drugs  
6 and also provides coverage for human immunodeficiency virus infection  
7 and acquired immune deficiency syndrome treatment shall permit each  
8 insured to fill any covered prescription that may be obtained at a  
9 network participating mail order or other non-retail pharmacy, at the  
10 insured's option, from a network participating physician providing  
11 services in accordance with section sixty-eight hundred seven of the  
12 education law. Any policy providing such coverage shall not impose a  
13 co-payment fee or other condition on any insured who elects to purchase  
14 antiretroviral medications from a prescribing network participating  
15 physician which is not also imposed on insureds electing to purchase  
16 drugs from a network participating mail order or other non-retail phar-  
17 macy. The policy shall not exclude from network participation any physi-  
18 cian dispensing or involved in the provision of pharmacy services in  
19 accordance with section sixty-eight hundred seven of the education law  
20 due to their dispensing or the provision of said pharmacy services. This  
21 paragraph shall also apply to any pharmacy benefits manager as defined  
22 in section two hundred eighty-a of the public health law.

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

26 § 2. Subsection (1) of section 3221 of the insurance law is amended by  
27 adding two new paragraphs 18-a and 18-b to read as follows:

28 (18-a) (A) Any policy that provides coverage for prescription drugs  
29 and also provides coverage for cancer chemotherapy treatment shall  
30 permit each insured to fill any covered prescription under paragraph  
31 twelve-a of this subsection that may be obtained at a network partic-  
32 ipating mail order or other non-retail pharmacy, at the insured's  
33 option, from a network participating oncologist providing services in  
34 accordance with section sixty-eight hundred seven of the education law.  
35 Any policy providing such coverage shall not impose a co-payment fee or  
36 other condition on any insured who elects to purchase oral anticancer  
37 medications from a prescribing network participating oncologist which is  
38 not also imposed on insureds electing to purchase drugs from a network  
39 participating mail order or other non-retail pharmacy. The policy shall  
40 not exclude from network participation any oncologist dispensing or  
41 involved in the provision of pharmacy services in accordance with  
42 section sixty-eight hundred seven of the education law due to their  
43 dispensing or the provision of said pharmacy services. This paragraph  
44 shall also apply to any pharmacy benefits manager as defined in section  
45 two hundred eighty-a of the public health law.

46 (B) For the purposes of this paragraph, "oncologist" shall mean a  
47 licensed or registered physician who is board certified or board eligi-  
48 ble in medical oncology, radiation oncology, hematology, or another  
49 oncology specialty recognized by the American board of medical special-  
50 ties, or a surgeon who consults predominantly with patients who have a  
51 cancer diagnosis.

52 (18-b) (A) Any policy that provides coverage for prescription drugs  
53 and also provides coverage for human immunodeficiency virus infection  
54 and acquired immune deficiency syndrome treatment shall permit each  
55 insured to fill any covered prescription that may be obtained at a  
56 network participating mail order or other non-retail pharmacy, at the

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

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

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

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

39 (B) For the purposes of this paragraph, "oncologist" shall mean a  
40 licensed or registered physician who is board certified or board eligi-  
41 ble in medical oncology, radiation oncology, hematology, or another  
42 oncology specialty recognized by the American board of medical special-  
43 ties, or a surgeon who consults predominantly with patients who have a  
44 cancer diagnosis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15    § 6509-a. Additional definition of professional misconduct; limited  
16 application. Notwithstanding any inconsistent provision of this article  
17 or of any other provision of law to the contrary, the license or regis-  
18 tration of a person subject to the provisions of articles one hundred  
19 thirty-two, one hundred thirty-three, one hundred thirty-six, one  
20 hundred thirty-seven, one hundred thirty-nine, one hundred forty-one,  
21 one hundred forty-three, one hundred forty-four, one hundred fifty-six,  
22 one hundred fifty-nine and one hundred sixty-four of this chapter may be  
23 revoked, suspended or annulled or such person may be subject to any  
24 other penalty provided in section sixty-five hundred eleven of this  
25 article in accordance with the provisions and procedure of this article  
26 for the following:

27    That any person subject to the above enumerated articles, has directly  
28 or indirectly requested, received or participated in the division,  
29 transference, assignment, rebate, splitting or refunding of a fee for,  
30 or has directly requested, received or profited by means of a credit or  
31 other valuable consideration as a commission, discount or gratuity in  
32 connection with the furnishing of professional care, or service, includ-  
33 ing x-ray examination and treatment, or for or in connection with the  
34 sale, rental, supplying or furnishing of clinical laboratory services or  
35 supplies, x-ray laboratory services or supplies, inhalation therapy  
36 service or equipment, ambulance service, hospital or medical supplies,  
37 physiotherapy or other therapeutic service or equipment, artificial  
38 limbs, teeth or eyes, orthopedic or surgical appliances or supplies,  
39 optical appliances, supplies or equipment, devices for aid of hearing,  
40 drugs, medication or medical supplies or any other goods, services or  
41 supplies prescribed for medical diagnosis, care or treatment under this  
42 chapter, except payment, not to exceed thirty-three and one-third per  
43 centum of any fee received for x-ray examination, diagnosis or treat-  
44 ment, to any hospital furnishing facilities for such examination, diag-  
45 nosis or treatment. Nothing contained in this section shall prohibit  
46 such persons from practicing as partners, in groups or as a professional  
47 corporation or as a university faculty practice corporation nor from  
48 pooling fees and moneys received, either by the partnerships, profes-  
49 sional corporations, university faculty practice corporations or groups  
50 by the individual members thereof, for professional services furnished  
51 by any individual professional member, or employee of such partnership,  
52 corporation or group, nor shall the professionals constituting the part-  
53 nerships, corporations or groups be prohibited from sharing, dividing or  
54 apportioning the fees and moneys received by them or by the partnership,  
55 corporation or group in accordance with a partnership or other agree-  
56 ment; provided that no such practice as partners, corporations or in

1 groups or pooling of fees or moneys received or shared, division or  
2 apportionment of fees shall be permitted with respect to care and treat-  
3 ment under the workers' compensation law except as expressly authorized  
4 by the workers' compensation law. Nothing contained in this chapter  
5 shall prohibit a medical or dental expense indemnity corporation pursu-  
6 ant to its contract with the subscriber from prorating a medical or  
7 dental expense indemnity allowance among two or more professionals in  
8 proportion to the services rendered by each such professional at the  
9 request of the subscriber, provided that prior to payment thereof such  
10 professionals shall submit both to the medical or dental expense indem-  
11 nity corporation and to the subscriber statements itemizing the services  
12 rendered by each such professional and the charges therefor. Nothing in  
13 this section shall prohibit any person subject to the above enumerated  
14 articles from participating in an arrangement permitted in section two  
15 hundred thirty-eight-a of the public health law.

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

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

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

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

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

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

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

42 § 6807. Exempt persons; special provisions. 1. This article shall not  
43 be construed to affect or prevent:

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

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

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

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

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

15 e. The necessary and ordinary activities of manufacturers and whole-  
16 salers, subject to the provisions of article thirty-three of the public  
17 health law.

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

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

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

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

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

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

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

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

35 (8) the dispensing of allergenic extracts; or

36 (9) the dispensing of drugs pursuant to an oncological or AIDS proto-  
37 col.

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

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

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

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

1 3. A pharmacist may dispense drugs and devices to a registered profes-  
2 sional nurse, and a registered professional nurse may possess and admin-  
3 ister, drugs and devices, pursuant to a non-patient specific regimen  
4 prescribed or ordered by a licensed physician or certified nurse practi-  
5 tioner, pursuant to regulations promulgated by the commissioner and the  
6 public health law.

7 § 10. This act shall take effect immediately.