

STATE OF NEW YORK

7191

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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:

1 Section 1. The public health law is amended by adding a new section
2 280-c to read as follows:

3 § 280-c. Contracts between pharmacies and pharmacy benefit managers.
4 1. On and after January first, two thousand eighteen, no contract for
5 pharmacy services entered into in the state between a health insurance
6 carrier or a pharmacy benefit manager, as defined in section two hundred
7 eighty-a of this article, and a pharmacy, pharmacist or a pharmacy's
8 contracting agent, such as a pharmacy services administrative organiza-
9 tion, shall contain a provision prohibiting or penalizing, including
10 through increased utilization review, reduced payments or other finan-
11 cial disincentives, a pharmacist's disclosure to an individual purchas-
12 ing prescription medication of information regarding (a) the cost of the
13 prescription medication to the individual, or (b) the availability of
14 any therapeutically equivalent alternative medications or alternative
15 methods of purchasing the prescription medication, including, but not
16 limited to, paying a cash price, that are less expensive than the cost
17 of the prescription medication to the individual.

18 2. On and after January first, two thousand eighteen, no health insur-
19 ance carrier or pharmacy benefit manager shall require an individual to
20 make a payment at the point of sale for a covered prescription medica-
21 tion in an amount greater than the lesser of (a) the applicable copay-
22 ment for such prescription medication, (b) the allowable claim amount
23 for the prescription medication, or (c) the amount an individual would
24 pay for the prescription medication if the individual purchased the
25 prescription medication without using a health benefit plan or any other
26 source of prescription medication benefits or discounts. For the
27 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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1 health insurance carrier or pharmacy benefit manager has agreed to pay
2 the pharmacy for the prescription medication.

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

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

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

24 § 2. Section 3217-b of the insurance law is amended by adding a new
25 subsection (1) to read as follows:

26 (1) (1) No insurer subject to this article shall by contract, written
27 policy or written procedure prohibit or restrict any health care provid-
28 er from disclosure of (i) billed or allowed amounts, reimbursement rates
29 or out-of-pocket costs, or (ii) any data to the all payor database
30 (APD). Such information may be used to assist consumers and institu-
31 tional purchasers in making informed decisions regarding their health
32 care and informed choices among health care providers and allow compar-
33 isons between prices paid by various health carriers to health care
34 providers.

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

46 (3) If a contract described in paragraph one or two of this
47 subsection, whichever is applicable, contains a provision prohibited
48 under the applicable paragraphs, such provision shall be void and unen-
49 forceable. The invalidity or unenforceability of any contract provision
50 under this subsection shall not affect any other provision of such
51 contract.

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

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

1 rates or out-of-pocket costs, or (ii) any data to the all payor database
2 (APD). Such information may be used to assist consumers and institu-
3 tional purchasers in making informed decisions regarding their health
4 care and informed choices among health care providers and allow compar-
5 isons between prices paid by various health carriers to health care
6 providers.

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

18 (3) If a contract described in paragraph one or two of this
19 subsection, whichever is applicable, contains a provision prohibited
20 under the applicable paragraphs, such provision shall be void and unen-
21 forceable. The invalidity or unenforceability of any policy provision
22 under this subsection shall not affect any other provision of such
23 contract.

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