

# STATE OF NEW YORK

7191--A

## 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 nineteen, 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 nineteen, 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

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

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1 source of prescription medication benefits or discounts. For the  
2 purposes of this section, "allowable claim amount" means the amount the  
3 health insurance carrier or pharmacy benefit manager has agreed to pay  
4 the pharmacy for the prescription medication.

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

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

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

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

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

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

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

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

1 (m) (1) No corporation organized under this article shall by contract,  
2 written policy or written procedure prohibit or restrict any health care  
3 provider from disclosure of (i) billed or allowed amounts, reimbursement  
4 rates or out-of-pocket costs, or (ii) any data to the all payor database  
5 (APD). Such information may be used to assist consumers and institu-  
6 tional purchasers in making informed decisions regarding their health  
7 care and informed choices among health care providers and allow compar-  
8 isons between prices paid by various health carriers to health care  
9 providers.

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

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

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