STATE OF NEW YORK

8117--A

2019-2020 Regular Sessions

IN ASSEMBLY

June 3, 2019

Introduced by M. of A. BRONSON, ABBATE, BENEDETTO, DenDEKKER, BRABENEC -- Multi-Sponsored by -- M. of A. HEVESI -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to contracted network pharmacy use

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

Section 1. Paragraph 5 of subdivision (i) of section 13 of the workers' compensation law, as added by chapter 6 of the laws of 2007, is amended and a new paragraph 6 is added to read as follows:

(5) Notwithstanding any other provision of this chapter, if an employer or carrier has contracted with a pharmacy to provide prescribed medicine to claimants, then such employer or carrier may [~~require~~] encourage claimants to obtain all prescribed medicines from the pharmacy with which it has contracted[~~, except if a medical emergency occurs and it would not be reasonably possible to obtain immediately required prescribed medicine from the pharmacy with which the employer or carrier has a contract~~]. An employer or carrier that [~~requires~~] encourages claimants to obtain prescribed medicines from a pharmacy with which it has a contract must notify claimants of the pharmacy or pharmacies with which it has a contract, the locations and addresses of the pharmacy or pharmacies, if applicable, how to initially fill and refill prescriptions through the mail, internet, telephone or other means, and any other required information that must be supplied to the pharmacy or pharmacies. [~~If the pharmacy or pharmacies with which the employer or carrier contracts does not offer mail order service and does not have a physical location within a reasonable distance from the claimant, as defined by regulation of the board, the claimant may obtain prescribed~~

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

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~~medicines at the pharmacy or pharmacies of his or her choice and the employer or carrier will be liable for such charges in accordance with the fee schedule prescribed in section thirteen-o of this chapter~~] While an employer or a carrier may contract with a network pharmacy and encourage claimants to use it exclusively, claimants may obtain prescribed medicines at the pharmacy or pharmacies of their choice so long as that pharmacy is registered as a resident, in-state pharmacy with the New York state board of pharmacy and the employer or carrier will be liable for such charges in accordance with the fee schedule prescribed in section thirteen-o of this article so long as the medications are causally related to the claimants' work related injuries and are in accordance with the New York state workers' compensation pharmacy formulary and all other applicable board regulations regarding pharmacy. This paragraph will not apply to any resident, in-state pharmacies that are contracted with the network pharmacy that the employer or carrier designates as their preferred and encouraged network pharmacy. Such pharmacies are obligated to process all claims through their contract with the employer's or carrier's designated network pharmacy. This paragraph will also not apply to any non-resident, out-of-state pharmacies nor shall it apply to any compound medications that the claimant is prescribed. The employer or carrier will have the right to deny any charges that originate from non-resident, out-of-state pharmacies and deny any charges for non-FDA approved extemporaneous compound medications.

(6) (i) Any pharmacist licensed and registered to practice in New York state pursuant to article one hundred thirty-seven of the education law shall be permitted to dispense medication to a claimant outside of the network where:

(A) the carrier has refused to pay for the claimant's medication and the claimant is unable to access a network pharmacy; or

(B) the claimant's medication needs to be reauthorized monthly, and is so authorized, but is denied because:

(I) the carrier failed to respond to the reauthorization;

(II) medical reports were not filed for reauthorization or a filed medical report contains a defect;

(III) the medication has been authorized in the past, however the carrier denies authorization claiming that the medical treatment guidelines do not support reauthorization;

(IV) an independent medical examiner disagrees with reauthorization;

(V) reauthorization has been denied because maximum medical improvement has been reached; or

(VI) the case is in the process of being settled.

(ii) Any pharmacy that agrees to dispense medication to a claimant under subparagraph (i) of this paragraph shall:

(A) follow the fee schedule prescribed in section thirteen-o of this article;

(B) follow all treatment guidelines;

(C) follow the New York state workers' compensation pharmacy formulary;

(D) verify that the medication is causally related to the claimant's work related injuries; and

(E) assume all liability for the medication if a case is not established or if the medication is not later approved.

(iii) Upon approval of any medication dispensed by a pharmacy pursuant to subparagraph (i) of this paragraph, such pharmacy shall be entitled to receive prompt payment for such medication from the carrier within

ten days of such approval, and shall be permitted to continue to provide such medication to the claimant after such claimant's case has been established outside of the network.

§ 2. This act shall take effect immediately.