STATE OF NEW YORK

7200--A

2021-2022 Regular Sessions

IN ASSEMBLY

April 29, 2021

Introduced by M. of A. GOTTFRIED, STECK, McDONALD -- read once and referred to the Committee on Health -- recommitted to the Committee on Ways and Means 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 social services law, in relation to prescription drugs eligible for Medicaid coverage; to amend the public health law, in relation to prior authorization under the preferred drug program; to repeal certain provisions of part FFF of chapter 56 of the laws of 2020 directing the department of health to remove the pharmacy benefit from the managed care benefit package, relating to restoring such benefits; and to repeal certain provisions of the social services law, relating to coverage for certain prescription drugs under Medicaid managed care programs

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

Section 1. Legislative findings. This legislature finds that the costs of many prescription drugs in the market have been escalating unreasonably. The preferred drug program and the clinical drug review program under the public health law provide effective mechanisms for assuring access to quality, effective and safe drugs to patients at reasonable cost. Providing prescription drugs to Medicaid managed health care provider participants through these programs will maximize the Medicaid program's ability to negotiate more substantial rebates with drug manufacturers (effectively, lower prices), while protecting Medicaid managed care provider participants.

§ 2. Sections 1 and 1-a of part FFF of chapter 56 of the laws of 2020, relating to prescription drugs under the Medicaid program, are REPEALED.

§ 3. The social services law is amended by adding a new section 365-i to read as follows:

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

LBD11099-02-2

§ 365-i. Prescription drugs in Medicaid. 1. The definitions of terms in section two hundred seventy of the public health law shall apply to this section. As used in this section, unless the context clearly requires otherwise, "managed care provider" means a managed care provider under section three hundred sixty-four-j of this article, or a managed long term care plan under section forty-four hundred three-f of the public health law.

2. Prescription drugs eligible for reimbursement under this article shall be provided and paid for under the preferred drug program and the clinical drug review program under title one of article two-A of the public health law, except as otherwise provided in subdivision three of this section.

3. This subdivision applies where the eligible individual is enrolled in a managed care provider and a prescription for the eligible individual is made under section 340B of the federal Public Health Service Act (the "340B program"). The managed care provider shall pay for the drugs under the 340B program. However, the prescription shall be subject to section two hundred seventy-three (preferred drug program prior authorization) and section two hundred seventy-four (clinical drug review program) of the public health law.

4. The managed care provider shall account to and reimburse the department for the net cost to the department for prescription drugs provided to eligible individuals who receive medical services from the managed care provider. Capitation payments by the department to such managed care provider shall include a component for reimbursements paid under this subdivision.

§ 4. Paragraph (b) of subdivision 3 of section 273 of the public health law, as added by section 10 of part C of chapter 58 of the laws of 2005, is amended to read as follows:

(b) In the event that the patient does not meet the criteria in paragraph (a) of this subdivision, the prescriber may provide additional information to the program to justify the use of a prescription drug that is not on the preferred drug list. The program shall provide a reasonable opportunity for a prescriber to reasonably present his or her justification of prior authorization. If, after consultation with the program, the prescriber, in his or her reasonable professional judgment, determines that the use of a prescription drug that is not on the preferred drug list is warranted, the prescriber's determination shall be final. However, the prescriber's determination shall not be final: (i) where the preferred drug is a generic drug subject to subparagraph (i) of paragraph (a-1) of subdivision four of section three hundred sixty-five-a of the social services law (mandatory generic substitution), and even if the prescriber has indicated that the prescription shall be dispensed as written; or (ii) if it is for the use of a drug that is not consistent with food and drug administration-approved labeling or supported by one or more official Compendia references, including, but not limited to, the American Hospital Formulary Service (AHFS), the DRUGDEX Drug Information System and the United States Pharmacopeia.

§ 5. Subdivisions 25, 25-a, 26 and 26-b, and paragraph (u) of subdivision 4 of section 364-j of the social services law are REPEALED.

§ 6. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given

effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 7. This act shall take effect immediately, except that sections one through five of this act shall take effect on the one hundred eightieth day after they shall have become a law. Effective immediately, the commissioner of health shall make regulations and take other actions reasonably necessary to implement this act when it takes effect.