

# STATE OF NEW YORK

1026

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

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

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:

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

4 (5) Notwithstanding any other provision of this chapter, if an employ-  
5 er or carrier has contracted with a pharmacy to provide prescribed medi-  
6 cine to claimants, then such employer or carrier may [~~require~~] encourage  
7 claimants to obtain all prescribed medicines from the pharmacy with  
8 which it has contracted[~~, except if a medical emergency occurs and it~~  
9 ~~would not be reasonably possible to obtain immediately required~~  
10 ~~prescribed medicine from the pharmacy with which the employer or carrier~~  
11 ~~has a contract~~]. An employer or carrier that [~~requires~~] encourages  
12 claimants to obtain prescribed medicines from a pharmacy with which it  
13 has a contract must notify claimants of the pharmacy or pharmacies with  
14 which it has a contract, the locations and addresses of the pharmacy or  
15 pharmacies, if applicable, how to initially fill and refill  
16 prescriptions through the mail, internet, telephone or other means, and  
17 any other required information that must be supplied to the pharmacy or  
18 pharmacies. [~~If the pharmacy or pharmacies with which the employer or~~  
19 ~~carrier contracts does not offer mail order service and does not have a~~  
20 ~~physical location within a reasonable distance from the claimant, as~~  
21 ~~defined by regulation of the board, the claimant may obtain prescribed~~  
22 ~~medicines at the pharmacy or pharmacies of his or her choice and the~~  
23 ~~employer or carrier will be liable for such charges in accordance with~~  
24 ~~the fee schedule prescribed in section thirteen-o of this chapter~~] While  
25 an employer or a carrier may contract with a network pharmacy and  
26 encourage claimants to use it exclusively, claimants may obtain  
27 prescribed medicines at the pharmacy or pharmacies of their choice so

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

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1 long as that pharmacy is registered as a resident, in-state pharmacy  
2 with the New York state board of pharmacy and the employer or carrier  
3 will be liable for such charges in accordance with the fee schedule  
4 prescribed in section thirteen-o of this article so long as the medica-  
5 tions are causally related to the claimants' work related injuries and  
6 are in accordance with the New York state workers' compensation pharmacy  
7 formulary and all other applicable board regulations regarding pharmacy.  
8 This paragraph will not apply to any resident, in-state pharmacies that  
9 are contracted with the network pharmacy that the employer or carrier  
10 designates as their preferred and encouraged network pharmacy. Such  
11 pharmacies are obligated to process all claims through their contract  
12 with the employer's or carrier's designated network pharmacy. This para-  
13 graph will also not apply to any non-resident, out-of-state pharmacies  
14 nor shall it apply to any compound medications that the claimant is  
15 prescribed. The employer or carrier will have the right to deny any  
16 charges that originate from non-resident, out-of-state pharmacies and  
17 deny any charges for non-FDA approved extemporaneous compound medica-  
18 tions.

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

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

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

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

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

30 (III) the medication has been authorized in the past, however the  
31 carrier denies authorization claiming that the medical treatment guide-  
32 lines do not support reauthorization;

33 (IV) an independent medical examiner disagrees with reauthorization;

34 (V) reauthorization has been denied because maximum medical improve-  
35 ment has been reached; or

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

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

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

41 (B) follow all treatment guidelines;

42 (C) follow the New York state workers' compensation pharmacy formu-  
43 lary;

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

46 (E) assume all liability for the medication if a case is not estab-  
47 lished or if the medication is not later approved.

48 (iii) Upon approval of any medication dispensed by a pharmacy pursuant  
49 to subparagraph (i) of this paragraph, such pharmacy shall be entitled  
50 to receive prompt payment for such medication from the carrier within  
51 ten days of such approval, and shall be permitted to continue to provide  
52 such medication to the claimant after such claimant's case has been  
53 established outside of the network.

54 § 2. This act shall take effect immediately.