STATE OF NEW YORK

1974

2023-2024 Regular Sessions

IN SENATE

January 17, 2023

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:

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 to read as follows:

(5) **(i)** 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 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~~] **When an employer or insurance carrier fails to provide required access for**

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

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medication to a claimant as per the board guidelines and pharmacy formulary, claimants may then obtain prescribed medicines from any resident, in-state pharmacy licensed and registered to practice in New York state pursuant to all requirements outlined in section 63.6 of title 8 NYCRR part 63 under the following circumstances:

(A) the network pharmacy or insurance carrier has refused to pay for the claimant's medication and the claimant is unable to access medication through a network pharmacy due to the failure to authorize within seventy-two hours of such request; or

(B) the claimant's medication needs to be on a schedule, and is so authorized, but has not been authorized within seventy-two hours of such request because:

(I) the insurance carrier or network pharmacy failed to respond to the reauthorization request;

(II) medical reports were not yet 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 pharmacist that agrees to dispense medication to a claimant under this paragraph shall:

(A) follow the New York state workers' compensation pharmacy fee schedule prescribed in section thirteen-o of this article;

(B) follow all New York state workers' compensation medical treatment guidelines for the claimant's site of injury for which the medication is prescribed;

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

(D) 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 this paragraph, such pharmacy shall be entitled to receive prompt payment for such medication from the insurance carrier directly within forty-five business days of such approval, and shall be permitted to continue to provide such medication to the claimant outside of the network after such claimant's case has been established.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.