STATE OF NEW YORK

1219--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. BRONSON, BENEDETTO, BRABENEC, HEVESI, COLTON, DeSTEFANO, DURSO -- 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. Subdivision (i) of section 13 of the workers' compensation law is amended by adding a new paragraph 6 to read as follows:

(6) (i) Notwithstanding paragraph five of this subdivision, a claimant shall not be required to obtain prescribed medicines through a pharmacy with which the employer or carrier has a contract and may obtain prescribed medicines from a pharmacy of his or her choice when:

(A) the employer or insurance carrier has refused to provide payment for the claimant's prescribed medication and the claimant is unable to obtain the prescribed medication from a pharmacy with which the employer or carrier has a contract due to the failure to authorize such prescribed medication within seventy-two hours of such request; or

(B) the prescribed medication is scheduled for reauthorization but the employer or carrier has failed to reauthorize such prescribed medication within seventy-two hours of the request for one or more of the following reasons:

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

(II) medical reports have not yet been filed for reauthorization, or a filed medical report contains a defect;

(III) the medication has been authorized previously; however the employer or carrier denies reauthorization on the basis that the medical treatment guidelines do not support reauthorization;

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

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(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 prescribed medication to a claimant pursuant to subparagraph (i) of this paragraph shall:

(A) adhere to the amounts prescribed by the fee schedule adopted under the New York state workers' compensation pharmacy fee schedule prescribed in section thirteen-o of this article;

(B) adhere to the New York state workers' compensation medical treatment guidelines authorized under subdivision five of section thirteen-a of this article for the claimant's site of injury for which the medication is prescribed;

(C) follow the New York state workers' compensation pharmacy formulary prescribed under section thirteen-p of this article; and

(D) assume all liability for charges for such prescribed medication in accordance with the fee schedule prescribed under section thirteen-o of this article if a case is not established or if the prescribed medication is not later approved.

(iii) Upon approval of any prescribed medication dispensed by a pharmacy pursuant to this subparagraph, such pharmacy shall be entitled to submit a claim to the employer or its carrier for payment of such prescribed medication or for reimbursement of the cost of such prescribed medication. The employer or carrier shall pay the amount prescribed by the fee schedule prescribed under section thirteen-o of this article, or if the prescribed medication is not included on the current fee schedule, the usual and customary charges for such prescribed medication within forty-five business days of such approval. Such pharmacy shall be permitted to continue to dispense such prescribed medication to the claimant outside of the network after payment or reimbursement of payment for the prescribed medication is 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.