STATE OF NEW YORK

10413

IN ASSEMBLY

March 3, 2026

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to access to prescription medication and coordination with workers' compensation board regulations governing network pharmacy use

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

Section 1. Legislative findings and intent. The legislature hereby finds that timely access to medically necessary prescription medication is essential to the health, safety, and recovery of injured workers, and that delays in authorization or dispensing may cause unnecessary pain, medical deterioration, and increased system costs.

The legislature further finds that the workers' compensation board has adopted regulations governing out-of-network pharmacy access, effective July 2025, which allow injured workers to obtain prescription medication out of network when a contracted pharmacy fails to dispense such medication and which provide for payment surcharges when medication is subsequently determined to be compensable. These regulations represent important protections that should be codified in statute to ensure permanence, consistency, and enforceability, while preserving the board's authority to adapt to evolving medical and pharmaceutical delivery systems.

It is the intent of this act to codify and harmonize existing regulatory protections in statute, establish clear, objective, and time-based standards that minimize litigation and factual disputes, ensure prompt access to prescription medication, preserve administrative efficiency, and maintain the workers' compensation board's full regulatory flexibility to address emerging issues related to prescription medication access.

§ 2. 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 be permitted to obtain prescribed medication from a pharmacy of

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

LBD09234-02-6

such claimant's choice outside of an employer or carrier contracted pharmacy network when any of the following objective conditions occur:

(A) a prescription medication that has been authorized for dispensing by the employer or insurance carrier has not been dispensed by a contracted network pharmacy within the timeframes for dispensing established by regulations of the workers' compensation board, as documented in the workers' compensation board's electronic system of record or in written authorization communications;

(B) the employer, insurance carrier, or contracted network pharmacy has failed to issue a written authorization or reauthorization determination within the timeframes established by regulations of the workers' compensation board following documented receipt of a request for such determination, as reflected in the workers' compensation board's electronic data interchange system or, if submitted by mail, by the date shown on the return receipt for certified mail; provided that, for purposes of this subparagraph, a request for which the employer, insurance carrier, or contracted network pharmacy seeks additional information shall not toll or extend the applicable regulatory timeframe unless and to the extent expressly authorized by the workers' compensation board's regulations under specified circumstances;

(C) the claimant requires emergency prescription medication necessary to prevent imminent harm to health or safety, as defined or recognized under applicable medical treatment guidelines or regulations adopted by the workers' compensation board, including but not limited to opioid antagonists, insulin, cardiac medications, seizure medications, or antibiotics for acute infections;

(D) circumstances exist that permit out-of-network pharmacy access pursuant to regulations adopted by the workers' compensation board under its authority to ensure timely access to prescription medication, including regulations providing for payment surcharges when medication is subsequently determined to be compensable; or

(E) such other circumstances as the workers' compensation board may identify by regulation to address delays in medication access that are inconsistent with medical treatment guidelines or that impede the claimant's recovery, provided that such regulations establish objective, documentary, or time-based standards and do not require individualized factual determinations by the board as a prerequisite to out-of-network access.

(ii) Any pharmacy dispensing prescribed medication pursuant to subparagraph (i) of this paragraph shall:

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

(B) comply with the workers' compensation medical treatment guidelines promulgated pursuant to subdivision five of section thirteen-a of this article for the claimant's site of injury for which the medication is prescribed;

(C) comply with the workers' compensation pharmacy formulary established pursuant to section thirteen-p of this article; and

(D) assume financial responsibility for the cost of such medication in accordance with the fee schedule prescribed under section thirteen-o of this article if:

(I) the workers' compensation claim is denied or not established; or

(II) the prescribed medication is determined to be non-compensable by the workers' compensation board or a court of competent jurisdiction.

(iii) Upon a determination that the prescribed medication dispensed pursuant to this paragraph is compensable, the dispensing pharmacy shall be entitled to payment or reimbursement from the employer or carrier. The employer or carrier shall pay the amount prescribed by the fee schedule established 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 the timeframes established by the workers' compensation board pursuant to regulation. Such pharmacy shall be permitted to continue to dispense such prescribed medication to the claimant outside of the contracted network after payment or reimbursement for the prescribed medication is established.

(iv) The objective conditions set forth in subparagraph (i) of this paragraph are self-executing and shall not require a determination by the workers' compensation board as a prerequisite to out-of-network pharmacy access. The provisions of this paragraph shall be construed consistently with regulations adopted by the board to ensure timely access to prescription medication and shall not be construed to limit the board's authority to adopt, amend, or implement rules and regulations that facilitate medication access or minimize administrative burden.

(v) The provisions of this paragraph shall be construed as complementary to regulations adopted by the workers' compensation board governing pharmacy networks, medication authorization, and out-of-network access. To the extent any such regulation provides greater access to out-of-network pharmacy services or establishes more protective timeframes for injured workers than those specified in this paragraph, such regulation shall control. No regulation shall be construed to diminish the protections established by this paragraph.

(vi) A claimant's exercise of the right to obtain medication from an out-of-network pharmacy pursuant to this paragraph shall not constitute evidence regarding the compensability of the underlying claim or the medical necessity of the medication, and the fact that medication was obtained out-of-network shall not be admissible for such purpose in any proceeding before the workers' compensation board.

§ 3. Reporting requirement. No later than three years after the effective date of this act, the workers' compensation board shall submit a report to the governor, the temporary president of the senate, and the speaker of the assembly analyzing the implementation of paragraph six of subdivision (i) of section thirteen of the workers' compensation law as added by section two of this act. Such report shall include:

(a) data on the frequency and circumstances of out-of-network pharmacy utilization under this act;

(b) data on medication access delays before and after implementation of this act;

(c) information regarding any increase or decrease in litigation or administrative proceedings related to pharmacy access issues;

(d) analysis of costs and cost savings associated with improved medication access;

(e) stakeholder feedback from injured workers, employers, carriers, pharmacies, and health care providers; and

(f) recommendations for statutory or regulatory modifications to improve medication access, reduce administrative burden, or address implementation challenges.

§ 4. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent

jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This act shall take effect on the sixtieth 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.