STATE OF NEW YORK

7357

2025-2026 Regular Sessions

IN ASSEMBLY

March 25, 2025

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to pharmacy benefit management services and durable medical equipment

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

Section 1. Subdivisions 1, 3, 4 and 5 of section 280-a of the public health law, subdivisions 1 and 3 as amended by chapter 128 of the laws of 2022, subdivision 4 as added by chapter 828 of the laws of 2021, and subdivision 5 as amended by chapter 396 of the laws of 2024, are amended to read as follows:

1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Health plan" means an entity for which a pharmacy benefit manager provides pharmacy benefit management services and that is a health benefit plan or other entity that approves, provides, arranges for, or pays or reimburses in whole or in part for health care items or services, to include at least prescription drugs **or durable medical equipment**, for a substantial number of beneficiaries who work or reside in this state. The superintendent shall determine, in [~~his or her~~] **such superintendent's** sole discretion, by regulation how the phrase "a substantial number of beneficiaries who work or reside in this state" shall be interpreted.

(b) "Pharmacy benefit management services" means the management or administration of prescription drug benefits **or the management or administration of benefits relating to durable medical equipment,** for a health plan, directly or through another entity, and regardless of whether the pharmacy benefit manager and the health plan are related, or associated by ownership, common ownership, organization or otherwise; including the procurement of prescription drugs to be dispensed to patients, [~~or~~] the administration or management of prescription drug

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

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benefits, **or the administration or management of benefits relating to durable medical equipment,** including but not limited to, any of the following:

(i) mail service pharmacy;

(ii) claims processing, retail network management, or payment of claims to pharmacies for dispensing prescription drugs;

(iii) clinical or other formulary or preferred drug list development or management;

(iv) negotiation or administration of rebates, discounts, payment differentials, or other incentives, for the inclusion of particular prescription drugs in a particular category or to promote the purchase of particular prescription drugs;

(v) patient compliance, therapeutic intervention, or generic substitution programs;

(vi) disease management;

(vii) drug utilization review or prior authorization;

(viii) adjudication of appeals or grievances related to prescription drug coverage;

(ix) contracting with network pharmacies; [~~and~~]

(x) controlling the cost of covered prescription drugs**; and**

(xi) credentialing, contracting, authorizing, processing payment, or acting as an intermediary for the management, administration, or provision of durable medical equipment, excluding workers' compensation plans.

(c) "Pharmacy benefit manager" means any entity that performs pharmacy benefit management services for a health plan.

(d) "Maximum allowable cost price" means a maximum reimbursement amount set by the pharmacy benefit manager for therapeutically equivalent multiple source generic drugs.

(e) "Controlling person" means any person or other entity who or which directly or indirectly has the power to direct or cause to be directed the management, control or activities of a pharmacy benefit manager.

(f) "Covered individual" means a member, participant, enrollee, contract holder or policy holder or beneficiary of a health plan.

(g) "License" means a license to be a pharmacy benefit manager, under article twenty-nine of the insurance law.

(h) "Spread pricing" means the practice of a pharmacy benefit manager retaining an additional amount of money in addition to the amount paid to the pharmacy **or durable medical equipment provider** to fill a prescription.

(i) "Superintendent" means the superintendent of financial services.

(j) "Durable medical equipment" means devices and equipment that have been ordered by a practitioner in the treatment of a specific medical condition and that have all of the following characteristics:

(i) can withstand repeated use for a protracted period of time;

(ii) are primarily and customarily used for medical purposes;

(iii) are generally not useful in the absence of an illness or injury;

(iv) are not usually fitted, designed or fashioned for a particular individual's use; and

(v) if intended for use by only one patient, the equipment may be either custom-made or customized.

The term "durable medical equipment" shall also include medical/surgical supplies, orthotic appliances and devices, and orthopedic footwear, as defined by the commissioner.

3. Prescriptions. A pharmacy benefit manager may not substitute or cause the substituting of one prescription drug **or item of durable**

medical equipment for another in dispensing a prescription, or alter or cause the altering of the terms of a prescription, except with the approval of the prescriber or as explicitly required or permitted by law, including regulations of the department of financial services or the department of health. The superintendent and commissioner, in coordination with each other, are authorized to promulgate regulations to determine when substitution of prescription drugs or durable medical equipment may be required or permitted.

4. Appeals. A pharmacy benefit manager shall, with respect to contracts between a pharmacy benefit manager and a pharmacy or durable medical equipment provider or, alternatively, a pharmacy benefit manager and a [~~pharmacy's~~] contracting agent of a pharmacy or durable medical equipment provider, such as a pharmacy services administrative organization, include a reasonable process to appeal, investigate and resolve disputes regarding multi-source generic drug pricing. The appeals process shall include the following provisions:

(a) the right to appeal by the pharmacy, durable medical equipment provider, and/or the [~~pharmacy's~~] contracting agent of the pharmacy or durable medical equipment provider shall be limited to thirty days following the initial claim submitted for payment;

(b) a telephone number through which a network pharmacy or durable medical equipment provider may contact the pharmacy benefit manager for the purpose of filing an appeal and an electronic mail address of the individual who is responsible for processing appeals;

(c) the pharmacy benefit manager shall send an electronic mail message acknowledging receipt of the appeal. The pharmacy benefit manager shall respond in an electronic message to the pharmacy, durable medical equipment provider, and/or the [~~pharmacy's~~] contracting agent of the pharmacy or durable medical equipment provider filing the appeal within seven business days indicating its determination. If the appeal is determined to be valid, the maximum allowable cost for the drug shall be adjusted for the appealing pharmacy or durable medical equipment provider effective as of the date of the original claim for payment. The pharmacy benefit manager shall require the appealing pharmacy or durable medical equipment provider to reverse and rebill the claim in question in order to obtain the corrected reimbursement;

(d) if an update to the maximum allowable cost is warranted, the pharmacy benefit manager or covered entity shall adjust the maximum allowable cost of the drug effective for all similarly situated pharmacies in its network in the state on the date the appeal was determined to be valid; and

(e) if an appeal is denied, the pharmacy benefit manager shall identify the national drug code of a therapeutically equivalent drug, as determined by the federal Food and Drug Administration, that is available for purchase by pharmacies in this state from wholesalers registered pursuant to subdivision four of section sixty-eight hundred eight of the education law at a price which is equal to or less than the maximum allowable cost for that drug as determined by the pharmacy benefit manager.

5. Contract provisions. No pharmacy benefit manager shall, with respect to contracts between such pharmacy benefit manager and a pharmacy or durable medical equipment provider pharmacy or, alternatively, such pharmacy benefit manager and a [~~pharmacy's~~] contracting agent of a pharmacy or durable medical equipment provider, such as a pharmacy services administrative organization:

(a) prohibit or penalize a pharmacist [~~or~~], pharmacy, or durable medical equipment provider from disclosing to an individual purchasing [~~a~~] prescription medication, durable medical equipment, or a service information regarding:

(i) the cost of the prescription medication, durable medical equipment, or service to the individual, or the cost of the prescription medication, durable medical equipment, or service to the pharmacy or durable medical equipment provider and the [~~pharmacy's~~] reimbursement to such pharmacy or durable medical equipment provider for that prescription medication, durable medical equipment, or service; or

(ii) the availability of any therapeutically equivalent alternative medications or alternative methods of purchasing the prescription medication or durable medical equipment, including but not limited to, paying a cash price; or

(b) charge or collect from an individual a copayment that exceeds the total submitted charges by the pharmacy or durable medical equipment provider for which the pharmacy or durable medical equipment provider is paid. If an individual pays a copayment, the pharmacy or durable medical equipment provider shall retain the adjudicated costs and the pharmacy benefit manager shall not redact or recoup the adjudicated cost.

§ 2. Section 280-c of the public health law, as added by section 1 of part MM of chapter 57 of the laws of 2018, is amended to read as follows:

§ 280-c. Pharmacy or durable medical equipment provider audits by pharmacy benefit managers. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Pharmacy benefit manager" shall have the same meaning as in section two hundred eighty-a of this article.

(b) "Pharmacy" shall mean a pharmacy that has contracted with a pharmacy benefit manager for the provision of pharmacy services.

(c) "Durable medical equipment" shall have the same meaning as in section two hundred eighty-a of this article.

2. When conducting an audit of a pharmacy's or durable medical equipment provider's records, a pharmacy benefit manager shall:

(a) not conduct an on-site audit of a pharmacy or durable medical equipment provider at any time during the first three calendar days of a month;

(b) notify the pharmacy, durable medical equipment provider or [~~its~~] the contracting agent of such pharmacy or durable medical equipment provider no later than fifteen days before the date of initial on-site audit. Such notification to the pharmacy, durable medical equipment provider or [~~its~~] the contracting agent of such pharmacy or durable medical equipment provider shall be in writing delivered either (i) by mail or common carrier, return receipt requested, or (ii) electronically with electronic receipt confirmation, addressed to the supervising pharmacist of record and pharmacy corporate office, or the durable medical equipment provider, where applicable, at least fifteen days before the date of an initial on-site audit;

(c) limit the audit period to twenty-four months after the date a claim is submitted to or adjudicated by the pharmacy benefit manager;

(d) include in the written advance notice of an on-site audit the list of specific prescription numbers to be included in the audit that may or may not include the final two digits of the prescription numbers;

(e) use the written and verifiable records of a hospital, physician or other authorized practitioner, which are transmitted by any means of

communication, to validate the pharmacy **or durable medical equipment provider** records in accordance with state and federal law;

(f) limit the number of prescriptions audited to no more than one hundred randomly selected in a twelve-month period, except in cases of fraud;

(g) provide the pharmacy**, durable medical equipment provider** or [~~its~~] **the** contracting agent **of such pharmacy or durable medical equipment provider** with a copy of the preliminary audit report within forty-five days after the conclusion of the audit;

(h) be allowed to conduct a follow-up audit on-site if a remote or desk audit reveals the necessity for a review of additional claims;

(i) in the case of invoice audits, accept as validation invoices from any wholesaler registered with the department of education from which the pharmacy **or durable medical equipment provider** has purchased prescription drugs or, in the case of durable medical equipment or sick-room supplies, invoices from an authorized distributor other than a wholesaler;

(j) provide the pharmacy**, durable medical equipment provider** or [~~its~~] **the** contracting agent **of such pharmacy or durable medical equipment provider** with the ability to provide documentation to address a discrepancy or audit finding, provided that such documentation must be received by the pharmacy benefit manager no later than the forty-fifth day after the preliminary audit report was provided to the pharmacy**, durable medical equipment provider** or [~~its~~] **the** contracting agent **of such pharmacy or durable medical equipment provider**. The pharmacy benefit manager shall consider a reasonable request from the pharmacy **or durable medical equipment provider** for an extension of time to submit documentation to address or correct any findings in the report; and

(k) provide the pharmacy**, durable medical equipment provider,** or [~~its~~] **the** contracting agent **of such pharmacy or durable medical equipment provider** with the final audit report no later than sixty days after the initial audit report was provided to the pharmacy**, durable medical equipment provider,** or [~~its~~] **the** contracting agent **of such pharmacy or durable medical equipment provider**.

3. Any claim that was retroactively denied for a clerical error, typographical error, scrivener's error or computer error shall be paid if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged or the error results in actual financial loss to the entity. A clerical error is an error that does not result in actual financial harm to the covered entity or consumer and does not include the dispensing of an incorrect dose, amount or type of medication or dispensing a prescription drug **or durable medical equipment** to the wrong person.

4. This section shall not apply to:

(a) audits in which suspected fraudulent activity or other intentional or willful misrepresentation is evidenced by a physical review, review of claims data or statements, or other investigative methods; or

(b) audits of claims paid for by federally funded programs; or

(c) concurrent reviews or desk audits that occur within three business days of transmission of a claim and where no chargeback or recoupment is demanded.

§ 3. Paragraph 2 of subsection (a) of section 111-a of the insurance law, as added by chapter 738 of the laws of 2023, is amended to read as follows:

(2) A pharmacy benefit manager, including an entity that directly or through an intermediary, manages the prescription drug coverage provided

by a health insurer under a contract or policy delivered or issued for delivery in this state or a health plan subject to section three hundred sixty-four-j of the social services law, including the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered prescription drugs**, but not including a pharmacy benefit manager engaged solely in credentialing, contracting, authorizing, processing payment, or acting as an intermediary for the management, administration, or provision of durable medical equipment, prosthetics, orthotics or supplies**.

§ 4. Subsection (b) of section 2901 of the insurance law, as amended by chapter 128 of the laws of 2022, is amended to read as follows:

(b) The terms "covered individual", "health plan", "pharmacy benefit manager"**,** [~~and~~] "pharmacy benefit management services"**, and "durable medical equipment"** have the same meanings as defined by section two hundred eighty-a of the public health law. The superintendent is expressly authorized to interpret these terms as if the definitions were stated within this article.

§ 5. Subsection (b) of section 2902 of the insurance law, as amended by chapter 128 of the laws of 2022, is amended to read as follows:

(b) Any person, firm, association, corporation or other entity that violates this section shall, in addition to any other penalty provided by law, be liable for restitution and compensatory damages to any health plan, pharmacy**, durable medical equipment provider,** [~~or~~] covered individual, or other person harmed by the violation and shall also be subject to a penalty not exceeding of the greater of (1) four thousand dollars for the first violation and ten thousand dollars for each subsequent violation or (2) the aggregate economic gross receipts attributable to all violations.

§ 6. Subsection (b) of section 2905 of the insurance law, as amended by chapter 128 of the laws of 2022, is amended to read as follows:

(b) Any person, firm, association, corporation or other entity that violates this section shall, in addition to any other penalty provided by law, be liable for restitution and compensatory damages to any health plan, pharmacy, **durable medical equipment provider,** covered individual or other person harmed by the violation and further shall be subject to a penalty not exceeding the greater of (1) four thousand dollars for the first violation and ten thousand dollars for each subsequent violation or (2) the aggregate economic gross receipts attributable to all violations, as determined by the superintendent at a hearing.

§ 7. Paragraph 6 of subsection (b) of section 2906 of the insurance law, as added by chapter 128 of the laws of 2022, is amended to read as follows:

(6) standards and practices used in the creation of pharmacy networks **and durable medical equipment provider networks** and contracting with network pharmacies**, durable medical equipment providers,** and other providers, including promotion and use of independent and community pharmacies and patient access and minimizing excessive concentration and vertical integration of markets; and

§ 8. Paragraph 1 of subsection (g) of section 3217-a of the insurance law is amended by adding a new subparagraph (J) to read as follows:

(J) "Durable medical equipment" shall have the same meaning as in section two hundred eighty-a of the public health law.

§ 9. Subparagraph (B) of paragraph 1, and paragraphs 6, 7 and 10 of subsection (g) of section 3217-a of the insurance law, as added by chapter 63 of the laws of 2023, are amended to read as follows:

(B) "Cost-sharing information" means the amount an insured is required to pay to receive a drug **or item of durable medical equipment** that is covered under the insured's insurance policy.

(6) Upon a request made pursuant to paragraph three of this subsection, the insurer or pharmacy benefit manager shall provide the following data for any drug **or durable medical equipment** covered under the insured's insurance policy:

(A) insured-specific eligibility information;

(B) insured-specific prescription cost and benefit data, such as applicable formulary, benefit, coverage and cost-sharing data for the prescribed drug and clinically-appropriate alternatives **or durable medical equipment**, when appropriate;

(C) insured-specific cost-sharing information that describes variance in cost-sharing based on the pharmacy **or durable medical equipment provider** dispensing the prescribed drug or its alternatives **or durable medical equipment**, and in relation to the insured's benefit; and

(D) applicable utilization management requirements.

(7) Any insurer or pharmacy benefit manager shall furnish the data as required whether the request is made using the [~~drug's~~] unique billing code **of the drug or durable medical equipment**, such as a National Drug Code or Healthcare Common Procedure Coding System code or descriptive term. An insurer or pharmacy benefit manager shall not deny or unreasonably delay processing a request.

(10) Nothing in this subsection shall interfere with insured choice and a health care provider's ability to convey the full range of prescription drug **or durable medical equipment** cost options to an insured. Insurers and pharmacy benefit managers shall not restrict a health care provider from communicating to the insured prescription cost options.

§ 10. Paragraph 1 of subsection (g) of section 4324 of the insurance law is amended by adding a new subparagraph (J) to read as follows:

(J) "Durable medical equipment" shall have the same meaning as in section two hundred eighty-a of the public health law.

§ 11. Subparagraph (B) of paragraph 1, and paragraphs 6, 7 and 10 of subsection (g) of section 4324 of the insurance law, as added by chapter 63 of the laws of 2023, are amended to read as follows:

(B) "Cost-sharing information" means the amount a subscriber is required to pay to receive a drug **or an item of durable medical equipment** that is covered under the subscriber's insurance contract.

(6) Upon a request made pursuant to paragraph three of this subsection, the health service, hospital service, or medical expense indemnity corporation or pharmacy benefit manager shall provide the following data for any drug **or durable medical equipment** covered under the subscriber's insurance contract:

(A) subscriber-specific eligibility information;

(B) subscriber-specific prescription cost and benefit data, such as applicable formulary, benefit, coverage, and cost-sharing data for the prescribed drug and clinically-appropriate alternatives **or durable medical equipment**, when appropriate;

(C) subscriber-specific cost-sharing information that describes variance in cost-sharing based on the pharmacy **or durable medical equipment provider** dispensing the prescribed drug or its alternatives **or durable medical equipment**, and in relation to the insured's benefit; and

(D) applicable utilization management requirements.

(7) A health service, hospital service, or medical expense indemnity corporation or pharmacy benefit manager shall furnish the data as required whether the request is made using the [~~drug's~~] unique billing code **of the drug or durable medical equipment**, such as a National Drug Code or Healthcare Common Procedure Coding System code or descriptive term. A health service, hospital service, or medical expense indemnity corporation or pharmacy benefit manager shall not deny or unreasonably delay processing a request.

(10) Nothing in this subsection shall interfere with subscriber choice and a health care provider's ability to convey the full range of prescription drug **or durable medical equipment** cost options to a subscriber. Health service, hospital service, or medical expense indemnity corporations and pharmacy benefit managers shall not restrict a health care provider from communicating to the subscriber prescription cost options.

§ 12. Paragraph (a) of subdivision 8 of section 4408 of the public health law is amended by adding a new subparagraph (x) to read as follows:

(x) "Durable medical equipment" shall have the same meaning as in section two hundred eighty-a of the public health law.

§ 13. Subparagraph (ii) of paragraph (a), and paragraphs (f), (g) and (j) of subdivision 8 of section 4408 of the public health law, as added by chapter 63 of the laws of 2023, are amended to read as follows:

(ii) "Cost-sharing information" means the amount a subscriber is required to pay to receive a drug **or an item of durable medical equipment** that is covered under the subscriber's insurance contract.

(f) Upon a request made pursuant to paragraph (c) of this subdivision, the health maintenance organization or pharmacy benefit manager shall provide the following data for any drug **or durable medical equipment** covered under the subscriber's subscriber contract:

(i) subscriber-specific eligibility information;

(ii) subscriber-specific prescription cost and benefit data, such as applicable formulary, benefit, coverage, and cost-sharing data for the prescribed drug and clinically-appropriate alternatives **or durable medical equipment**, when appropriate;

(iii) subscriber-specific cost-sharing information that describes variance in cost-sharing based on the pharmacy **or durable medical equipment provider** dispensing the prescribed drug or its alternatives **or durable medical equipment**, and in relation to the insured's benefit; and

(iv) applicable utilization management requirements.

(g) A health maintenance organization or pharmacy benefit manager shall furnish the data as required whether the request is made using the [~~drug's~~] unique billing code **of the drug or durable medical equipment,** such as a National Drug Code or Healthcare Common Procedure Coding System code or descriptive term. A health maintenance organization or pharmacy benefit manager shall not deny or unreasonably delay processing a request.

(j) Nothing in this subdivision shall interfere with subscriber choice and a health care provider's ability to convey the full range of prescription drug **or durable medical equipment** cost options to a subscriber. Health maintenance organizations and pharmacy benefit managers shall not restrict a health care provider from communicating to the subscriber prescription cost options.

§ 14. This act shall take effect immediately.