

# STATE OF NEW YORK

2317--B

Cal. No. 171

2017-2018 Regular Sessions

## IN ASSEMBLY

January 17, 2017

Introduced by M. of A. PEOPLES-STOKES, HARRIS, SKOUFIS, BARRETT, NIOU, ORTIZ, SEPULVEDA, GALEF, ABINANTI, LAVINE -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, HEVESI -- read once and referred to the Committee on Insurance -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the insurance law and the public health law, in relation to prescription drug formulary changes during a contract year

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

1 Section 1. The insurance law is amended by adding a new section 4909  
2 to read as follows:

3 § 4909. Prescription drug formulary changes. (a) Except as otherwise  
4 provided in subsection (c) of this section, a health care plan shall  
5 not:

6 (i) remove a prescription drug from a formulary;

7 (ii) move a prescription drug to a tier with a larger deductible,  
8 copayment, or coinsurance if the formulary includes two or more tiers of  
9 benefits providing for different deductibles, copayments or coinsurance  
10 applicable to the prescription drugs in each tier; or

11 (iii) add utilization management restrictions to a prescription drug  
12 on a formulary, unless such changes occur at the time of enrollment or  
13 issuance of coverage.

14 (b) Prohibitions provided in subsection (a) of this section shall  
15 apply beginning on the date on which open enrollment begins for a plan  
16 year and through the end of the plan year to which such open enrollment  
17 period applies.

18 (c) (i) A health care plan with a formulary that includes two or more  
19 tiers of benefits providing for different deductibles, copayments or  
20 coinsurance applicable to prescription drugs in each tier may move a  
21 prescription drug to a tier with a larger deductible, copayment or coin-  
22 surance if an AB-rated generic equivalent for such prescription drug is  
23 added to the formulary at the same time.

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

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1 (ii) A health care plan may remove a prescription drug from a formu-  
2 lary if the federal Food and Drug Administration determines that such  
3 prescription drug should be removed from the market, including new  
4 utilization management restrictions issued pursuant to federal Food and  
5 Drug Administration safety concerns.

6 (d) A health care plan shall provide notice to policyholders of the  
7 intent to remove a prescription drug from a formulary or alter deduct-  
8 ible, copayment or coinsurance requirements in the upcoming plan year,  
9 thirty days prior to the open enrollment period for the consecutive plan  
10 year. Such notice of impending formulary and deductible, copayment or  
11 coinsurance changes shall also be posted on the plan's online formulary  
12 and in any prescription drug finder system that the plan provides to the  
13 public.

14 § 2. The public health law is amended by adding a new section 4909 to  
15 read as follows:

16 § 4909. Prescription drug formulary changes. 1. Except as otherwise  
17 provided in subdivision three of this section, a health care plan shall  
18 not:

19 (a) remove a prescription drug from a formulary;

20 (b) move a prescription drug to a tier with a larger deductible,  
21 copayment, or coinsurance if the formulary includes two or more tiers of  
22 benefits providing for different deductibles, copayments or coinsurance  
23 applicable to the prescription drugs in each tier; or

24 (c) add utilization management restrictions to a prescription drug on  
25 a formulary, unless such changes occur at the time of enrollment or  
26 issuance of coverage.

27 2. Prohibitions provided in subdivision one of this section shall  
28 apply beginning on the date on which open enrollment begins for a plan  
29 year and through the end of the plan year to which such open enrollment  
30 period applies.

31 3. (a) A health care plan with a formulary that includes two or more  
32 tiers of benefits providing for different deductibles, copayments or  
33 coinsurance applicable to prescription drugs in each tier may move a  
34 prescription drug to a tier with a larger deductible, copayment or coin-  
35 surance if an AB-rated generic equivalent for such prescription drug is  
36 added to the formulary at the same time.

37 (b) A health care plan may remove a prescription drug from a formulary  
38 if the federal Food and Drug Administration determines that such  
39 prescription drug should be removed from the market, including new  
40 utilization management restrictions issued pursuant to federal Food and  
41 Drug Administration safety concerns.

42 4. A health care plan shall provide notice to policyholders of the  
43 intent to remove a prescription drug from a formulary or alter deduct-  
44 ible, copayment or coinsurance requirements in the upcoming plan year,  
45 thirty days prior to the open enrollment period for the consecutive plan  
46 year. Such notice of impending formulary and deductible, copayment or  
47 coinsurance changes shall also be posted on the plan's online formulary  
48 and in any prescription drug finder system that the plan provides to the  
49 public.

50 § 3. This act shall take effect on the sixtieth day after it shall  
51 have become a law; provided, however, that effective immediately, the  
52 addition, amendment and/or repeal of any rule or regulation necessary  
53 for the implementation of this act on its effective date are authorized  
54 to be made and completed by the superintendent of financial services on  
55 or before such date.