

STATE OF NEW YORK

4668

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Insurance

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 or interchangeable biological
23 product for such prescription drug is added to the formulary at the same
24 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 (iii) A health care plan with a formulary that includes two or more
7 tiers of benefits providing for different copayments applicable to
8 prescription drugs may move a prescription drug to a tier with a larger
9 copayment during the plan year, provided the change is not applicable to
10 an insured who is already receiving such prescription drug or has been
11 diagnosed with or presented with a condition on or prior to the start of
12 the plan year which is treated by such prescription drug or is a
13 prescription drug that is or would be part of the insured's treatment
14 regimen for such condition.

15 (d) A health care plan shall provide notice to policyholders of the
16 intent to remove a prescription drug from a formulary or alter deduct-
17 ible, copayment or coinsurance requirements in the upcoming plan year,
18 thirty days prior to the open enrollment period for the consecutive plan
19 year. Such notice of impending formulary and deductible, copayment or
20 coinsurance changes shall also be posted on the plan's online formulary
21 and in any prescription drug finder system that the plan provides to the
22 public.

23 (e) The provisions of this section shall not supersede the terms of a
24 collective bargaining agreement, or the rights of labor representation
25 groups to collectively bargain changes to the formularies.

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

28 § 4909. Prescription drug formulary changes. 1. Except as otherwise
29 provided in subdivision three of this section, a health care plan shall
30 not:

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

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

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

39 2. Prohibitions provided in subdivision one of this section shall
40 apply beginning on the date on which open enrollment begins for a plan
41 year and through the end of the plan year to which such open enrollment
42 period applies.

43 3. (a) A health care plan with a formulary that includes two or more
44 tiers of benefits providing for different deductibles, copayments or
45 coinsurance applicable to prescription drugs in each tier may move a
46 prescription drug to a tier with a larger deductible, copayment or coin-
47 surance if an AB-rated generic equivalent or interchangeable biological
48 product for such prescription drug is added to the formulary at the same
49 time.

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

55 (c) A health care plan with a formulary that includes two or more
56 tiers of benefits providing for different copayments applicable to

1 prescription drugs may move a prescription drug to a tier with a larger
2 copayment during the plan year, provided the change is not applicable to
3 an insured who is already receiving such prescription drug or has been
4 diagnosed with or presented with a condition on or prior to the start of
5 the plan year which is treated by such prescription drug or is a
6 prescription drug that is or would be part of the insured's treatment
7 regimen for such condition.

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

16 5. The provisions of this section shall not supersede the terms of a
17 collective bargaining agreement, or the rights of labor representation
18 groups to collectively bargain changes to the formularies.

19 § 3. This act shall take effect on the sixtieth day after it shall
20 have become a law. Effective immediately, the addition, amendment and/or
21 repeal of any rule or regulation necessary for the implantation of this
22 act on its effective date are authorized to be made on or before such
23 effective date.