

4492

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

Introduced by M. of A. MENG, AUBRY, ROBINSON, JAFFEE, JEFFRIES, LANCMAN, KAVANAGH, J. RIVERA, SCARBOROUGH, WEPRIN, TITUS, GALEF, CASTRO, MAYER-SOHN, ZEBROWSKI -- Multi-Sponsored by -- M. of A. BARRON, GOTTFRIED, HOOPER, JOHNS, LAVINE, LIFTON, LUPARDO, MARKEY, McENENY, MILLMAN, NOLAN, PERRY, PHEFFER, WEISENBERG -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to requiring certain health insurance policies to include coverage for the cost of certain infant and baby formulas

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 21 of subsection (i) of section 3216 of the
2 insurance law, as added by chapter 177 of the laws of 1997, is amended
3 to read as follows:
4 (21) Every policy which provides coverage for prescription drugs shall
5 include coverage for the cost of enteral, INFANT AND BABY formulas for
6 home use for which a physician or other licensed health care provider
7 legally authorized to prescribe under title eight of the education law
8 has issued a written order. Such written order shall state that the
9 enteral, INFANT OR BABY formula is clearly medically necessary and has
10 been proven effective as a disease-specific treatment regimen for those
11 individuals who are or will become malnourished or suffer from disorders,
12 which if left untreated, cause chronic physical disability, mental
13 retardation or death. Specific diseases for which enteral, INFANT AND
14 BABY formulas have been proven effective shall include, but are not
15 limited to, inherited diseases of amino acid or organic acid metabolism;
16 Crohn's Disease; gastroesophageal reflux with failure to thrive; disorders
17 of gastrointestinal motility such as chronic intestinal pseudo-obstruction;
18 and multiple, severe food allergies which if left untreated
19 will cause malnourishment, chronic physical disability, mental retardation
20 or death. Enteral, INFANT AND BABY formulas which are medically
21 necessary and taken under written order from a physician for the treatment
22 of specific diseases shall be distinguished from nutritional
23 supplements taken electively. Coverage for certain inherited diseases of

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

LBD07103-01-1

1 amino acid and organic acid metabolism shall include modified solid food
2 products that are low protein or which contain modified protein which
3 are medically necessary, and such coverage for such modified solid food
4 products for any calendar year or for any continuous period of twelve
5 months for any insured individual shall not exceed two thousand five
6 hundred dollars. COVERAGE FOR INFANT AND BABY FORMULAS FOR ANY CALENDAR
7 YEAR OR ANY CONTINUOUS PERIOD OF TWELVE MONTHS FOR ANY INSURED INDIVID-
8 UAL SHALL BE NO LESS THAN THREE THOUSAND DOLLARS.

9 S 2. Paragraph 11 of subsection (k) of section 3221 of the insurance
10 law, as added by chapter 177 of the laws of 1997, is amended to read as
11 follows:

12 (11) Every policy which provides coverage for prescription drugs shall
13 include coverage for the cost of enteral, INFANT AND BABY formulas for
14 home use for which a physician or other licensed health care provider
15 legally authorized to prescribe under title eight of the education law
16 has issued a written order. Such written order shall state that the
17 enteral, INFANT OR BABY formula is clearly medically necessary and has
18 been proven effective as a disease-specific treatment regimen for those
19 individuals who are or will become malnourished or suffer from disor-
20 ders, which if left untreated, cause chronic physical disability, mental
21 retardation or death. Specific diseases for which enteral, INFANT AND
22 BABY formulas have been proven effective shall include, but are not
23 limited to, inherited diseases of amino-acid or organic acid metabolism;
24 Crohn's Disease; gastroesophageal reflux with failure to thrive; disor-
25 ders of gastrointestinal motility such as chronic intestinal pseudo-ob-
26 struction; and multiple, severe food allergies which if left untreated
27 will cause malnourishment, chronic physical disability, mental retarda-
28 tion or death. Enteral, INFANT AND BABY formulas which are medically
29 necessary and taken under written order from a physician for the treat-
30 ment of specific diseases shall be distinguished from nutritional
31 supplements taken electively. Coverage for certain inherited diseases of
32 amino acid and organic acid metabolism shall include modified solid food
33 products that are low protein or which contain modified protein which
34 are medically necessary, and such coverage for such modified solid food
35 products for any calendar year or for any continuous period of twelve
36 months for any insured individual shall not exceed two thousand five
37 hundred dollars. COVERAGE FOR INFANT AND BABY FORMULAS FOR ANY CALENDAR
38 YEAR OR ANY CONTINUOUS PERIOD OF TWELVE MONTHS FOR ANY INSURED INDIVID-
39 UAL SHALL BE NO LESS THAN THREE THOUSAND DOLLARS.

40 S 3. Subsection (y) of section 4303 of the insurance law, as added by
41 chapter 177 of the laws of 1997, is amended to read as follows:

42 (y) Every contract which provides coverage for prescription drugs
43 shall include coverage for the cost of enteral, INFANT AND BABY formulas
44 for home use for which a physician or other licensed health care provid-
45 er legally authorized to prescribe under title eight of the education
46 law has issued a written order. Such written order shall state that the
47 enteral, INFANT OR BABY formula is clearly medically necessary and has
48 been proven effective as a disease-specific treatment regimen for those
49 individuals who are or will become malnourished or suffer from disor-
50 ders, which if left untreated, cause chronic disability, mental retarda-
51 tion or death. Specific diseases for which enteral, INFANT AND BABY
52 formulas have been proven effective shall include, but are not limited
53 to, inherited diseases of amino-acid or organic acid metabolism; Crohn's
54 Disease; gastroesophageal reflux with failure to thrive; disorders of
55 gastrointestinal motility such as chronic intestinal pseudo-obstruction;
56 and multiple, severe food allergies which if left untreated will cause

1 malnourishment, chronic physical disability, mental retardation or
2 death. Enteral, INFANT AND BABY formulas which are medically necessary
3 and taken under written order from a physician for the treatment of
4 specific diseases shall be distinguished from nutritional supplements
5 taken electively. Coverage for certain inherited diseases of amino acid
6 and organic acid metabolism shall include modified solid food products
7 that are low protein, or which contain modified protein which are
8 medically necessary, and such coverage for such modified solid food
9 products for any calendar year or for any continuous period of twelve
10 months for any insured individual shall not exceed two thousand five
11 hundred dollars. COVERAGE FOR INFANT AND BABY FORMULAS FOR ANY CALENDAR
12 YEAR OR ANY CONTINUOUS PERIOD OF TWELVE MONTHS FOR ANY INSURED INDIVID-
13 UAL SHALL BE NO LESS THAN THREE THOUSAND DOLLARS.

14 S 4. The opening paragraph of paragraph 25 of subsection (b) of
15 section 4322 of the insurance law, as amended by chapter 554 of the laws
16 of 2002, is amended to read as follows:

17 Prescription drugs, OBTAINED AT A PARTICIPATING PHARMACY UNDER A
18 PRESCRIPTION WRITTEN BY AN IN-PLAN OR OUT-OF-PLAN PROVIDER, including
19 contraceptive drugs or devices approved by the federal food and drug
20 administration or generic equivalents approved as substitutes by such
21 food and drug administration [and], nutritional supplements (formulas)
22 for the therapeutic treatment of phenylketonuria, branched-chain ketonu-
23 ria, galactosemia and homocystinuria[, obtained at a participating phar-
24 macy under a prescription written by an in-plan or out-of-plan provider]
25 AND INFANT AND BABY FORMULAS FOR HOME USE FOR WHICH A PHYSICIAN OR OTHER
26 LICENSED HEALTH CARE PROVIDER LEGALLY AUTHORIZED TO PRESCRIBE UNDER
27 TITLE EIGHT OF THE EDUCATION LAW HAS ISSUED A WRITTEN ORDER. SUCH WRIT-
28 TEN ORDER SHALL STATE THAT THE INFANT OR BABY FORMULA IS CLEARLY
29 MEDICALLY NECESSARY AND HAS BEEN PROVEN EFFECTIVE AS A DISEASE-SPECIFIC
30 TREATMENT REGIMEN FOR THOSE INDIVIDUALS WHO ARE OR WILL BECOME MALNOUR-
31 ISHED OR SUFFER FROM DISORDERS, WHICH IF LEFT UNTREATED, CAUSE CHRONIC
32 PHYSICAL DISABILITY, MENTAL RETARDATION OR DEATH. SPECIFIC DISEASES FOR
33 WHICH INFANT AND BABY FORMULAS HAVE BEEN PROVEN EFFECTIVE SHALL INCLUDE,
34 BUT ARE NOT LIMITED TO, INHERITED DISEASES OF AMINO ACID OR ORGANIC ACID
35 METABOLISM; CROHN'S DISEASE; GASTROESOPHAGEAL REFLUX WITH FAILURE TO
36 THRIVE; DISORDERS OF GASTROINTESTINAL MOTILITY SUCH AS CHRONIC INTES-
37 TINAL PSEUDO-OBSTRUCTION; AND MULTIPLE, SEVERE FOOD ALLERGIES WHICH IF
38 LEFT UNTREATED WILL CAUSE MALNOURISHMENT, CHRONIC PHYSICAL DISABILITY,
39 MENTAL RETARDATION OR DEATH. INFANT AND BABY FORMULAS WHICH ARE
40 MEDICALLY NECESSARY AND TAKEN UNDER WRITTEN ORDER FROM A PHYSICIAN FOR
41 THE TREATMENT OF SPECIFIC DISEASES SHALL BE DISTINGUISHED FROM NUTRI-
42 TIONAL SUPPLEMENTS TAKEN ELECTIVELY. COVERAGE FOR INFANT AND BABY FORMU-
43 LAS FOR ANY CALENDAR YEAR OR ANY CONTINUOUS PERIOD OF TWELVE MONTHS FOR
44 ANY INSURED INDIVIDUAL SHALL BE NO LESS THAN THREE THOUSAND DOLLARS.
45 Health maintenance organizations, in addition to providing coverage for
46 prescription drugs at a participating pharmacy, may utilize a mail order
47 prescription drug program. Health maintenance organizations may provide
48 prescription drugs pursuant to a drug formulary; however, health mainte-
49 nance organizations must implement an appeals process so that the use of
50 non-formulary prescription drugs may be requested by a physician or
51 other provider.

52 S 5. This act shall take effect on the first of January next succeed-
53 ing the date on which it shall have become a law and shall apply to all
54 policies and contracts issued, renewed, modified, altered, or amended on
55 or after such date.