

# STATE OF NEW YORK

5022--C

2017-2018 Regular Sessions

## IN SENATE

March 6, 2017

Introduced by Sens. SERINO, ALCANTARA, AVELLA, BRESLIN, CARLUCCI, CROCI, GOLDEN, GRIFFO, HAMILTON, HANNON, HELMING, KAMINSKY, KENNEDY, KRUEGER, MARCHIONE, MURPHY, ORTT, RITCHIE, SANDERS, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD05529-10-8

1 year and through the end of the plan year to which such open enrollment  
2 period applies.

3 (c) (i) A health care plan with a formulary that includes two or more  
4 tiers of benefits providing for different deductibles, copayments or  
5 coinsurance applicable to prescription drugs in each tier may move a  
6 prescription drug to a tier with a larger deductible, copayment or coin-  
7 surance if an AB-rated generic equivalent or interchangeable biological  
8 product for such prescription drug is added to the formulary at the same  
9 time.

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

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

25 § 4909. Prescription drug formulary changes. 1. Except as otherwise  
26 provided in subdivision three of this section, a health care plan shall  
27 not:

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

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

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

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

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

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

52 4. A health care plan shall provide notice to policyholders of the  
53 intent to remove a prescription drug from a formulary or alter deduct-  
54 ible, copayment or coinsurance requirements in the upcoming plan year,  
55 thirty days prior to the open enrollment period for the consecutive plan  
56 year. Such notice of impending formulary and deductible, copayment or

1 coinsurance changes shall also be posted on the plan's online formulary  
2 and in any prescription drug finder system that the plan provides to the  
3 public.

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