

# STATE OF NEW YORK

7872

## IN SENATE

March 5, 2018

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to utilization review program standards and prescription drug formulary changes during a contract year, and in relation to pre-authorization of health care services

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

1 Section 1. Paragraph (c) of subdivision 1 of section 4902 of the  
2 public health law, as added by chapter 705 of the laws of 1996, is  
3 amended to read as follows:

4 (c) Utilization of written clinical review criteria developed pursuant  
5 to a utilization review plan. Such clinical review criteria shall  
6 utilize recognized evidence-based and peer reviewed clinical review  
7 criteria that takes into account the needs of atypical patient popu-  
8 lations and diagnoses;

9 § 2. Paragraph (a) of subdivision 2 of section 4903 of the public  
10 health law, as amended by chapter 371 of the laws of 2015, is amended to  
11 read as follows:

12 (a) A utilization review agent shall make a utilization review deter-  
13 mination involving health care services which require pre-authorization  
14 and provide notice of a determination to the enrollee or enrollee's  
15 designee and the enrollee's health care provider by telephone and in  
16 writing within [~~three business days~~] forty-eight hours of receipt of the  
17 necessary information, or within twenty-four hours of the receipt of  
18 necessary information if the request is for an enrollee with a medical  
19 condition that places the health of the insured in serious jeopardy  
20 without the health care services recommended by the enrollee's health  
21 care professional. To the extent practicable, such written notification  
22 to the enrollee's health care provider shall be transmitted electron-  
23 ically, in a manner and in a form agreed upon by the parties. The  
24 notification shall identify; (i) whether the services are considered  
25 in-network or out-of-network; (ii) and whether the enrollee will be held  
26 harmless for the services and not be responsible for any payment, other

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

LBD11465-05-8

1 than any applicable co-payment or co-insurance; (iii) as applicable, the  
2 dollar amount the health care plan will pay if the service is out-of-  
3 network; and (iv) as applicable, information explaining how an enrollee  
4 may determine the anticipated out-of-pocket cost for out-of-network  
5 health care services in a geographical area or zip code based upon the  
6 difference between what the health care plan will reimburse for out-of-  
7 network health care services and the usual and customary cost for out-  
8 of-network health care services. An approval for a request for pre-au-  
9 thorization shall be valid for the duration of the prescription or  
10 treatment as requested by the enrollee's health care provider.

11 § 3. The public health law is amended by adding a new section 4909 to  
12 read as follows:

13 § 4909. Prescription drug formulary changes. 1. A health care plan  
14 required to provide essential health benefits shall not, except as  
15 otherwise provided in subdivision two of this section, remove a  
16 prescription drug from a formulary:

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

21 (b) add utilization management restrictions to a formulary drug,  
22 unless such changes occur at the time of enrollment or issuance of  
23 coverage. Such prohibition shall apply beginning on the date on which  
24 open enrollment begins for a plan year and through the end of the plan  
25 year to which such open enrollment period applies.

26 2. (a) A health care plan with a formulary that includes two or more  
27 tiers of benefits providing for different deductibles, copayments or  
28 coinsurance applicable to prescription drugs in each tier may move a  
29 prescription drug to a tier with a larger deductible, copayment or coin-  
30 insurance if an AB-rated generic drug for such prescription drug is added  
31 to the formulary at the same time.

32 (b) A health care plan may remove a prescription drug from a formulary  
33 if the federal food and drug administration determines that such drug  
34 should be removed from the market.

35 § 4. Paragraph 3 of subsection (a) of section 4902 of the insurance  
36 law, as added by chapter 705 of the laws of 1996, is amended to read as  
37 follows:

38 (3) Utilization of written clinical review criteria developed pursuant  
39 to a utilization review plan. Such clinical review criteria shall  
40 utilize recognized evidence-based and peer reviewed clinical review  
41 criteria that takes into account the needs of atypical patient popu-  
42 lations and diagnoses;

43 § 5. Paragraph 1 of subsection (b) of section 4903 of the insurance  
44 law, as amended by chapter 371 of the laws of 2015, is amended to read  
45 as follows:

46 (1) A utilization review agent shall make a utilization review deter-  
47 mination involving health care services which require pre-authorization  
48 and provide notice of a determination to the insured or insured's desig-  
49 nee and the insured's health care provider by telephone and in writing  
50 within [~~three business days~~] forty-eight hours of receipt of the neces-  
51 sary information, or within twenty-four hours of the receipt of neces-  
52 sary information if the request is for an insured with a medical condi-  
53 tion that places the health of the insured in serious jeopardy without  
54 the health care services recommended by the insured's health care  
55 provider. To the extent practicable, such written notification to the

56 enrollee's health care provider shall be transmitted electronically, in

1 a manner and in a form agreed upon by the parties. The notification  
2 shall identify: (i) whether the services are considered in-network or  
3 out-of-network; (ii) whether the insured will be held harmless for the  
4 services and not be responsible for any payment, other than any applica-  
5 ble co-payment, co-insurance or deductible; (iii) as applicable, the  
6 dollar amount the health care plan will pay if the service is out-of-  
7 network; and (iv) as applicable, information explaining how an insured  
8 may determine the anticipated out-of-pocket cost for out-of-network  
9 health care services in a geographical area or zip code based upon the  
10 difference between what the health care plan will reimburse for out-of-  
11 network health care services and the usual and customary cost for out-  
12 of-network health care services. An approval of request for pre-author-  
13 ization shall be valid for the duration of the prescription or treatment  
14 requested for pre-authorization.

15 § 6. The insurance law is amended by adding a new section 4909 to read  
16 as follows:

17 § 4909. Prescription drug formulary changes. (a) A health care plan  
18 required to provide essential health benefits shall not, except as  
19 otherwise provided in subsection (b) of this section, remove a  
20 prescription drug from a formulary:

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

25 (ii) add utilization management restrictions to a formulary drug,  
26 unless such changes occur at the time of enrollment or issuance of  
27 coverage. Such prohibition shall apply beginning on the date on which  
28 open enrollment begins for a plan year and through the end of the plan  
29 year to which such open enrollment period applies.

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

36 (ii) A health care plan may remove a prescription drug from a formu-  
37 lary if the federal food and drug administration determines that such  
38 drug should be removed from the market.

39 § 7. Subsection (a) of section 3238 of the insurance law, as added by  
40 chapter 451 of the laws of 2007, is amended to read as follows:

41 (a) An insurer, corporation organized pursuant to article forty-three  
42 of this chapter, municipal cooperative health benefits plan certified  
43 pursuant to article forty-seven of this chapter, or health maintenance  
44 organization and other organizations certified pursuant to article  
45 forty-four of the public health law ("health plan") shall pay claims for  
46 a health care service for which a pre-authorization was required by, and  
47 received from, the health plan prior to the rendering of such health  
48 care service, and eligibility confirmed on the day of the service,  
49 unless:

50 (1) ~~(i) the insured, subscriber, or enrollee was not a covered person~~  
51 ~~at the time the health care service was rendered.~~

52 ~~(ii) Notwithstanding the provisions of subparagraph (i) of this para-~~  
53 ~~graph, a health plan shall not deny a claim on this basis if the~~  
54 ~~insured's, subscriber's or enrollee's coverage was retroactively termi-~~  
55 ~~nated more than one hundred twenty days after the date of the health~~  
56 ~~care service, provided that the claim is submitted within ninety days~~

1 ~~after the date of the health care service. If the claim is submitted~~  
2 ~~more than ninety days after the date of the health care service, the~~  
3 ~~health plan shall have thirty days after the claim is received to deny~~  
4 ~~the claim on the basis that the insured, subscriber or enrollee was not~~  
5 ~~a covered person on the date of the health care service.~~

6 (2) the submission of the claim with respect to an insured, subscrib-  
7 er or enrollee was not timely under the terms of the applicable provider  
8 contract, if the claim is submitted by a provider, or the policy or  
9 contract, if the claim is submitted by the insured, subscriber or enrol-  
10 lee;

11 (3) at the time the pre-authorization was issued, the insured,  
12 subscriber or enrollee had not exhausted contract or policy benefit  
13 limitations based on information available to the health plan at such  
14 time, but subsequently exhausted contract or policy benefit limitations  
15 after authorization was issued; provided, however, that the health plan  
16 shall include in the notice of determination required pursuant to  
17 subsection (b) of section four thousand nine hundred three of this chap-  
18 ter and subdivision two of section forty-nine hundred three of the  
19 public health law that the visits authorized might exceed the limits of  
20 the contract or policy and accordingly would not be covered under the  
21 contract or policy;

22 (4) the pre-authorization was based on materially inaccurate or  
23 incomplete information provided by the insured, subscriber or enrollee,  
24 the designee of the insured, subscriber or enrollee, or the health care  
25 provider such that if the correct or complete information had been  
26 provided, such pre-authorization would not have been granted; or

27 ~~(5) the pre-authorized service was related to a pre-existing condi-~~  
28 ~~tion that was excluded from coverage; or~~

29 (6) there is a reasonable basis supported by specific information  
30 available for review by the superintendent that the insured, subscriber  
31 or enrollee, the designee of the insured, subscriber or enrollee, or the  
32 health care provider has engaged in fraud or abuse.

33 § 8. This act shall take effect on the ninetieth day after it shall  
34 have become a law.