

# STATE OF NEW YORK

2969--A

R. R. 69

2019-2020 Regular Sessions

## IN ASSEMBLY

January 28, 2019

Introduced by M. of A. PEOPLES-STOKES, BARRETT, NIOU, ORTIZ, GALEF, ABINANTI, LAVINE, COLTON, JEAN-PIERRE, TAYLOR, BYRNE, WEPRIN, SEAWRIGHT, BARRON, MOSLEY, LUPARDO, ASHBY, REYES, L. ROSENTHAL, VANEL, STIRPE, D. ROSENTHAL, GRIFFIN, JAFFEE, BUCHWALD, GOTTFRIED, D'URSO, MAGNARELLI, STERN, HUNTER, JACOBSON, LIPETRI, HEVESI, OTIS, CARROLL, STECK, SIMON, MIKULIN, PICHARDO, EPSTEIN, ROZIC, WALLACE, MALLIOTAKIS, BUTTENSCHON, SCHMITT -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, RA, THIELE -- read once and referred to the Committee on Insurance -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special 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

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

LBD04720-04-9

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 insurance 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 (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 insurance 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 4. A health care plan shall provide notice to policyholders of the  
56 intent to remove a prescription drug from a formulary or alter deduct-

1 ible, copayment or coinsurance requirements in the upcoming plan year,  
2 thirty days prior to the open enrollment period for the consecutive plan  
3 year. Such notice of impending formulary and deductible, copayment or  
4 coinsurance changes shall also be posted on the plan's online formulary  
5 and in any prescription drug finder system that the plan provides to the  
6 public.

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

10 § 3. This act shall take effect on the sixtieth day after it shall  
11 have become a law. Effective immediately, the addition, amendment  
12 and/or repeal of any rule or regulation necessary for the implementation  
13 of this act on its effective date are authorized to be made and  
14 completed on or before such effective date.