

STATE OF NEW YORK

2849

2019-2020 Regular Sessions

IN SENATE

January 29, 2019

Introduced by Sens. BRESLIN, ADDABBO, AKSHAR, BROOKS, CARLUCCI, COMRIE, GRIFFO, HELMING, JACOBS, KAMINSKY, KENNEDY, KRUEGER, LANZA, LAVALLE, MAYER, ORTT, PARKER, RITCHIE, RIVERA, ROBACH, SANDERS, SAVINO, SEPULVEDA, SERINO -- read twice and ordered printed, and when printed to be committed 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 (d) A health care plan shall provide notice to policyholders of the
7 intent to remove a prescription drug from a formulary or alter deduct-
8 ible, copayment or coinsurance requirements in the upcoming plan year,
9 thirty days prior to the open enrollment period for the consecutive plan
10 year. Such notice of impending formulary and deductible, copayment or
11 coinsurance changes shall also be posted on the plan's online formulary
12 and in any prescription drug finder system that the plan provides to the
13 public.

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

16 § 4909. Prescription drug formulary changes. 1. Except as otherwise
17 provided in subdivision three of this section, a health care plan shall
18 not:

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

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

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

27 2. Prohibitions provided in subdivision one of this section shall
28 apply beginning on the date on which open enrollment begins for a plan
29 year and through the end of the plan year to which such open enrollment
30 period applies.

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

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

43 4. A health care plan shall provide notice to policyholders of the
44 intent to remove a prescription drug from a formulary or alter deduct-
45 ible, copayment or coinsurance requirements in the upcoming plan year,
46 thirty days prior to the open enrollment period for the consecutive plan
47 year. Such notice of impending formulary and deductible, copayment or
48 coinsurance changes shall also be posted on the plan's online formulary
49 and in any prescription drug finder system that the plan provides to the
50 public.

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