

STATE OF NEW YORK

2849--A

Cal. No. 462

2019-2020 Regular Sessions

IN SENATE

January 29, 2019

Introduced by Sens. BRESLIN, ADDABBO, AKSHAR, BENJAMIN, BIAGGI, BROOKS, CARLUCCI, COMRIE, FUNKE, GALLIVAN, GAUGHRAN, GIANARIS, GRIFFO, HELMING, HOYLMAN, JACOBS, JORDAN, KAMINSKY, KENNEDY, KRUEGER, LANZA, LAVALLE, MAY, MAYER, ORTT, PARKER, RITCHIE, RIVERA, ROBACH, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERINO, SERRANO, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the 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:

Section 1. The insurance law is amended by adding a new section 4909 to read as follows:

§ 4909. Prescription drug formulary changes. (a) Except as otherwise provided in subsection (c) of this section, a health care plan shall not:

(i) remove a prescription drug from a formulary;

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

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

(b) Prohibitions provided in subsection (a) of this section shall apply beginning on the date on which open enrollment begins for a plan year and through the end of the plan year to which such open enrollment period applies.

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

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

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

13 (d) A health care plan shall provide notice to policyholders of the
14 intent to remove a prescription drug from a formulary or alter deduct-
15 ible, copayment or coinsurance requirements in the upcoming plan year,
16 thirty days prior to the open enrollment period for the consecutive plan
17 year. Such notice of impending formulary and deductible, copayment or
18 coinsurance changes shall also be posted on the plan's online formulary
19 and in any prescription drug finder system that the plan provides to the
20 public.

21 (e) The provisions of this section shall not supersede the terms of a
22 collective bargaining agreement, or the rights of labor representation
23 groups to collectively bargain changes to the formularies.

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

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

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

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

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

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

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

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

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

1 year. Such notice of impending formulary and deductible, copayment or
2 coinsurance changes shall also be posted on the plan's online formulary
3 and in any prescription drug finder system that the plan provides to the
4 public.

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

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