

# STATE OF NEW YORK

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3386

2021-2022 Regular Sessions

## IN SENATE

January 29, 2021

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

AN ACT to amend the insurance law, in relation to requiring certain health insurance policies to include coverage for the cost of certain infant and baby formulas

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

1 Section 1. Paragraph 21 of subsection (i) of section 3216 of the  
2 insurance law, as amended by section 6 of subpart B of part J of chapter  
3 57 of the laws of 2019, is amended to read as follows:

4 (21) Every policy that provides coverage for prescription drugs shall  
5 include coverage for the cost of enteral, infant and baby formulas for  
6 home use, whether administered orally or via tube feeding, for which a  
7 physician or other licensed health care provider legally authorized to  
8 prescribe under title eight of the education law has issued a written  
9 order. Such written order shall state that the enteral, infant and baby  
10 formula is clearly medically necessary and has been proven effective as  
11 a disease-specific treatment regimen. Specific diseases and disorders  
12 for which enteral, infant and baby formulas have been proven effective  
13 shall include, but are not limited to, inherited diseases of amino acid  
14 or organic acid metabolism; Crohn's Disease; gastroesophageal reflux;  
15 disorders of gastrointestinal motility such as chronic intestinal pseu-  
16 do-obstruction; and multiple, severe food allergies including, but not  
17 limited to immunoglobulin E and nonimmunoglobulin E-mediated allergies  
18 to multiple food proteins; severe food protein induced enterocolitis  
19 syndrome; eosinophilic disorders; and impaired absorption of nutrients  
20 caused by disorders affecting the absorptive surface, function, length,  
21 and motility of the gastrointestinal tract. Enteral, infant and baby  
22 formulas that are medically necessary and taken under written order from  
23 a physician for the treatment of specific diseases shall be distin-  
24 guished from nutritional supplements taken electively. Coverage for

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

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1 certain inherited diseases of amino acid and organic acid metabolism as  
2 well as severe protein allergic conditions shall include modified solid  
3 food products that are low protein, contain modified protein, or are  
4 amino acid based that are medically necessary. Coverage for infant and  
5 baby formulas for any calendar year or any continuous period of twelve  
6 months for any insured individual shall be no less than three thousand  
7 dollars.

8 § 2. Paragraph 11 of subsection (k) of section 3221 of the insurance  
9 law, as amended by section 14 of subpart B of part J of chapter 57 of  
10 the laws of 2019, is amended to read as follows:

11 (11) Every policy that provides coverage for prescription drugs shall  
12 include coverage for the cost of enteral, infant and baby formulas for  
13 home use, whether administered orally or via tube feeding, for which a  
14 physician or other licensed health care provider legally authorized to  
15 prescribe under title eight of the education law has issued a written  
16 order. Such written order shall state that the enteral, infant and baby  
17 formula is clearly medically necessary and has been proven effective as  
18 a disease-specific treatment regimen. Specific diseases and disorders  
19 for which enteral, infant and baby formulas have been proven effective  
20 shall include, but are not limited to, inherited diseases of amino-acid  
21 or organic acid metabolism; Crohn's Disease; gastroesophageal reflux;  
22 disorders of gastrointestinal motility such as chronic intestinal pseu-  
23 do-obstruction; and multiple, severe food allergies including, but not  
24 limited to immunoglobulin E and nonimmunoglobulin E-mediated allergies  
25 to multiple food proteins; severe food protein induced enterocolitis  
26 syndrome; eosinophilic disorders and impaired absorption of nutrients  
27 caused by disorders affecting the absorptive surface, function, length,  
28 and motility of the gastrointestinal tract. Enteral, infant and baby  
29 formulas that are medically necessary and taken under written order from  
30 a physician for the treatment of specific diseases shall be distin-  
31 guished from nutritional supplements taken electively. Coverage for  
32 certain inherited diseases of amino acid and organic acid metabolism as  
33 well as severe protein allergic conditions shall include modified solid  
34 food products that are low protein, contain modified protein, or are  
35 amino acid based that are medically necessary. Coverage for infant and  
36 baby formulas for any calendar year or any continuous period of twelve  
37 months for any insured individual shall be no less than three thousand  
38 dollars.

39 § 3. Subsection (y) of section 4303 of the insurance law, as amended  
40 by section 27 of subpart B of part J of chapter 57 of the laws of 2019,  
41 is amended to read as follows:

42 (y) Every contract that provides coverage for prescription drugs shall  
43 include coverage for the cost of enteral, infant and baby formulas for  
44 home use, whether administered orally or via tube feeding, for which a  
45 physician or other licensed health care provider legally authorized to  
46 prescribe under title eight of the education law has issued a written  
47 order. Such written order shall state that the enteral, infant and baby  
48 formula is clearly medically necessary and has been proven effective as  
49 a disease-specific treatment regimen. Specific diseases and disorders  
50 for which enteral, infant and baby formulas have been proven effective  
51 shall include, but are not limited to, inherited diseases of amino-acid  
52 or organic acid metabolism; Crohn's Disease; gastroesophageal reflux;  
53 disorders of gastrointestinal motility such as chronic intestinal pseu-  
54 do-obstruction; and multiple, severe food allergies including, but not  
55 limited to immunoglobulin E and nonimmunoglobulin E-mediated allergies  
56 to multiple food proteins; severe food protein induced enterocolitis

1 syndrome; eosinophilic disorders; and impaired absorption of nutrients  
2 caused by disorders affecting the absorptive surface, function, length,  
3 and motility of the gastrointestinal tract. Enteral, infant and baby  
4 formulas that are medically necessary and taken under written order from  
5 a physician for the treatment of specific diseases shall be distin-  
6 guished from nutritional supplements taken electively. Coverage for  
7 certain inherited diseases of amino acid and organic acid metabolism as  
8 well as severe protein allergic conditions shall include modified solid  
9 food products that are low protein, contain modified protein, or are  
10 amino acid based that are medically necessary. Coverage for infant and  
11 baby formulas for any calendar year or any continuous period of twelve  
12 months for any insured individual shall be no less than three thousand  
13 dollars.

14 § 4. The opening paragraph of paragraph 25 of subsection (b) of  
15 section 4322 of the insurance law, as amended by chapter 388 of the laws  
16 of 2013, is amended to read as follows:

17 Prescription drugs, obtained at a participating pharmacy under a  
18 prescription written by an in-plan or out-of-plan provider, including  
19 contraceptive drugs or devices approved by the federal food and drug  
20 administration or generic equivalents approved as substitutes by such  
21 food and drug administration ~~[and]~~, nutritional supplements (formulas),  
22 whether administered orally or via a feeding tube for the therapeutic  
23 treatment of phenylketonuria, branched-chain ketonuria, galactosemia and  
24 homocystinuria~~[, obtained at a participating pharmacy under a~~  
25 ~~prescription written by an in-plan or out-of-plan provider]~~ and infant  
26 and baby formulas for home use for which a physician or other licensed  
27 health care provider legally authorized to prescribe under title eight  
28 of the education law has issued a written order. Such written order  
29 shall state that the infant or baby formula is clearly medically neces-  
30 sary and has been proven effective as a disease-specific treatment regi-  
31 men for those individuals who are or will become malnourished or suffer  
32 from disorders, which if left untreated, cause chronic physical disabili-  
33 ty, mental retardation or death. Specific diseases for which infant and  
34 baby formulas have been proven effective shall include, but are not  
35 limited to, inherited diseases of amino acid or organic acid metabolism;  
36 Crohn's Disease; gastroesophageal reflux with failure to thrive; disor-  
37 ders of gastrointestinal motility such as chronic intestinal pseudo-ob-  
38 struction; and multiple, severe food allergies which if left untreated  
39 will cause malnourishment, chronic physical disability, mental retarda-  
40 tion or death. Infant and baby formulas which are medically necessary  
41 and taken under written order from a physician for the treatment of  
42 specific diseases shall be distinguished from nutritional supplements  
43 taken electively. Coverage for infant and baby formulas for any calendar  
44 year or any continuous period of twelve months for any insured individ-  
45 ual shall be no less than three thousand dollars.

46 Health maintenance  
47 organizations, in addition to providing coverage for prescription drugs  
48 at a participating pharmacy, may utilize a mail order prescription drug  
49 program. Health maintenance organizations may provide prescription drugs  
50 pursuant to a drug formulary; however, health maintenance organizations  
51 must implement an appeals process so that the use of non-formulary  
52 prescription drugs may be requested by a physician or other provider.

53 § 5. This act shall take effect on the first of January next succeed-  
54 ing the date on which it shall have become a law and shall apply to all  
55 policies and contracts issued, renewed, modified, altered, or amended on  
or after such date.