STATE OF NEW YORK

4111

2021-2022 Regular Sessions

IN SENATE

February 2, 2021

Introduced by Sens. BRESLIN, ADDABBO, BENJAMIN, BIAGGI, BROOKS, COMRIE, GAUGHRAN, GIANARIS, GRIFFO, HELMING, HOYLMAN, JORDAN, KAMINSKY, KAPLAN, KENNEDY, KRUEGER, LANZA, MAY, MAYER, MYRIE, PARKER, RITCHIE, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERINO, SERRANO, SKOUFIS, THOMAS -- 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:

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.

(c) (i) A health care plan with a formulary that includes two or more tiers of benefits providing for different deductibles, copayments or coinsurance applicable to prescription drugs in each tier may move a prescription drug to a tier with a larger deductible, copayment or coin-

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

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surance if an AB-rated generic equivalent or interchangeable biological product for such prescription drug is added to the formulary at the same time.

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

(iii) A health care plan with a formulary that includes two or more tiers of benefits providing for different copayments applicable to prescription drugs may move a prescription drug to a tier with a larger copayment during the plan year, provided the change is not applicable to an insured who is already receiving such prescription drug or has been diagnosed with or presented with a condition on or prior to the start of the plan year which is treated by such prescription drug or is a prescription drug that is or would be part of the insured's treatment regimen for such condition.

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

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

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

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

(a) remove a prescription drug from a formulary;

(b) 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

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

2. Prohibitions provided in subdivision one 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.

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

(b) A health care plan may remove a prescription drug from a formulary if the federal Food and Drug Administration determines that such prescription drug should be removed from the market, including new

utilization management restrictions issued pursuant to federal Food and Drug Administration safety concerns.

(c) A health care plan with a formulary that includes two or more tiers of benefits providing for different copayments applicable to prescription drugs may move a prescription drug to a tier with a larger copayment during the plan year, provided the change is not applicable to an insured who is already receiving such prescription drug or has been diagnosed with or presented with a condition on or prior to the start of the plan year which is treated by such prescription drug or is a prescription drug that is or would be part of the insured's treatment regimen for such condition.

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

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

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