

# STATE OF NEW YORK

9043

## IN SENATE

May 5, 2022

Introduced by Sens. RIVERA, REICHLIN-MELNICK -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the social services law, in relation to prescription drugs eligible for Medicaid coverage; to amend the public health law, in relation to prior authorization under the preferred drug program; to repeal certain provisions of part FFF of chapter 56 of the laws of 2020 directing the department of health to remove the pharmacy benefit from the managed care benefit package, relating to restoring such benefits; and to repeal certain provisions of the social services law, relating to coverage for certain prescription drugs under Medicaid managed care programs

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

1 Section 1. Legislative findings. This legislature finds that the costs  
2 of many prescription drugs in the market have been escalating unreason-  
3 ably. The preferred drug program and the clinical drug review program  
4 under the public health law provide effective mechanisms for assuring  
5 access to quality, effective and safe drugs to patients at reasonable  
6 cost. Providing prescription drugs to Medicaid managed health care  
7 provider participants through these programs will maximize the Medicaid  
8 program's ability to negotiate more substantial rebates with drug  
9 manufacturers (effectively, lower prices), while protecting Medicaid  
10 managed care provider participants.

11 § 2. Sections 1 and 1-a of part FFF of chapter 56 of the laws of 2020,  
12 relating to prescription drugs under the Medicaid program, are REPEALED.

13 § 3. The social services law is amended by adding a new section 365-i  
14 to read as follows:

15 § 365-i. Prescription drugs in Medicaid. 1. The definitions of terms  
16 in section two hundred seventy of the public health law shall apply to  
17 this section. As used in this section, unless the context clearly  
18 requires otherwise, "managed care provider" means a managed care provid-  
19 er under section three hundred sixty-four-j of this article, or a  
20 managed long term care plan under section forty-four hundred three-f of  
21 the public health law.

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

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1 2. Prescription drugs eligible for reimbursement under this article  
2 shall be provided and paid for under the preferred drug program and the  
3 clinical drug review program under title one of article two-A of the  
4 public health law, except as otherwise provided in subdivision three of  
5 this section.

6 3. This subdivision applies where the eligible individual is enrolled  
7 in a managed care provider and a prescription for the eligible individ-  
8 ual is made under section 340B of the federal Public Health Service Act  
9 (the "340B program"). The managed care provider shall pay for the drugs  
10 under the 340B program. However, the prescription shall be subject to  
11 section two hundred seventy-three (preferred drug program prior authori-  
12 zation) and section two hundred seventy-four (clinical drug review  
13 program) of the public health law.

14 4. The managed care provider shall account to and reimburse the  
15 department for the net cost to the department for prescription drugs  
16 provided to eligible individuals who receive medical services from the  
17 managed care provider. Capitation payments by the department to such  
18 managed care provider shall include a component for reimbursements paid  
19 under this subdivision.

20 § 4. Paragraph (b) of subdivision 3 of section 273 of the public  
21 health law, as added by section 10 of part C of chapter 58 of the laws  
22 of 2005, is amended to read as follows:

23 (b) In the event that the patient does not meet the criteria in para-  
24 graph (a) of this subdivision, the prescriber may provide additional  
25 information to the program to justify the use of a prescription drug  
26 that is not on the preferred drug list. The program shall provide a  
27 reasonable opportunity for a prescriber to reasonably present his or her  
28 justification of prior authorization. If, after consultation with the  
29 program, the prescriber, in his or her reasonable professional judgment,  
30 determines that the use of a prescription drug that is not on the  
31 preferred drug list is warranted, the prescriber's determination shall  
32 be final. However, the prescriber's determination shall not be final:

33 (i) where the preferred drug is a generic drug subject to subparagraph  
34 (i) of paragraph (a-1) of subdivision four of section three hundred  
35 sixty-five-a of the social services law (mandatory generic substi-  
36 tution), and even if the prescriber has indicated that the prescription  
37 shall be dispensed as written; or (ii) if it is for the use of a drug  
38 that is not consistent with food and drug administration-approved label-  
39 ing or supported by one or more official Compendia references, includ-  
40 ing, but not limited to, the American Hospital Formulary Service (AHFS),  
41 the DRUGDEX Drug Information System and the United States Pharmacopeia.

42 § 5. Subdivisions 25, 25-a, 26 and 26-b, and paragraph (u) of subdivi-  
43 sion 4 of section 364-j of the social services law are REPEALED.

44 § 6. Severability. If any provision of this act, or any application of  
45 any provision of this act, is held to be invalid, or to violate or be  
46 inconsistent with any federal law or regulation, that shall not affect  
47 the validity or effectiveness of any other provision of this act, or of  
48 any other application of any provision of this act, which can be given  
49 effect without that provision or application; and to that end, the  
50 provisions and applications of this act are severable.

51 § 7. This act shall take effect immediately, except that sections one  
52 through five of this act shall take effect on the one hundred eightieth  
53 day after they shall have become a law. Effective immediately, the  
54 commissioner of health shall make regulations and take other actions  
55 reasonably necessary to implement this act when it takes effect.