

# 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:

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-

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

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

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

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

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

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

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

31 § 4909. Prescription drug formulary changes. 1. Except as otherwise  
32 provided in subdivision three of this section, a health care plan shall  
33 not:

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

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

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

42 2. Prohibitions provided in subdivision one of this section shall  
43 apply beginning on the date on which open enrollment begins for a plan  
44 year and through the end of the plan year to which such open enrollment  
45 period applies.

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

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

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

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

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

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

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