STATE OF NEW YORK

7767

IN SENATE

January 11, 2022

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

AN ACT to amend the insurance law, in relation to prescription drug formulary changes during a plan year; to amend a chapter of the laws of 2021 amending the insurance law and the public health law relating to prescription drug formulary changes during a contract year, as proposed in legislative bills numbers S. 4111 and A. 4668, in relation to the effectiveness thereof; and to repeal section 4909 of the insurance law and section 4909 of the public health law relating thereto

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

Section 1. Section 4909 of the insurance law, as added by a chapter of the laws of 2021 amending the insurance law and the public health law relating to prescription drug formulary changes during a contract year, as proposed in legislative bills numbers S. 4111 and A. 4668, is REPEALED.

§ 2. Section 4909 of the public health law, as added by a chapter of the laws of 2021 amending the insurance law and the public health law relating to prescription drug formulary changes during a contract year, as proposed in legislative bills numbers S. 4111 and A. 4668, is REPEALED.

§ 3. Section 3242 of the insurance law is amended by adding a new subsection (c) to read as follows:

(c)(1) Except as otherwise provided in paragraph three of this subsection, an insurer 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, issuance or renewal of coverage.

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

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(2) Prohibitions provided in paragraph one of this subsection shall apply beginning on the date on which a plan year begins and through the end of such plan year.

(3) (A) An insurer 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) An insurer 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) An insurer 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 that 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) An insurer shall provide notice to insureds of the intent to remove a prescription drug from a formulary or alter deductible, copayment or coinsurance requirements in the upcoming plan year, ninety days prior to the start of the plan year. Such notice of impending formulary and deductible, copayment or coinsurance changes shall also be posted on the insurer's online formulary and in any prescription drug finder system that the insurer provides to the public.

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

§ 4. Section 4329 of the insurance law is amended by adding a new subsection (c) to read as follows:

(c) (1) Except as otherwise provided in paragraph three of this subsection, a corporation 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, issuance or renewal of coverage.

(2) Prohibitions provided in paragraph one of this subsection shall apply beginning on the date on which a plan year begins and through the end of such plan year.

(3) (A) A corporation 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 corporation 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 corporation 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 that 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 corporation shall provide notice to insureds of the intent to remove a prescription drug from a formulary or alter deductible, copayment or coinsurance requirements in the upcoming plan year, ninety days prior to the start of the plan year. Such notice of impending formulary and deductible, copayment or coinsurance changes shall also be posted on the corporation's online formulary and in any prescription drug finder system that the corporation provides to the public.

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

§ 5. Section 3 of a chapter of the laws of 2021 amending the insurance law and the public health law relating to prescription drug formulary changes during a contract year, as proposed in legislative bills numbers S. 4111 and A. 4668, is amended to read as follows:

§ 3. This act shall take effect on [~~the sixtieth day after it shall have become a law~~] January 1, 2023 and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the [~~implantation~~] implementation of this act on its effective date are authorized to be made on or before such effective date.

§ 6. This act shall take effect immediately; provided, however, that sections one, two, three and four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the insurance law and the public health law relating to prescription drug formulary changes during a contract year, as proposed in legislative bills numbers S. 4111 and A. 4668, takes effect.