STATE OF NEW YORK

10185

IN ASSEMBLY

May 10, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Forrest) -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to substituting brand name prescription drugs in the case of a drug shortage

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

Section 1. Section 3242 of the insurance law is amended by adding a new subsection (d) to read as follows:

(d) (1) As used in this subsection:

(A) "Eligible prescription drug" means a prescription drug approved under 21 U.S.C. 355(c) that is not under patent.

(B) "Generic drug" means a drug that is approved pursuant to an application referencing an eligible prescription drug that is submitted under subsection (j) of Section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355.

(C) "Supply issue" means a drug shortage or meaningful disruption as defined in 21 U.S.C. 356(c).

(2) In the event an AB-rated generic equivalent or interchangeable biological product for an eligible prescription drug is covered in an insurer's formulary and such generic drug equivalent is unavailable due to a supply issue which has been recognized by the federal food and drug administration pursuant to 21 U.S.C. 356e and the dosage cannot be adjusted, an insurer that delivers or issues for delivery in this state a policy that provides coverage for prescription drugs shall provide coverage for a brand name eligible prescription drug to an insured who is already receiving such prescription drug as a generic equivalent 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 eligible prescription drug or is an eligible prescription drug that is or would be part of the insured's treatment regimen for such condition. Such brand name eligible prescription drug shall be covered at the same level of coverage as the generic drug in the insurer's formulary until such time as the supply issue is resolved and the drug has been removed from the federal food and drug administration's shortage list.

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

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

(d) (1) As used in this subsection:

(A) "Eligible prescription drug" means a prescription drug approved under 21 U.S.C. 355(c) that is not under patent.

(B) "Generic drug" means a drug that is approved pursuant to an application referencing an eligible prescription drug that is submitted under subsection (j) of Section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355.

(C) "Supply issue" means a drug shortage or meaningful disruption as defined in 21 U.S.C. 356(c).

(2) In the event an AB-rated generic equivalent or interchangeable biological product for an eligible prescription drug is covered in an insurer's formulary and such generic drug equivalent is unavailable due to a supply issue which has been recognized by the federal food and drug administration pursuant to 21 U.S.C. 356e and the dosage cannot be adjusted, a corporation subject to the provisions of this article that issues a contract that provides coverage for prescription drugs shall provide coverage for a brand name eligible prescription drug to an insured who is already receiving such prescription drug as a generic equivalent 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 eligible prescription drug or is an eligible prescription drug that is or would be part of the insured's treatment regimen for such condition. Such brand name eligible prescription drug shall be covered at the same level of coverage as the generic drug in the insurer's formulary until such time as the supply issue is resolved and the drug has been removed from the federal food and drug administration's shortage list.

§ 3. This act shall take effect immediately.