

STATE OF NEW YORK

3693

2023-2024 Regular Sessions

IN ASSEMBLY

February 6, 2023

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to calculating an insured individual's overall contribution to any out-of-pocket maximum or any cost-sharing requirement; and to amend a chapter of the laws of 2022 amending the insurance law relating to calculating an insured individual's overall contribution to any out-of-pocket maximum or any cost-sharing requirement, as proposed in legislative bills numbers S. 5299-A and A. 1741-A, in relation to the effectiveness thereof

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

1 Section 1. Paragraph 37 of subsection (i) of section 3216 of the
2 insurance law, as added by a chapter of the laws of 2022 amending the
3 insurance law relating to calculating an insured individual's overall
4 contribution to any out-of-pocket maximum or any cost-sharing require-
5 ment, as proposed in legislative bills numbers S. 5299-A and A. 1741-A,
6 is amended to read as follows:
7 (37) Any policy that provides coverage for prescription drugs shall
8 apply any third-party payments, financial assistance, discount, voucher
9 or other price reduction instrument for out-of-pocket expenses made on
10 behalf of an insured individual for the cost of a prescription [~~drugs~~]
11 drug to the insured's deductible, copayment, coinsurance, out-of-pocket
12 maximum, or any other cost-sharing requirement when calculating such
13 insured individual's overall contribution to any out-of-pocket maximum
14 or any cost-sharing requirement. If under federal law, application of
15 this requirement would result in health savings account ineligibility
16 under 26 USC 223, this requirement shall apply for health savings
17 account-qualified high deductible health plans with respect to the
18 deductible of such a plan after the enrollee has satisfied the minimum
19 deductible under 26 USC 223, except for with respect to items or
20 services that are preventive care pursuant to 26 USC 223(c)(2)(C), in

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

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1 which case the requirements of this paragraph shall apply regardless of
2 whether the minimum deductible under 26 USC 223 has been satisfied.
3 This paragraph only applies to a prescription drug that is either (A) a
4 brand-name drug without an AB rated generic equivalent, as determined by
5 the United States Food and Drug Administration; or (B) a brand-name drug
6 with an AB rated generic equivalent, as determined by the United States
7 Food and Drug Administration, and the insured has access to the brand-
8 name drug through prior authorization by the insurer or through the
9 insurer's appeal process, including any step-therapy process; or (C) a
10 generic drug the insurer will cover, with or without prior authorization
11 or an appeal process.

12 § 2. Paragraph 21 of subsection (l) of section 3221 of the insurance
13 law, as added by a chapter of the laws of 2022 amending the insurance
14 law relating to calculating an insured individual's overall contribution
15 to any out-of-pocket maximum or any cost-sharing requirement, as
16 proposed in legislative bills numbers S. 5299-A and A. 1741-A, is
17 amended to read as follows:

18 (21) Every group or blanket policy delivered or issued for delivery in
19 this state that provides coverage for a prescription [~~drugs~~] drug shall
20 apply any third-party payments, financial assistance, discount, voucher
21 or other price reduction instrument for out-of-pocket expenses made on
22 behalf of an insured individual for the cost of prescription drugs to
23 the insured's deductible, copayment, coinsurance, out-of-pocket maximum,
24 or any other cost-sharing requirement when calculating such insured
25 individual's overall contribution to any out-of-pocket maximum or any
26 cost-sharing requirement. If under federal law, application of this
27 requirement would result in health savings account ineligibility under
28 26 USC 223, this requirement shall apply for health savings account-qua-
29 lified high deductible health plans with respect to the deductible of
30 such a plan after the enrollee has satisfied the minimum deductible
31 under 26 USC 223, except for with respect to items or services that are
32 preventive care pursuant to 26 USC 223(c)(2)(C), in which case the
33 requirements of this paragraph shall apply regardless of whether the
34 minimum deductible under 26 USC 223 has been satisfied. This paragraph
35 only applies to a prescription drug that is either (A) a brand-name drug
36 without an AB rated generic equivalent, as determined by the United
37 States Food and Drug Administration; or (B) a brand-name drug with an AB
38 rated generic equivalent, as determined by the United States Food and
39 Drug Administration, and the insured has access to the brand-name drug
40 through prior authorization by the insurer or through the insurer's
41 appeal process, including any step-therapy process; or (C) a generic
42 drug the insurer will cover, with or without prior authorization or an
43 appeal process.

44 § 3. Subsection (tt) of section 4303 of the insurance law, as added by
45 a chapter of the laws of 2022 amending the insurance law relating to
46 calculating an insured individual's overall contribution to any out-of-
47 pocket maximum or any cost-sharing requirement, as proposed in legisla-
48 tive bills numbers S. 5299-A and A. 1741-A, is amended to read as
49 follows:

50 (tt) Every contract issued by a medical expense indemnity corporation,
51 hospital service corporation, or health service corporation that
52 provides coverage for a prescription [~~drugs~~] drug shall apply any third-
53 party payments, financial assistance, discount, voucher or other price
54 reduction instrument for out-of-pocket expenses made on behalf of an
55 insured individual for the cost of prescription drugs to the insured's
56 deductible, copayment, coinsurance, out-of-pocket maximum, or any other

1 cost-sharing requirement when calculating such insured individual's
2 overall contribution to any out-of-pocket maximum or any cost-sharing
3 requirement. If under federal law, application of this requirement would
4 result in health savings account ineligibility under 26 USC 223, this
5 requirement shall apply for health savings account-qualified high deduc-
6 tible health plans with respect to the deductible of such a plan after
7 the enrollee has satisfied the minimum deductible under 26 USC 223,
8 except for with respect to items or services that are preventive care
9 pursuant to 26 USC 223(c)(2)(C), in which case the requirements of this
10 paragraph shall apply regardless of whether the minimum deductible under
11 26 USC 223 has been satisfied. This subsection only applies to a
12 prescription drug that is either (A) a brand-name drug without an AB
13 rated generic equivalent, as determined by the United States Food and
14 Drug Administration; or (B) a brand-name drug with an AB rated generic
15 equivalent, as determined by the United States Food and Drug Adminis-
16 tration, and the insured has access to the brand-name drug through prior
17 authorization by the insurer or through the insurer's appeal process,
18 including any step-therapy process; or (C) a generic drug the insurer
19 will cover, with or without prior authorization or an appeal process.

20 § 4. Section 4 of a chapter of the laws of 2022 amending the insur-
21 ance law relating to calculating an insured individual's overall
22 contribution to any out-of-pocket maximum or any cost-sharing require-
23 ment, as proposed in legislative bills numbers S. 5299-A and A. 1741-A,
24 is amended to read as follows:

25 § 4. This act shall take effect on the first of [~~January~~] July next
26 succeeding the date on which it shall have become a law and shall apply
27 to all policies and contracts issued, renewed, modified, altered or
28 amended on or after such date.

29 § 5. This act shall take effect immediately; provided, however, that
30 sections one, two and three of this act shall take effect on the same
31 date and in the same manner as a chapter of the laws of 2022 amending
32 the insurance law relating to calculating an insured individual's over-
33 all contribution to any out-of-pocket maximum or any cost-sharing
34 requirement, as proposed in legislative bills numbers S. 5299-A and A.
35 1741-A, takes effect.