

# STATE OF NEW YORK

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3693

2023-2024 Regular Sessions

## IN ASSEMBLY

February 6, 2023

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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.