

# 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 Assem-  
bly, do enact as follows:

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

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

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

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

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

12 (2) In the event an AB-rated generic equivalent or interchangeable  
13 biological product for an eligible prescription drug is covered in an  
14 insurer's formulary and such generic drug equivalent is unavailable due  
15 to a supply issue which has been recognized by the federal food and drug  
16 administration pursuant to 21 U.S.C. 356e and the dosage cannot be  
17 adjusted, an insurer that delivers or issues for delivery in this state  
18 a policy that provides coverage for prescription drugs shall provide  
19 coverage for a brand name eligible prescription drug to an insured who  
20 is already receiving such prescription drug as a generic equivalent or  
21 has been diagnosed with or presented with a condition on or prior to the  
22 start of the plan year that is treated by such eligible prescription  
23 drug or is an eligible prescription drug that is or would be part of the  
24 insured's treatment regimen for such condition. Such brand name eligible  
25 prescription drug shall be covered at the same level of coverage as the  
26 generic drug in the insurer's formulary until such time as the supply  
27 issue is resolved and the drug has been removed from the federal food  
28 and drug administration's shortage list.

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

LBD15336-01-4

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

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

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

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

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

12 (2) In the event an AB-rated generic equivalent or interchangeable  
13 biological product for an eligible prescription drug is covered in an  
14 insurer's formulary and such generic drug equivalent is unavailable due  
15 to a supply issue which has been recognized by the federal food and drug  
16 administration pursuant to 21 U.S.C. 356e and the dosage cannot be  
17 adjusted, a corporation subject to the provisions of this article that  
18 issues a contract that provides coverage for prescription drugs shall  
19 provide coverage for a brand name eligible prescription drug to an  
20 insured who is already receiving such prescription drug as a generic  
21 equivalent or has been diagnosed with or presented with a condition on  
22 or prior to the start of the plan year that is treated by such eligible  
23 prescription drug or is an eligible prescription drug that is or would  
24 be part of the insured's treatment regimen for such condition. Such  
25 brand name eligible prescription drug shall be covered at the same level  
26 of coverage as the generic drug in the insurer's formulary until such  
27 time as the supply issue is resolved and the drug has been removed from  
28 the federal food and drug administration's shortage list.

29 § 3. This act shall take effect immediately.