

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:

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5 REPEALED.

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10 REPEALED.

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

13 (c)(1) Except as otherwise provided in paragraph three of this
14 subsection, an insurer shall not:

15 (A) remove a prescription drug from a formulary;

16 (B) move a prescription drug to a tier with a larger deductible,
17 copayment, or coinsurance if the formulary includes two or more tiers of
18 benefits providing for different deductibles, copayments or coinsurance
19 applicable to the prescription drugs in each tier; or

20 (C) add utilization management restrictions to a prescription drug on
21 a formulary, unless such changes occur at the time of enrollment, issu-
22 ance or renewal of coverage.

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

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

4 (3) (A) An insurer with a formulary that includes two or more tiers of
5 benefits providing for different deductibles, copayments or coinsurance
6 applicable to prescription drugs in each tier may move a prescription
7 drug to a tier with a larger deductible, copayment or coinsurance if an
8 AB-rated generic equivalent or interchangeable biological product for
9 such prescription drug is added to the formulary at the same time.

10 (B) An insurer may remove a prescription drug from a formulary if the
11 federal Food and Drug Administration determines that such prescription
12 drug should be removed from the market, including new utilization
13 management restrictions issued pursuant to federal Food and Drug Admin-
14 istration safety concerns.

15 (C) An insurer with a formulary that includes two or more tiers of
16 benefits providing for different copayments applicable to prescription
17 drugs may move a prescription drug to a tier with a larger copayment
18 during the plan year, provided the change is not applicable to an
19 insured who is already receiving such prescription drug or has been
20 diagnosed with or presented with a condition on or prior to the start of
21 the plan year that is treated by such prescription drug or is a
22 prescription drug that is or would be part of the insured's treatment
23 regimen for such condition.

24 (4) An insurer shall provide notice to insureds of the intent to
25 remove a prescription drug from a formulary or alter deductible, copay-
26 ment or coinsurance requirements in the upcoming plan year, ninety days
27 prior to the start of the plan year. Such notice of impending formulary
28 and deductible, copayment or coinsurance changes shall also be posted on
29 the insurer's online formulary and in any prescription drug finder
30 system that the insurer provides to the public.

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

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

36 (c) (1) Except as otherwise provided in paragraph three of this
37 subsection, a corporation shall not:

38 (A) remove a prescription drug from a formulary;

39 (B) move a prescription drug to a tier with a larger deductible,
40 copayment, or coinsurance if the formulary includes two or more tiers of
41 benefits providing for different deductibles, copayments or coinsurance
42 applicable to the prescription drugs in each tier; or

43 (C) add utilization management restrictions to a prescription drug on
44 a formulary, unless such changes occur at the time of enrollment, issu-
45 ance or renewal of coverage.

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

49 (3) (A) A corporation with a formulary that includes two or more tiers
50 of benefits providing for different deductibles, copayments or coinsu-
51 rance applicable to prescription drugs in each tier may move a
52 prescription drug to a tier with a larger deductible, copayment or coin-
53 surance if an AB-rated generic equivalent or interchangeable biological
54 product for such prescription drug is added to the formulary at the same
55 time.

1 (B) A corporation may remove a prescription drug from a formulary if
2 the federal Food and Drug Administration determines that such
3 prescription drug should be removed from the market, including new
4 utilization management restrictions issued pursuant to federal Food and
5 Drug Administration safety concerns.

6 (C) A corporation with a formulary that includes two or more tiers of
7 benefits providing for different copayments applicable to prescription
8 drugs may move a prescription drug to a tier with a larger copayment
9 during the plan year, provided the change is not applicable to an
10 insured who is already receiving such prescription drug or has been
11 diagnosed with or presented with a condition on or prior to the start of
12 the plan year that is treated by such prescription drug or is a
13 prescription drug that is or would be part of the insured's treatment
14 regimen for such condition.

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

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

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

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

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