

**§4311. Access to prescription drugs**

**1. Formulary.** If a health plan provides coverage for prescription drugs but the coverage limits such benefits to drugs included in a formulary, a carrier shall:

A. Ensure participation of participating physicians and pharmacists in the development of the formulary; [PL 2017, c. 429, Pt. A, §1 (AMD).]

B. Provide exceptions to the formulary limitation when a nonformulary alternative is medically indicated, consistent with the utilization review standards in section 4304; [PL 2017, c. 429, Pt. A, §1 (AMD).]

C. Provide an enrollee with at least 60 days' written notice of an adverse change to a formulary, except that a carrier may provide less than 60 days' notice when a prescription drug is being removed from the formulary because of concerns about safety. The notice must use a conspicuous font and inform the enrollee of the adverse change to the formulary and advise the enrollee to consult with the enrollee's provider about the change. For the purposes of this paragraph, "adverse change to a formulary" means a change that removes a drug currently prescribed for that enrollee from the formulary applicable to the enrollee's health plan or a change that moves the prescribed drug to a tier with a higher cost-sharing requirement if the carrier uses a formulary with tiers; [PL 2017, c. 429, Pt. A, §1 (NEW).]

D. If a prescription drug is removed from a formulary, notify an enrollee affected by the change of the enrollee's ability to request an exception to the formulary limitation pursuant to paragraph B and provide a form for the enrollee to use to request an exception. If an enrollee has already received prior authorization for that drug, the carrier shall continue to honor the existing authorization until it expires, as long as the enrollee continues to be covered under the same health plan and the drug has not been removed from the formulary because of concerns about safety; and [PL 2017, c. 429, Pt. A, §1 (NEW).]

E. Except when a drug has been removed because of concerns about safety, if a drug has been removed from a formulary and a request for an exception to a formulary limitation submitted by or on behalf of an enrollee is received prior to the effective date of the proposed change, continue to provide coverage for that drug until the carrier has rendered a decision on the enrollee's request for an exception to the formulary limitation. [PL 2017, c. 429, Pt. A, §1 (NEW).]

[PL 2017, c. 429, Pt. A, §1 (AMD).]

**1-A. Access to clinically appropriate prescription drugs.** For plan years beginning on or after the effective date of this subsection, a carrier must allow an enrollee, the enrollee's designee or the person who has issued a valid prescription for the enrollee to request and gain access to a clinically appropriate drug not otherwise covered by the health plan. The carrier's process must comply with section 4304 and with this subsection. If the carrier approves a request under this subsection for a drug not otherwise covered by the health plan, the carrier must treat the drug as an essential health benefit, including counting any cost sharing toward the plan's annual limit on cost sharing and including it when calculating the plan's actuarial value.

A. The carrier must determine whether it will cover the drug requested and notify the enrollee, the enrollee's designee, if applicable, and the person who has issued the valid prescription for the enrollee of its coverage decision within 72 hours or 2 business days, whichever is less, following receipt of the request. A carrier that grants coverage under this paragraph must provide coverage of the drug for the duration of the prescription, including refills. [PL 2019, c. 273, §3 (AMD).]

B. The carrier must have a process by which an expedited review may be requested in exigent circumstances. Exigent circumstances exist when an enrollee is suffering from a health condition that may seriously jeopardize the enrollee's life, health or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a nonformulary drug. When an

expedited review has been requested, the carrier must determine whether it will cover the drug requested and notify the enrollee, the enrollee's designee, if applicable, and the person who has provided a valid prescription for the enrollee of its coverage decision within 24 hours following receipt of the request. A carrier that grants coverage under this paragraph must provide coverage of the drug for the duration of the exigency. [PL 2019, c. 5, Pt. A, §21 (NEW).]

[PL 2019, c. 273, §3 (AMD).]

**2. Coverage of approved drugs and medical devices.** A carrier that provides coverage for prescription drugs and medical devices may not deny coverage of a prescribed drug or medical device on the basis that the use of the drug or device is investigational if the intended use of the drug or device is included in the labeling authorized by the federal Food and Drug Administration or if the use of the drug or device is recognized in one of the standard reference compendia or in peer-reviewed medical literature.

[PL 1999, c. 742, §19 (NEW); PL 1999, c. 742, §21 (AFF).]

**2-A. Coverage of prescription during emergency declared by the Governor.** Except as provided in this subsection, a carrier shall provide coverage for the furnishing or dispensing of a prescription drug in accordance with a valid prescription issued by a provider in a quantity sufficient for an extended period of time, not to exceed a 180-day supply, during a statewide state of emergency declared by the Governor in accordance with Title 37-B, section 742. This subsection does not apply to coverage of prescribed contraceptive supplies furnished and dispensed pursuant to section 2756, 2847-G or 4247 or coverage of opioids prescribed in accordance with limits set forth in Title 32.

[PL 2021, c. 28, Pt. B, §1 (NEW).]

**3. Construction.** This section may not be construed to require a carrier to provide coverage of prescription drugs or medical devices.

[PL 1999, c. 742, §19 (NEW); PL 1999, c. 742, §21 (AFF).]

**4. Application.** The requirements of this section apply to all individual and group policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

[PL 2003, c. 517, Pt. B, §32 (NEW).]

## SECTION HISTORY

PL 1999, c. 742, §19 (NEW). PL 1999, c. 742, §21 (AFF). PL 2003, c. 517, §B32 (AMD). PL 2017, c. 429, Pt. A, §1 (AMD). PL 2019, c. 5, Pt. A, §21 (AMD). PL 2019, c. 273, §3 (AMD). PL 2021, c. 28, Pt. B, §1 (AMD).

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