

3419--C

2015-2016 Regular Sessions

I N S E N A T E

February 9, 2015

Introduced by Sens. YOUNG, AKSHAR, AVELLA, BRESLIN, CARLUCCI, GOLDEN, KAMINSKY, LANZA, LARKIN, LATIMER, LAVALLE, MARCHIONE, PARKER, PERKINS, RIVERA, SAVINO, SQUADRON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the public health law, in relation to expedited utilization review of prescription drugs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 10 of subsection (b) of section 3217-a of the
2 insurance law, as added by chapter 705 of the laws of 1996, is amended
3 to read as follows:
4 (10) upon written request, provide specific written clinical review
5 criteria relating to a particular condition or disease INCLUDING CLIN-
6 ICAL REVIEW CRITERIA RELATING TO A STEP THERAPY PROTOCOL OVERRIDE DETER-
7 MINATION PURSUANT TO SUBSECTION (C-1), SUBSECTION (C-2) AND SUBSECTION
8 (C-3) OF SECTION FORTY-NINE HUNDRED THREE OF THIS CHAPTER, and, where
9 appropriate, other clinical information which the insurer might consider
10 in its utilization review and the insurer may include with the informa-
11 tion a description of how it will be used in the utilization review
12 process; provided, however, that to the extent such information is
13 proprietary to the insurer, the insured or prospective insured shall
14 only use the information for the purposes of assisting the enrollee or
15 prospective enrollee in evaluating the covered services provided by the
16 organization. SUCH CLINICAL REVIEW CRITERIA, AND OTHER CLINICAL INFORMA-
17 TION SHALL ALSO BE MADE AVAILABLE TO A HEALTH CARE PROFESSIONAL AS

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

LBD03838-09-6

1 DEFINED IN SUBSECTION (F) OF SECTION FORTY-NINE HUNDRED OF THIS CHAPTER,
2 ON BEHALF OF AN INSURED AND UPON WRITTEN REQUEST;

3 S 2. Paragraph 10 of subsection (b) of section 4324 of the insurance
4 law, as added by chapter 705 of the laws of 1996, is amended to read as
5 follows:

6 (10) upon written request, provide specific written clinical review
7 criteria relating to a particular condition or disease INCLUDING CLIN-
8 ICAL REVIEW CRITERIA RELATING TO A STEP THERAPY PROTOCOL OVERRIDE DETER-
9 MINATION PURSUANT TO SUBSECTION (C-1), SUBSECTION (C-2) AND SUBSECTION
10 (C-3) OF SECTION FORTY-NINE HUNDRED THREE OF THIS CHAPTER, and, where
11 appropriate, other clinical information which the corporation might
12 consider in its utilization review and the corporation may include with
13 the information a description of how it will be used in the utilization
14 review process; provided, however, that to the extent such information
15 is proprietary to the corporation, the subscriber or prospective
16 subscriber shall only use the information for the purposes of assisting
17 the subscriber or prospective subscriber in evaluating the covered
18 services provided by the organization. SUCH CLINICAL REVIEW CRITERIA,
19 AND OTHER CLINICAL INFORMATION SHALL ALSO BE MADE AVAILABLE TO A HEALTH
20 CARE PROFESSIONAL AS DEFINED IN SUBSECTION (F) OF SECTION FORTY-NINE
21 HUNDRED OF THIS CHAPTER, ON BEHALF OF AN INSURED AND UPON WRITTEN
22 REQUEST;

23 S 3. Section 4900 of the insurance law is amended by adding two new
24 subsections (g-8) and (g-9) to read as follows:

25 (G-8) "STEP THERAPY PROTOCOL OVERRIDE DETERMINATION" MEANS A DETERMI-
26 NATION MADE BY A UTILIZATION REVIEW AGENT AS DEFINED IN SUBSECTION (I)
27 OF THIS SECTION TO OVERRIDE A STEP THERAPY PROTOCOL PURSUANT TO
28 SUBSECTIONS (C-1), (C-2) AND (C-3) OF SECTION FORTY-NINE HUNDRED THREE
29 OF THIS TITLE GRANTING COVERAGE FOR THE HEALTH CARE PROFESSIONAL'S
30 SELECTED PRESCRIPTION DRUG OR DRUGS. ANY STEP THERAPY OVERRIDE DETERMI-
31 NATION AS DEFINED BY THIS SUBSECTION SHALL BE ELIGIBLE FOR APPEAL BY AN
32 INSURED PURSUANT TO THIS ARTICLE.

33 (G-9) "STEP THERAPY PROTOCOL" MEANS A POLICY, PROTOCOL OR PROGRAM
34 ESTABLISHED BY A UTILIZATION REVIEW AGENT AS DEFINED IN SUBSECTION (I)
35 OF THIS SECTION THAT ESTABLISHES THE SPECIFIC SEQUENCE IN WHICH
36 PRESCRIPTION DRUGS FOR A SPECIFIED MEDICAL CONDITION ARE APPROVED FOR A
37 PARTICULAR INSURED. NOTHING IN THIS CHAPTER SHALL IMPAIR OR PREVENT AN
38 INSURED FROM HAVING THE RIGHT TO APPEAL PURSUANT TO THIS ARTICLE RELAT-
39 ING TO THE IMPOSITION OF A STEP THERAPY PROTOCOL.

40 S 4. Subsection (a) of section 4902 of the insurance law is amended by
41 adding two new paragraphs 10 and 11 to read as follows:

42 10. WHEN ESTABLISHING A STEP THERAPY PROTOCOL, A UTILIZATION REVIEW
43 AGENT SHALL UTILIZE RECOGNIZED EVIDENCE-BASED AND PEER REVIEWED CLINICAL
44 REVIEW CRITERIA THAT ALSO TAKES INTO ACCOUNT THE NEEDS OF ATYPICAL
45 PATIENT POPULATIONS AND DIAGNOSES WHEN ESTABLISHING THE CLINICAL REVIEW
46 CRITERIA.

47 11. WHEN CONDUCTING UTILIZATION REVIEW FOR A STEP THERAPY PROTOCOL
48 OVERRIDE DETERMINATION, A UTILIZATION REVIEW AGENT SHALL UTILIZE, IN
49 ADDITION TO ANY OTHER REQUIREMENTS OF THIS ARTICLE, RECOGNIZED
50 EVIDENCE-BASED AND PEER REVIEWED CLINICAL REVIEW CRITERIA THAT IS APPRO-
51 PRIATE FOR THE INSURED AND THE INSURED'S MEDICAL CONDITION.

52 S 5. Section 4903 of the insurance law is amended by adding three new
53 subsections (c-1), (c-2) and (c-3) to read as follows:

54 (C-1) A UTILIZATION REVIEW AGENT SHALL GRANT A STEP THERAPY PROTOCOL
55 OVERRIDE DETERMINATION WITHIN SEVENTY-TWO HOURS OF THE RECEIPT OF INFOR-

1 MATION THAT INCLUDES SUPPORTING RATIONALE AND DOCUMENTATION FROM A
2 HEALTH CARE PROFESSIONAL WHICH DEMONSTRATES THAT:

3 (1) THE REQUIRED PRESCRIPTION DRUG OR DRUGS IS CONTRAINDICATED OR WILL
4 LIKELY CAUSE AN ADVERSE REACTION BY OR PHYSICAL OR MENTAL HARM TO THE
5 INSURED;

6 (2) THE REQUIRED PRESCRIPTION DRUG OR DRUGS IS EXPECTED TO BE INEFFECTIVE
7 BASED ON THE KNOWN CLINICAL HISTORY AND CONDITIONS OF THE INSURED
8 AND THE INSURED'S PRESCRIPTION DRUG REGIMEN;

9 (3) THE INSURED HAS TRIED THE REQUIRED PRESCRIPTION DRUG OR DRUGS
10 WHILE UNDER THEIR CURRENT OR A PREVIOUS HEALTH INSURANCE OR HEALTH BENE-
11 FIT PLAN, OR ANOTHER PRESCRIPTION DRUG OR DRUGS IN THE SAME PHARMACOLOG-
12 IC CLASS OR WITH THE SAME MECHANISM OF ACTION AND SUCH PRESCRIPTION DRUG
13 OR DRUGS WAS DISCONTINUED DUE TO LACK OF EFFICACY OR EFFECTIVENESS,
14 DIMINISHED EFFECT, OR AN ADVERSE EVENT;

15 (4) THE INSURED IS STABLE ON A PRESCRIPTION DRUG OR DRUGS SELECTED BY
16 THEIR HEALTH CARE PROFESSIONAL FOR THE MEDICAL CONDITION UNDER CONSIDER-
17 ATION, PROVIDED THAT THIS SHALL NOT PREVENT A UTILIZATION REVIEW AGENT
18 FROM REQUIRING AN INSURED TO TRY AN AB-RATED GENERIC EQUIVALENT PRIOR TO
19 PROVIDING COVERAGE FOR THE EQUIVALENT BRAND NAME PRESCRIPTION DRUG OR
20 DRUGS; OR

21 (5) THE REQUIRED PRESCRIPTION DRUG OR DRUGS IS NOT IN THE BEST INTER-
22 EST OF THE INSURED BECAUSE IT WILL LIKELY CAUSE A SIGNIFICANT BARRIER TO
23 THE INSURED'S ADHERENCE TO OR COMPLIANCE WITH THE INSURED'S PLAN OF
24 CARE, WILL LIKELY WORSEN A COMORBID CONDITION OF THE INSURED, OR WILL
25 LIKELY DECREASE THE COVERED INDIVIDUAL'S ABILITY TO ACHIEVE OR MAINTAIN
26 REASONABLE FUNCTIONAL ABILITY IN PERFORMING DAILY ACTIVITIES.

27 (C-2) FOR AN INSURED WITH A MEDICAL CONDITION THAT PLACES THE HEALTH
28 OF THE INSURED IN SERIOUS JEOPARDY WITHOUT THE PRESCRIPTION DRUG OR
29 DRUGS PRESCRIBED BY THE INSURED'S HEALTH CARE PROFESSIONAL, THE STEP
30 THERAPY PROTOCOL OVERRIDE DETERMINATION SHALL BE GRANTED WITHIN TWENTY-
31 FOUR HOURS OF THE RECEIPT OF INFORMATION THAT INCLUDES SUPPORTING
32 RATIONALE AND DOCUMENTATION FROM A HEALTH CARE PROFESSIONAL DEMONSTRAT-
33 ING ONE OR MORE OF THE STANDARDS PROVIDED FOR IN SUBSECTION (C-1) OF
34 THIS SECTION.

35 (C-3) UPON A DETERMINATION THAT THE STEP THERAPY PROTOCOL SHOULD BE
36 OVERRIDDEN, THE HEALTH PLAN SHALL AUTHORIZE IMMEDIATE COVERAGE FOR THE
37 PRESCRIPTION DRUG PRESCRIBED BY THE INSURED'S TREATING HEALTH CARE
38 PROFESSIONAL.

39 S 6. Subsection (g) of section 4903 of the insurance law, as added by
40 chapter 586 of the laws of 1998, is amended to read as follows:

41 (g) Failure by the utilization review agent to make a determination
42 within the time periods prescribed in this section shall be deemed to be
43 an adverse determination subject to appeal pursuant to section four
44 thousand nine hundred four of this title, PROVIDED, HOWEVER, THAT FAIL-
45 URE TO MEET SUCH TIME PERIODS FOR A STEP THERAPY PROTOCOL AS DEFINED IN
46 SUBSECTION (G-9) OF SECTION FORTY-NINE HUNDRED OF THIS TITLE OR A STEP
47 THERAPY PROTOCOL OVERRIDE DETERMINATION PURSUANT TO SUBSECTIONS (C-1),
48 (C-2) AND (C-3) OF THIS SECTION SHALL BE DEEMED TO BE AN OVERRIDE OF THE
49 STEP THERAPY PROTOCOL.

50 S 7. Paragraph (j) of subdivision 2 of section 4408 of the public
51 health law, as added by chapter 705 of the laws of 1996, is amended to
52 read as follows:

53 (j) upon written request, provide specific written clinical review
54 criteria relating to a particular condition or disease INCLUDING CLIN-
55 ICAL REVIEW CRITERIA RELATING TO A STEP THERAPY PROTOCOL OVERRIDE DETER-
56 MINATION PURSUANT TO SUBDIVISIONS THREE-A, THREE-B AND THREE-C OF

1 SECTION FORTY-NINE HUNDRED THREE OF THIS CHAPTER, and, where appropri-
2 ate, other clinical information which the organization might consider in
3 its utilization review and the organization may include with the infor-
4 mation a description of how it will be used in the utilization review
5 process; provided, however, that to the extent such information is
6 proprietary to the organization, the enrollee or prospective enrollee
7 shall only use the information for the purposes of assisting the enrol-
8 lee or prospective enrollee in evaluating the covered services provided
9 by the organization. SUCH CLINICAL REVIEW CRITERIA, AND OTHER CLINICAL
10 INFORMATION SHALL ALSO BE MADE AVAILABLE TO A HEALTH CARE PROFESSIONAL
11 AS DEFINED IN SUBDIVISION SIX OF SECTION FORTY-NINE HUNDRED OF THIS
12 CHAPTER, ON BEHALF OF AN ENROLLEE AND UPON WRITTEN REQUEST;

13 S 8. Section 4900 of the public health law is amended by adding two
14 new subdivisions 7-f-2 and 7-f-3 to read as follows:

15 7-F-2. "STEP THERAPY PROTOCOL OVERRIDE DETERMINATION" MEANS A DETERMI-
16 NATION MADE BY A UTILIZATION REVIEW AGENT AS DEFINED IN SUBDIVISION NINE
17 OF THIS SECTION TO OVERRIDE A STEP THERAPY PROTOCOL PURSUANT TO SUBDIVI-
18 SIONS THREE-A, THREE-B AND THREE-C OF SECTION FORTY-NINE HUNDRED THREE
19 OF THIS TITLE GRANTING COVERAGE FOR THE HEALTH CARE PROFESSIONAL'S
20 SELECTED PRESCRIPTION DRUG OR DRUGS. ANY STEP THERAPY PROTOCOL OVERRIDE
21 DETERMINATION AS DEFINED BY THIS SUBDIVISION SHALL BE ELIGIBLE FOR
22 APPEAL BY AN ENROLLEE PURSUANT TO THIS ARTICLE.

23 7-F-3. "STEP THERAPY PROTOCOL" MEANS A POLICY, PROTOCOL OR PROGRAM
24 ESTABLISHED BY A UTILIZATION REVIEW AGENT AS DEFINED IN SUBDIVISION NINE
25 OF THIS SECTION THAT ESTABLISHES THE SPECIFIC SEQUENCE IN WHICH
26 PRESCRIPTION DRUGS FOR A SPECIFIED MEDICAL CONDITION ARE APPROVED FOR A
27 PARTICULAR ENROLLEE. NOTHING IN THIS CHAPTER SHALL IMPAIR OR PREVENT AN
28 INSURED FROM HAVING THE RIGHT TO APPEAL PURSUANT TO THIS ARTICLE RELAT-
29 ING TO THE IMPOSITION OF A STEP THERAPY PROTOCOL.

30 S 9. Section 4902 of the public health law is amended by adding two
31 new subdivisions 3 and 4 to read as follows:

32 3. WHEN ESTABLISHING A STEP THERAPY PROTOCOL, A UTILIZATION REVIEW
33 AGENT SHALL UTILIZE RECOGNIZED EVIDENCE-BASED AND PEER REVIEWED CLINICAL
34 REVIEW CRITERIA THAT TAKES INTO ACCOUNT THE NEEDS OF ATYPICAL PATIENT
35 POPULATIONS AND DIAGNOSES AS WELL WHEN ESTABLISHING THE CLINICAL REVIEW
36 CRITERIA.

37 4. WHEN CONDUCTING UTILIZATION REVIEW FOR A STEP THERAPY PROTOCOL
38 OVERRIDE DETERMINATION, A UTILIZATION REVIEW AGENT SHALL UTILIZE, IN
39 ADDITION TO ANY OTHER REQUIREMENTS OF THIS ARTICLE, RECOGNIZED
40 EVIDENCE-BASED AND PEER REVIEWED CLINICAL REVIEW CRITERIA THAT IS APPRO-
41 PRIATE FOR THE ENROLLEE AND THE ENROLLEE'S MEDICAL CONDITION.

42 S 10. Section 4903 of the public health law is amended by adding three
43 new subdivisions 3-a, 3-b and 3-c to read as follows:

44 3-A. A UTILIZATION REVIEW AGENT SHALL GRANT A STEP THERAPY PROTOCOL
45 OVERRIDE DETERMINATION WITHIN SEVENTY-TWO HOURS OF THE RECEIPT OF INFOR-
46 MATION THAT INCLUDES SUPPORTING RATIONALE AND DOCUMENTATION FROM A
47 HEALTH CARE PROFESSIONAL WHICH DEMONSTRATES THAT:

48 (A) THE REQUIRED PRESCRIPTION DRUG OR DRUGS IS CONTRAINDICATED, WILL
49 LIKELY CAUSE AN ADVERSE REACTION BY OR PHYSICAL OR MENTAL HARM TO THE
50 ENROLLEE;

51 (B) THE REQUIRED PRESCRIPTION DRUG OR DRUGS IS EXPECTED TO BE INEFFEC-
52 TIVE BASED ON THE KNOWN CLINICAL HISTORY AND CONDITIONS OF THE ENROLLEE
53 AND THE ENROLLEE'S PRESCRIPTION DRUG REGIMEN;

54 (C) THE ENROLLEE HAS TRIED THE REQUIRED PRESCRIPTION DRUG OR DRUGS
55 WHILE UNDER THEIR CURRENT OR A PREVIOUS HEALTH INSURANCE OR HEALTH BENE-
56 FIT PLAN, OR ANOTHER PRESCRIPTION DRUG OR DRUGS IN THE SAME PHARMACOLOG-

1 IC CLASS OR WITH THE SAME MECHANISM OF ACTION AND SUCH PRESCRIPTION DRUG
2 OR DRUGS WAS DISCONTINUED DUE TO LACK OF EFFICACY OR EFFECTIVENESS,
3 DIMINISHED EFFECT, OR AN ADVERSE EVENT;

4 (D) THE ENROLLEE IS STABLE ON A PRESCRIPTION DRUG OR DRUGS SELECTED BY
5 THEIR HEALTH CARE PROFESSIONAL FOR THE MEDICAL CONDITION UNDER CONSIDER-
6 ATION, PROVIDED THAT THIS SHALL NOT PREVENT A UTILIZATION REVIEW AGENT
7 FROM REQUIRING AN INSURED TO TRY AN AB-RATED GENERIC EQUIVALENT PRIOR TO
8 PROVIDING COVERAGE FOR THE EQUIVALENT BRAND NAME PRESCRIPTION DRUG OR
9 DRUGS; OR

10 (E) THE REQUIRED PRESCRIPTION DRUG OR DRUGS IS NOT IN THE BEST INTER-
11 EST OF THE ENROLLEE BECAUSE IT WILL LIKELY CAUSE A SIGNIFICANT BARRIER
12 TO THE ENROLLEE'S ADHERENCE TO OR COMPLIANCE WITH THE ENROLLEE'S PLAN OF
13 CARE, WILL LIKELY WORSEN A COMORBID CONDITION OF THE ENROLLEE, OR WILL
14 LIKELY DECREASE THE COVERED ENROLLEE'S ABILITY TO ACHIEVE OR MAINTAIN
15 REASONABLE FUNCTIONAL ABILITY IN PERFORMING DAILY ACTIVITIES.

16 3-B. FOR AN ENROLLEE WITH A MEDICAL CONDITION THAT PLACES THE HEALTH
17 OF THE INSURED IN SERIOUS JEOPARDY WITHOUT THE PRESCRIPTION DRUG OR
18 DRUGS PRESCRIBED BY THE INSURED'S HEALTH CARE PROFESSIONAL, THE STEP
19 THERAPY PROTOCOL OVERRIDE DETERMINATION SHALL BE GRANTED WITHIN TWENTY-
20 FOUR HOURS OF THE RECEIPT OF INFORMATION THAT INCLUDES SUPPORTING
21 RATIONALE AND DOCUMENTATION FROM A HEALTH CARE PROFESSIONAL DEMONSTRAT-
22 ING ONE OR MORE OF THE STANDARDS PROVIDED FOR IN SUBDIVISION THREE-A OF
23 THIS SECTION.

24 3-C. UPON A DETERMINATION THAT THE STEP THERAPY PROTOCOL SHOULD BE
25 OVERRIDDEN, THE HEALTH PLAN SHALL AUTHORIZE IMMEDIATE COVERAGE FOR THE
26 PRESCRIPTION DRUG OR DRUGS PRESCRIBED BY THE ENROLLEE'S TREATING HEALTH
27 CARE PROFESSIONAL.

28 S 11. Subdivision 7 of section 4903 of the public health law, as added
29 by chapter 586 of the laws of 1998, is amended to read as follows:

30 7. Failure by the utilization review agent to make a determination
31 within the time periods prescribed in this section shall be deemed to be
32 an adverse determination subject to appeal pursuant to section [forty
33 nine] FORTY-NINE hundred four of this title, PROVIDED, HOWEVER, THAT
34 FAILURE TO MEET SUCH TIME PERIODS FOR A STEP THERAPY PROTOCOL AS DEFINED
35 IN SUBDIVISION SEVEN-F-THREE OF SECTION FORTY-NINE HUNDRED OF THIS TITLE
36 OR A STEP THERAPY PROTOCOL OVERRIDE DETERMINATION PURSUANT TO SUBDIVI-
37 SIONS THREE-A, THREE-B AND THREE-C OF THIS SECTION SHALL BE DEEMED TO BE
38 AN OVERRIDE OF THE STEP THERAPY PROTOCOL.

39 S 12. This act shall not be construed to prevent: a health care plan
40 or utilization review agent from requiring a patient to try an AB-rated
41 generic equivalent prior to providing coverage for the equivalent brand-
42 ed prescription drug; or a health care provider from prescribing a
43 prescription drug that is determined to be medically appropriate.

44 S 13. This act shall take effect on January 1, 2017, and shall apply
45 only to health insurance and health benefit plans delivered, issued for
46 delivery, or renewed after such date, provided further that effective
47 immediately the superintendent of financial services is authorized to
48 promulgate such rules and regulations and take any other measures as may
49 be necessary for the timely implementation of this act.