

STATE OF NEW YORK

9267

IN ASSEMBLY

February 9, 2022

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to requiring a utilization review agent to follow certain rules when establishing a step therapy protocol

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subsection (a) of section 4902 of the insurance law is
2 amended by adding two new paragraphs 14 and 15 to read as follows:

3 (14) When establishing a step therapy protocol, a utilization review
4 agent shall ensure that the protocol cannot:

5 (i) require a prescription drug that has not been approved by the
6 United States Food and Drug Administration for the medical condition
7 being treated;

8 (ii) require an insured to try and fail on more than one drug before
9 providing coverage to the insured for the prescribed drug;

10 (iii) require the use of a step therapy-required drug for longer than
11 thirty days;

12 (iv) be imposed on an insured if the insured has taken the prescribed
13 drug covered by the plan within the past three hundred sixty-five days;

14 (v) require a newly enrolled insured to repeat step therapy for a
15 prescribed drug where that insured already completed step therapy for
16 that drug under a prior plan; and

17 (vi) be imposed on an insured for a prescribed drug that was previous-
18 ly approved for coverage by a plan for a specific medical condition
19 after the insured's plan implements a formulary change that impacts the
20 formulary status of the prescribed drug.

21 (15) When establishing a step therapy protocol, a utilization review
22 agent shall ensure that the protocol accepts any attestation submitted
23 by the insured's health care professional as defined in section four
24 thousand nine hundred of this title stating that a required drug has
25 failed as prima facie evidence that the required drug has failed.

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

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1 § 2. Subsections (c-3) and (g) of section 4903 of the insurance law,
2 subsection (c-3) as added and subsection (g) as amended by chapter 512
3 of the laws of 2016, are amended to read as follows:

4 (c-3) Upon a determination that the step therapy protocol should be
5 overridden, the health plan shall authorize immediate coverage for the
6 prescription drug prescribed by the insured's treating health care
7 professional. Any approval of a step therapy protocol override determi-
8 nation request shall be honored until the later of twelve months follow-
9 ing the date of the approval or renewal of the plan.

10 (g) Failure by the utilization review agent to make a determination
11 within the time periods prescribed in this section shall be deemed to be
12 an adverse determination subject to appeal pursuant to section four
13 thousand nine hundred four of this title, provided, however, that fail-
14 ure to meet such time periods for a step therapy protocol as defined in
15 subsection (g-9) of section forty-nine hundred of this title or a step
16 therapy protocol override determination pursuant to subsections (c-1),
17 (c-2) and (c-3) of this section shall be deemed to be an override of the
18 step therapy protocol. A utilization review agent's failure to comply
19 with any of the step therapy protocol requirements required in
20 subsections fourteen and fifteen of section four thousand nine hundred
21 two of this title shall be considered a basis for granting an override
22 of the step therapy protocol.

23 § 3. Section 4902 of the public health law is amended by adding two
24 new subdivisions 5 and 6 to read as follows:

25 5. When establishing a step therapy protocol, a utilization review
26 agent shall ensure that the protocol cannot:

27 (a) require a prescription drug that has not been approved by the
28 United States Food and Drug Administration for the medical condition
29 being treated;

30 (b) require an enrollee to try and fail on more than one drug before
31 providing coverage to the insured for the prescribed drug;

32 (c) require the use of a step therapy-required drug for longer than
33 thirty days;

34 (d) be imposed on an enrollee if the enrollee has taken the prescribed
35 drug covered by the plan within the past three hundred sixty-five days;

36 (f) require a newly enrolled enrollee to repeat step therapy for a
37 prescribed drug where that enrollee already completed step therapy for
38 that drug under a prior plan; and

39 (g) be imposed on an enrollee for a prescribed drug that was previous-
40 ly approved for coverage by a plan for a specific medical condition
41 after the enrollee's plan implements a formulary change that impacts the
42 formulary status of the prescribed drug.

43 6. When establishing a step therapy protocol, a utilization review
44 agent shall ensure that the protocol accepts any attestation submitted
45 by the enrollee's health care professional as defined in section forty-
46 nine hundred of this title stating that a required drug has failed as
47 prima facie evidence that the required drug has failed.

48 § 4. Subdivisions 3-c and 7 of section 4903 of the public health law,
49 subdivision 3-c as added and subdivision 7 as amended by chapter 512 of
50 the laws of 2016, are amended to read as follows:

51 3-c. Upon a determination that the step therapy protocol should be
52 overridden, the health plan shall authorize immediate coverage for the
53 prescription drug or drugs prescribed by the enrollee's treating health
54 care professional. Any approval of a step therapy protocol override
55 determination request shall be honored until the later of twelve months
56 following the date of the approval or renewal of the plan.

1 7. Failure by the utilization review agent to make a determination
2 within the time periods prescribed in this section shall be deemed to be
3 an adverse determination subject to appeal pursuant to section forty-
4 nine hundred four of this title, provided, however, that failure to meet
5 such time periods for a step therapy protocol as defined in subdivision
6 seven-f-three of section forty-nine hundred of this title or a step
7 therapy protocol override determination pursuant to subdivisions
8 three-a, three-b and three-c of this section shall be deemed to be an
9 override of the step therapy protocol. A utilization review agent's
10 failure to comply with any of the step therapy protocol requirements
11 required in subdivisions five and six of section forty-nine hundred two
12 of this title shall be considered a basis for granting an override of
13 the step therapy protocol.
14 § 5. This act shall take effect immediately.