

STATE OF NEW YORK

5009

2021-2022 Regular Sessions

IN SENATE

February 22, 2021

Introduced by Sen. REICHLIN-MELNICK -- read twice and ordered printed,
and when printed to be committed to the Committee on Health

AN ACT to amend the social services law and the public health law, in
relation to prescription drugs in Medicaid managed care programs; and
to repeal certain provisions of the social services law, relating to
payments for prescription drugs

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

1 Section 1. The social services law is amended by adding a new section
2 365-i to read as follows:

3 § 365-i. Prescription drugs in Medicaid managed care programs. 1.
4 Definitions. As used in this section, unless the context clearly
5 requires otherwise:

6 (a) "Article" means title eleven of article five of this chapter with
7 respect to the medical assistance program, and title one-A of article
8 twenty-five of the public health law with respect to the child health
9 insurance plan.

10 (b) "Clinical drug review program" means the clinical drug review
11 program under section two hundred seventy-four of the public health law.

12 (c) "Emergency condition" means a medical or behavioral condition as
13 determined by the prescriber or pharmacist, the onset of which is
14 sudden, that manifests itself by symptoms of sufficient severity,
15 including severe pain, and for which delay in beginning treatment
16 prescribed by the patient's health care practitioner would result in:

17 (i) placing the health or safety of the person afflicted with such
18 condition or other person or persons in serious jeopardy;

19 (ii) serious impairment to such person's bodily functions;

20 (iii) serious dysfunction of any bodily organ or part of such person;

21 (iv) serious disfigurement of such person; or

22 (v) severe discomfort.

23 (d) "Managed care provider" means a managed care provider under
24 section three hundred sixty-four-j of this title, a managed long term
25 care plan or other care coordination model under section forty-four
26 hundred three-f of the public health law, an approved organization under

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

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1 title one-A of article twenty-five of the public health law (child
2 health insurance plan), or any other entity that provides or arranges
3 for the provision of medical assistance services and supplies to partic-
4 ipants directly or indirectly (including by referral), including case
5 management, including the managed care provider's authorized agents.

6 (e) "Non-preferred drug" means a prescription drug that requires prior
7 authorization under the participant's managed care provider.

8 (f) "Participant" means a medical assistance recipient who receives,
9 is required to receive or elects to receive his or her medical assist-
10 ance services from a managed care provider.

11 (g) "Preferred drug" means a prescription drug that is not a non-pre-
12 ferred drug under the patient's managed care provider. "Preferred drug
13 list" means a list of a managed care provider's preferred drugs.

14 (h) "Preferred drug program" means the preferred drug program estab-
15 lished under section two hundred seventy-two of the public health law.

16 (i) "Prescriber" means a health care professional authorized to
17 prescribe prescription drugs for a participant of the managed care
18 provider, acting within his or her lawful scope of practice.

19 (j) "Prescription drug" or "drug" means a drug defined in subdivision
20 seven of section sixty-eight hundred two of the education law, for which
21 a prescription is required under the federal food, drug and cosmetic
22 act. Any drug that does not require a prescription under such act, but
23 which would otherwise be eligible for reimbursement under this article
24 when ordered by a prescriber and the prescription is subject to the
25 applicable provisions of this article and paragraph (a) of subdivision
26 four of section three hundred sixty-five-a of this title.

27 (k) "Prior authorization" means a process requiring the prescriber or
28 the dispenser to verify with the participant's managed care provider
29 that the drug is appropriate for the needs of the specific patient.

30 (l) "Qualified prescription drug system" or "system" means a process
31 under this section, approved by the commissioner, through which a
32 managed care provider approves payment for a non-preferred drug for a
33 participant based on prior authorization.

34 2. Payment for prescription drugs under capitation. (a) Payment for
35 prescription drugs shall be included in the capitation payments for
36 services or supplies provided to a managed care provider's participants,
37 provided that the managed care provider pays for prescription drugs
38 under a qualified prescription drug system. Every prescription drug
39 eligible for reimbursement under this article prescribed in relation to
40 a service provided by the managed care provider shall be either a
41 preferred or non-preferred drug under the qualified prescription drug
42 system. The commissioner shall approve a managed care provider's quali-
43 fied prescription drug system if it conforms to the provisions of this
44 section.

45 (b) If the managed care provider does not pay for prescription drugs
46 under a qualified prescription drug system, then payment for
47 prescription drugs for the managed care provider's patients shall not be
48 included in such capitation payments and prescription drugs shall be
49 provided for the managed care provider's participants under the
50 preferred drug program.

51 3. Qualified prescription drug system; criteria. (a) A qualified
52 prescription drug system shall promote access to the most effective
53 prescription drugs while reducing the cost of prescription drugs under
54 this article. This subdivision and subdivision four of this section
55 apply to qualified prescription drug systems.

1 (b) When a prescriber prescribes a non-preferred drug for a partic-
2 ipant, reimbursement may be denied unless prior authorization is
3 obtained, unless no prior authorization is required under this section.
4 When a prescriber prescribes a preferred drug for a participant, no
5 prior authorization shall be required for reimbursement, unless prior
6 authorization is required under the clinical drug review program.

7 (c) The commissioner shall establish performance standards for systems
8 that, at a minimum, ensure that systems provide sufficient technical
9 support and timely responses to consumers, prescribers and pharmacists.

10 (d) The commissioner shall adopt criteria for qualified prescription
11 drug systems after considering recommendations and comments received
12 from prescribers, pharmacists, participants, and organizations repres-
13 enting them.

14 (e) The managed care provider shall develop its preferred drug list
15 based initially on an evaluation of the clinical effectiveness, safety,
16 and patient outcomes, followed by consideration of the cost-effective-
17 ness of the drugs. In each therapeutic class, the managed care provider
18 shall determine whether there is one drug that is significantly more
19 clinically effective and safe, and that drug shall be included on the
20 preferred drug list without consideration of cost. If, among two or more
21 drugs in a therapeutic class, the difference in clinical effectiveness
22 and safety is not clinically significant, then cost-effectiveness may
23 also be considered in determining which drug or drugs shall be included
24 on the preferred drug list.

25 4. Prior authorization. (a) A qualified prescription drug system shall
26 make available a twenty-four hour per day, seven days per week telephone
27 call center that includes a tollfree telephone line and dedicated
28 facsimile line to respond to requests for prior authorization. The call
29 center shall include qualified health care professionals who shall be
30 available to consult with prescribers concerning prescription drugs that
31 are non-preferred drugs. A prescriber seeking prior authorization shall
32 consult with the program call line to reasonably present his or her
33 justification for the prescription and give the program's qualified
34 health care professional a reasonable opportunity to respond.

35 (b) When a patient's health care provider prescribes a non-preferred
36 drug, the prescriber shall consult with the system to confirm that in
37 his or her reasonable professional judgment, the patient's clinical
38 condition is consistent with the criteria for approval of the non-pre-
39 ferred drug. Such criteria shall include:

40 (i) the preferred drug has been tried by the patient and has failed to
41 produce the desired health outcomes;

42 (ii) the patient has tried the preferred drug and has experienced
43 unacceptable side effects;

44 (iii) the patient has been stabilized on a non-preferred drug and
45 transition to the preferred drug would be medically contraindicated; or

46 (iv) other clinical indications identified by the commissioner or the
47 managed care provider for the patient's use of the non-preferred drug,
48 which shall include consideration of the medical needs of special popu-
49 lations, including children, elderly, chronically ill, persons with
50 mental health conditions, and persons affected by HIV/AIDS or Hepatitis
51 C.

52 (c) In the event that the patient does not meet the criteria in para-
53 graph (b) of this subdivision, the prescriber may provide additional
54 information to the managed care provider to justify the use of a non-
55 preferred drug. The system shall provide a reasonable opportunity for a
56 prescriber to reasonably present his or her justification of prior

1 authorization. If, after consultation with the managed care provider,
2 the prescriber, in his or her reasonable professional judgment, deter-
3 mines that the use of a non-preferred drug is warranted, the
4 prescriber's determination shall be final.

5 (d) If a prescriber meets the requirements of paragraph (b) or (c) of
6 this subdivision, the prescriber shall be granted prior authorization
7 under this section.

8 (e) In the instance where a prior authorization determination is not
9 completed within twenty-four hours of the original request, solely as
10 the result of a failure of the system (whether by action or inaction),
11 prior authorization shall be immediately and automatically granted with
12 no further action by the prescriber and the prescriber shall be notified
13 of this determination. In the instance where a prior authorization
14 determination is not completed within twenty-four hours of the original
15 request for any other reason, a seventy-two hour supply of the medica-
16 tion shall be approved by the system and the prescriber shall be noti-
17 fied of this determination.

18 (f) When, in the judgment of the prescriber or the pharmacist, an
19 emergency condition exists, and the prescriber or pharmacist notifies
20 the managed care provider that an emergency condition exists, a seven-
21 ty-two hour emergency supply of the drug prescribed shall be immediately
22 authorized by the managed care provider.

23 (g) In the event that a patient presents a prescription to a pharma-
24 cist for a prescription drug that is a non-preferred drug and for which
25 the prescriber has not obtained a prior authorization, the pharmacist
26 shall, within a prompt period based on professional judgment, notify the
27 prescriber. The prescriber shall, within a prompt period based on
28 professional judgment, either seek prior authorization or shall contact
29 the pharmacist and amend or cancel the prescription. The pharmacist
30 shall, within a prompt period based on professional judgment, notify the
31 patient when prior authorization has been obtained or denied or when the
32 prescription has been amended or cancelled.

33 (h) Once prior authorization of a prescription for a drug that is not
34 on the preferred drug list is obtained, prior authorization shall not be
35 required for any refill of the prescription.

36 (i) No prior authorization under a qualified prescription drug system
37 shall be required for: (i) atypical anti-psychotics; (ii) anti-depres-
38 sants; (iii) anti-retrovirals used in the treatment of HIV/AIDS or Hepa-
39 titis C; (iv) anti-rejection drugs used in the treatment of organ and
40 tissue transplants; and (v) any other therapeutic class for the treat-
41 ment of mental illness, HIV/AIDS or Hepatitis C, approved by the commis-
42 sioner.

43 5. Clinical drug review program. In the case of a drug for which prior
44 authorization is required under the clinical drug review program, prior
45 authorization shall be obtained under the clinical drug review program
46 and not under this section.

47 6. Prescriber conduct. The managed care provider and the department
48 shall monitor the prior authorization process under a qualified
49 prescription drug system for prescribing patterns which are suspected of
50 endangering the health and safety of the patient or which demonstrate a
51 likelihood of fraud or abuse. The managed care provider and the depart-
52 ment shall take any and all actions otherwise permitted by law to inves-
53 tigate such prescribing patterns, to take remedial action and to enforce
54 applicable federal and state laws.

55 7. Use of preferred drug program. The commissioner may contract with a
56 managed care provider for the provider to use the preferred drug program

1 to provide prior authorization under the managed care provider's quali-
2 fied prescription drug system. The contract shall include terms required
3 by the commissioner to maximize savings to the Medicaid program and
4 protect the health and interests of the managed care provider's partic-
5 ipants. The contract shall provide whether the preferred drug program
6 shall use the managed care provider's lists of preferred and non-pre-
7 ferred drugs or the preferred drug list under the preferred drug
8 program, with respect to whether prior authorization is required.

9 § 2. Subdivisions 25 and 25-a of section 364-j of the social services
10 law are REPEALED.

11 § 3. Section 2511 of the public health law is amended by adding a new
12 subdivision 22 to read as follows:

13 22. Payment for prescription drugs. Payment for prescription drugs
14 shall be included in the payments for services or supplies provided by
15 the approved organization, provided that the plan pays for prescription
16 drugs under a qualified prescription drug system under section three
17 hundred sixty-five-i of the social services law. Every prescription drug
18 eligible for reimbursement under this article prescribed in relation to
19 a service provided by the approved organization shall be either a
20 preferred or non-preferred drug under the qualified prescription drug
21 system. If the approved organization does not pay for prescription drugs
22 under a qualified prescription drug system, then payment for
23 prescription drugs for the approved organization's patients shall not be
24 included in such payments and prescription drugs shall be provided for
25 the approved organization's participants under the preferred drug
26 program.

27 § 4. Subdivision 11 of section 270 of the public health law, as
28 amended by section 2-a of part C of chapter 58 of the laws of 2008, is
29 amended to read as follows:

30 11. "State public health plan" means the medical assistance program
31 established by title eleven of article five of the social services law
32 (referred to in this article as "Medicaid"), the elderly pharmaceutical
33 insurance coverage program established by title three of article two of
34 the elder law (referred to in this article as "EPIC"), ~~and the family~~
35 ~~health plus program established by section three hundred sixty-nine-ee~~
36 ~~of the social services law to the extent that section provides that the~~
37 ~~program shall be subject to this article], and the child health insur-~~
38 ance plan under title one-A of article twenty-five of this chapter.

39 § 5. Section 272 of the public health law is amended by adding a new
40 subdivision 12 to read as follows:

41 12. No prior authorization shall be required under the preferred drug
42 program for:

43 (a) atypical anti-psychotics; (b) anti-depressants; (c) anti-retrovi-
44 rals used in the treatment of HIV/AIDS or Hepatitis C; (d) anti-rejec-
45 tion drugs used in the treatment of organ and tissue transplants; and
46 (e) any other therapeutic class for the treatment of mental illness,
47 HIV/AIDS or Hepatitis C, recommended by the board and approved by the
48 commissioner under this section.

49 § 6. This act shall take effect on the one hundred eightieth day after
50 it shall become a law; provided, however, that section two of this act
51 shall take effect one year after this act shall become a law. Effective
52 immediately the commissioner of health is authorized to promulgate any
53 regulation or rule necessary to implement this act on or before such
54 effective date.