STATE OF NEW YORK

463--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 9, 2023

Introduced by M. of A. McDONALD, STECK, GUNTHER, STIRPE, K. BROWN, WEPRIN, COLTON, BENDETT -- read once and referred to the Committee on Insurance -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the insurance law and the public health law, in relation to requiring notice of adverse step therapy determinations

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

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

(14) Establishment of a written procedure to assure that the notice of an adverse determination in relation to a step therapy protocol override determination request includes:

(i) the reasons for the determination including the clinical rationale, if any;

(ii) instructions on how to initiate standard and expedited appeals pursuant to section four thousand nine hundred four of this article and an external appeal pursuant to section four thousand nine hundred fourteen of this article;

(iii) information that includes: any applicable alternative covered medications; the clinical review criteria relied upon to make such determination; and any additional necessary information that must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal;

(iv) the provisions of this section shall be satisfied by making such information available electronically on a formulary website, on the member portal and/or provider portal of the insurer's, the health maintenance organization's website, or the website of an organization subject to article forty-three of this chapter, provided that the member consents to receiving the information electronically.

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

LBD02500-03-3

§ 2. Section 4903 of the insurance law is amended by adding a new subsection (e-1) to read as follows:

(e-1) Notice of an adverse determination made by a utilization review agent in relation to a step therapy protocol override determination request shall be made in writing to the insured or the insured's authorized representative and the insured's prescribing health care professional as defined in subsection (f) of section forty-nine hundred of this chapter, and shall include:

(i) the reasons for the determination including the clinical rationale, if any;

(ii) instructions on how to initiate standard and expedited appeals pursuant to section four thousand nine hundred four of this article and an external appeal pursuant to section four thousand nine hundred fourteen of this article;

(iii) information that includes: any applicable alternative covered medications; the clinical review criteria relied upon to make such determination; and any additional necessary information that must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal;

(iv) the provisions of this section shall be satisfied by making such information available electronically on a formulary website, on the member portal and/or provider portal of the insurer's, the health maintenance organization's website, or the website of an organization subject to article forty-three of this chapter, provided that the member consents to receiving the information electronically.

§ 3. Subdivision 1 of section 4902 of the public health law is amended by adding a new paragraph (l) to read as follows:

(l) Establishment of a written procedure to assure that the notice of an adverse determination in relation to a step therapy protocol override determination request includes: (i) the reasons for the determination including the clinical rationale, if any; (ii) instructions on how to initiate standard and expedited appeals pursuant to subdivision two of section forty-nine hundred four of this title and an external appeal pursuant to section forty-nine hundred fourteen of this article; (iii) information that includes: any applicable alternative covered medications; the clinical review criteria relied upon to make such determination; and any additional necessary information that must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal; (iv) the provisions of this section shall be satisfied by making such information available electronically on a formulary website, on the member portal and/or provider portal of the insurer's, the health maintenance organization's website, or the website of an organization subject to article forty-three of this chapter, provided that the member consents to receiving the information electronically.

§ 4. Section 4903 of the public health law is amended by adding a new subdivision 5-a to read as follows:

5-a. Notice of an adverse determination made by a utilization review agent in relation to a step therapy protocol override determination request shall be made in writing to the enrollee or the enrollee's authorized representative and the enrollee's prescribing health care professional as defined in subdivision six of section forty-nine hundred of this title, and shall include:

(a) the reasons for the determination including the clinical rationale, if any;

(b) instructions on how to initiate standard and expedited appeals pursuant to section forty-nine hundred four of this title and an external appeal pursuant to section forty-nine hundred fourteen of this article;

(c) information that includes: any applicable alternative covered medications; the clinical review criteria relied upon to make such determination; and any additional necessary information that must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal;

(d) the provisions of this section shall be satisfied by making such information available electronically on a formulary website, on the member portal and/or provider portal of the insurer's, the health maintenance organization's website, or the website of an organization subject to article forty-three of this chapter, provided that the member consents to receiving the information electronically.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.