

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:

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

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

6 (i) the reasons for the determination including the clinical ration-
7 ale, if any;

8 (ii) instructions on how to initiate standard and expedited appeals
9 pursuant to section four thousand nine hundred four of this article and
10 an external appeal pursuant to section four thousand nine hundred four-
11 teen of this article;

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

17 (iv) the provisions of this section shall be satisfied by making such
18 information available electronically on a formulary website, on the
19 member portal and/or provider portal of the insurer's, the health main-
20 tenance organization's website, or the website of an organization
21 subject to article forty-three of this chapter, provided that the member
22 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

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

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

9 (i) the reasons for the determination including the clinical ration-
10 ale, if any;

11 (ii) instructions on how to initiate standard and expedited appeals
12 pursuant to section four thousand nine hundred four of this article and
13 an external appeal pursuant to section four thousand nine hundred four-
14 teen of this article;

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

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

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

28 (1) Establishment of a written procedure to assure that the notice of
29 an adverse determination in relation to a step therapy protocol override
30 determination request includes: (i) the reasons for the determination
31 including the clinical rationale, if any; (ii) instructions on how to
32 initiate standard and expedited appeals pursuant to subdivision two of
33 section forty-nine hundred four of this title and an external appeal
34 pursuant to section forty-nine hundred fourteen of this article; (iii)
35 information that includes: any applicable alternative covered medica-
36 tions; the clinical review criteria relied upon to make such determi-
37 nation; and any additional necessary information that must be provided
38 to, or obtained by, the utilization review agent in order to render a
39 decision on the appeal; (iv) the provisions of this section shall be
40 satisfied by making such information available electronically on a
41 formulary website, on the member portal and/or provider portal of the
42 insurer's, the health maintenance organization's website, or the website
43 of an organization subject to article forty-three of this chapter,
44 provided that the member consents to receiving the information electron-
45 ically.

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

48 5-a. Notice of an adverse determination made by a utilization review
49 agent in relation to a step therapy protocol override determination
50 request shall be made in writing to the enrollee or the enrollee's
51 authorized representative and the enrollee's prescribing health care
52 professional as defined in subdivision six of section forty-nine hundred
53 of this title, and shall include:

54 (a) the reasons for the determination including the clinical ration-
55 ale, if any;

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

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

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

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