STATE OF NEW YORK

8501

IN ASSEMBLY

January 4, 2024

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 adverse determinations related to a step therapy protocol override determination; and to repeal certain provisions of the insurance law and the public health law relating thereto

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

Section 1. Paragraph 14 of subsection (a) of section 4902 of the insurance law, as added by a chapter of the laws of 2023 amending the insurance law and the public health law relating to requiring notice of adverse step therapy determinations, as proposed in legislative bills numbers S. 2677-A and A. 463-A, is REPEALED.

§ 2. Paragraph 5 of subsection (a) of section 4902 of the insurance law, as added by chapter 705 of the laws of 1996, subparagraph (ii) as amended by chapter 586 of the laws of 1998, is amended to read as follows:

(5) **(i)** Establishment of a written procedure to assure that the notice of an adverse determination includes:

[~~(i)~~] **(A)** the reasons for the determination including the clinical rationale, if any;

[~~(ii)~~] **(B)** 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; [~~and~~

~~(iii)~~] **(C)** notice of the availability, upon request of the insured or the insured's designee, of the clinical review criteria relied upon to make such determination;

(D) what, if any, additional necessary information must be provided to, or obtained by, the utilization review agent in order to render a decision on appeal; and

(E) for an adverse determination related to a step therapy protocol override determination, information that includes the clinical review criteria relied upon to make such determination and any applicable

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

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alternative prescription drugs subject to the step therapy protocol of the utilization review agent.

(ii) A utilization review agent may provide a notice of an adverse determination related to a step therapy protocol override determination electronically pursuant to subsection (i) of section four thousand nine hundred three of this title, including by electronic mail or through the health care plan's member portal and provider portal. An electronic notice of such an adverse determination may meet the requirements of clause (E) of subparagraph (i) of this paragraph by linking to information posted on the website of the health care plan;

§ 3. Subsection (e-1) of section 4903 of the insurance law, as added by a chapter of the laws of 2023 amending the insurance law and the public health law relating to requiring notice of adverse step therapy determinations, as proposed in legislative bills numbers S. 2677-A and A. 463-A, is REPEALED.

§ 4. Subsection (e) of section 4903 of the insurance law, as added by chapter 705 of the laws of 1996, paragraph 2 as amended by chapter 586 of the laws of 1998, is amended to read as follows:

(e) (1) Notice of an adverse determination made by a utilization review agent shall be in writing and must include:

[~~(1)~~] (i) the reasons for the determination including the clinical rationale, if any;

[~~(2)~~] (ii) instructions on how to initiate standard appeals and expedited appeals pursuant to section four thousand nine hundred four and an external appeal pursuant to section four thousand nine hundred fourteen of this article; [~~and~~

~~(3)~~] (iii) notice of the availability, upon request of the insured, or the insured's designee, of the clinical review criteria relied upon to make such determination. Such notice shall also specify what, if any, additional necessary information must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal; and

(iv) for an adverse determination related to a step therapy protocol override request, information that includes the clinical review criteria relied upon to make such determination and any applicable alternative prescription drugs subject to the step therapy protocol of the utilization review agent.

(2) A utilization review agent may provide notice of an adverse determination related to a step therapy protocol override determination electronically pursuant to subsection (i) of this section, including by electronic mail or through the health care plan's member portal and provider portal. An electronic notice of such an adverse determination may meet the requirements of subparagraph (iv) of paragraph one of this subsection by linking to information posted on the website of the health care plan.

§ 5. Paragraph (l) of subdivision 1 of section 4902 of the public health law, as added by a chapter of the laws of 2023 amending the insurance law and the public health law relating to requiring notice of adverse step therapy determinations, as proposed in legislative bills numbers S. 2677-A and A. 463-A, is REPEALED.

§ 6. Paragraph (e) of subdivision 1 of section 4902 of the public health law, as added by chapter 705 of the laws of 1996, subparagraph (ii) as amended by chapter 586 of the laws of 1998, is amended to read as follows:

(e) (i) Establishment of a written procedure to assure that the notice of an adverse determination includes: [~~(i)~~] (1) the reasons for the

determination including the clinical rationale, if any; [~~(ii)~~] (2) instructions on how to initiate standard and expedited appeals pursuant to section forty-nine hundred four and an external appeal pursuant to section forty-nine hundred fourteen of this article; [~~and (iii)~~] (3) notice of the availability, upon request of the enrollee or the enrollee's designee, of the clinical review criteria relied upon to make such determination; (4) what, if any, additional necessary information must be provided to, or obtained by, the utilization review agent in order to render a decision on an appeal; and (5) for an adverse determination related to a step therapy protocol override determination, information that includes the clinical review criteria relied upon to make such determination and any applicable alternative prescription drugs subject to the step therapy protocol of the utilization review agent.

(ii) A utilization review agent may provide notice of an adverse determination related to a step therapy protocol override determination electronically pursuant to subdivision nine of section forty-nine hundred three of this title, including by electronic mail or through the health care plan's member portal and provider portal. An electronic notice of such an adverse determination may meet the requirements of clause five of subparagraph (i) of this paragraph by linking to information posted on the website of the health care plan;

§ 7. Subdivision 5-a of section 4903 of the public health law, as added by a chapter of the laws of 2023 amending the insurance law and the public health law relating to requiring notice of adverse step therapy determinations, as proposed in legislative bills numbers S. 2677-A and A. 463-A, is REPEALED.

§ 8. Subdivision 5 of section 4903 of the public health law, as added by chapter 705 of the laws of 1996, paragraph (b) as amended by chapter 586 of the laws of 1998, is amended to read as follows:

5. (a) Notice of an adverse determination made by a utilization review agent shall be in writing and must include:

[~~(a)~~] (i) the reasons for the determination including the clinical rationale, if any;

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

~~(c)~~] (iii) notice of the availability, upon request of the enrollee, or the enrollee's designee, of the clinical review criteria relied upon to make such determination. Such notice shall also specify what, if any, additional necessary information must be provided to, or obtained by, the utilization review agent in order to render a decision on the appeal; and

(iv) for an adverse determination related to a step therapy protocol override request, information that includes the clinical review criteria relied upon to make such determination and any applicable alternative prescription drugs subject to the step therapy protocol of the utilization review agent.

(b) A utilization review agent may provide notice of an adverse determination related to a step therapy protocol override determination electronically pursuant to subdivision nine of this section, including by electronic mail or through the health care plan's member portal and provider portal. An electronic notice of such an adverse determination may meet the requirements of subparagraph (iv) of paragraph (a) of this subdivision by linking to information posted on the website of the health care plan.

§ 9. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the insurance law and the public health law relating to requiring notice of adverse step therapy determinations, as proposed in legislative bills numbers S. 2677-A and A. 463-A, takes effect.