

# STATE OF NEW YORK

1267

2023-2024 Regular Sessions

## IN SENATE

January 11, 2023

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed 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

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

LBD02501-01-3

1 thousand nine hundred of this title stating that a required drug has  
2 failed as prima facie evidence that the required drug has failed.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 3-c. Upon a determination that the step therapy protocol should be  
54 overridden, the health plan shall authorize immediate coverage for the  
55 prescription drug or drugs prescribed by the enrollee's treating health  
56 care professional. Any approval of a step therapy protocol override

1 determination request shall be honored until the later of twelve months  
2 following the date of the approval or renewal of the plan.

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

16 § 5. This act shall take effect immediately.