

# STATE OF NEW YORK

8038

## IN SENATE

January 5, 2024

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

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:

- 1 Section 1. Paragraph 14 of subsection (a) of section 4902 of the  
2 insurance law, as added by a chapter of the laws of 2023 amending the  
3 insurance law and the public health law relating to requiring notice of  
4 adverse step therapy determinations, as proposed in legislative bills  
5 numbers S. 2677-A and A. 463-A, is REPEALED.
- 6 § 2. Paragraph 5 of subsection (a) of section 4902 of the insurance  
7 law, as added by chapter 705 of the laws of 1996, subparagraph (ii) as  
8 amended by chapter 586 of the laws of 1998, is amended to read as  
9 follows:
- 10 (5) (i) Establishment of a written procedure to assure that the notice  
11 of an adverse determination includes:
- 12 [~~(i)~~] (A) the reasons for the determination including the clinical  
13 rationale, if any;
- 14 [~~(ii)~~] (B) instructions on how to initiate standard and expedited  
15 appeals pursuant to section four thousand nine hundred four of this  
16 article and an external appeal pursuant to section four thousand nine  
17 hundred fourteen of this article; [~~and~~
- 18 ~~(iii)~~] (C) notice of the availability, upon request of the insured or  
19 the insured's designee, of the clinical review criteria relied upon to  
20 make such determination;
- 21 (D) what, if any, additional necessary information must be provided  
22 to, or obtained by, the utilization review agent in order to render a  
23 decision on appeal; and
- 24 (E) for an adverse determination related to a step therapy protocol  
25 override determination, information that includes the clinical review  
26 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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1 alternative prescription drugs subject to the step therapy protocol of  
2 the utilization review agent.

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

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

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

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

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

23 [~~(2)~~] (ii) instructions on how to initiate standard appeals and expe-  
24 dited appeals pursuant to section four thousand nine hundred four and an  
25 external appeal pursuant to section four thousand nine hundred fourteen  
26 of this article; [~~and~~

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

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

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

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

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

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

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

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

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

27 § 8. Subdivision 5 of section 4903 of the public health law, as added  
28 by chapter 705 of the laws of 1996, paragraph (b) as amended by chapter  
29 586 of the laws of 1998, is amended to read as follows:

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

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

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

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

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

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

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