

STATE OF NEW YORK

443

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

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 step therapy protocol; and to amend a chapter of the laws of 2024 amending the insurance law and the public health law, relating to requiring a utilization review agent to follow certain rules when establishing a step therapy protocol, as proposed in legislative bills numbers S. 1267-A and A. 901-A, in relation to the effectiveness thereof

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

1 Section 1. Paragraphs 15 and 16 of subsection (a) of section 4902 of
2 the insurance law, as added by a chapter of the laws of 2024 amending
3 the insurance law and the public health law, relating to requiring a
4 utilization review agent to follow certain rules when establishing a
5 step therapy protocol, as proposed in legislative bills numbers S.
6 1267-A and A. 901-A, are amended to read as follows:

7 (15) When establishing a step therapy protocol, a utilization review
8 agent shall ensure that the protocol cannot:

9 (i) require a prescription drug that has not been approved by the
10 United States Food and Drug Administration for the medical condition
11 being treated [~~and/or~~] or is not supported by current evidence-based
12 guidelines for the medical condition being treated;

13 (ii) require an insured to try and fail on more than two drugs [~~within~~
14 ~~one therapeutic category~~] used to treat the same medical condition or
15 disease before providing coverage to the insured for the prescribed
16 drug;

17 (iii) require the use of a step therapy-required drug for longer than
18 thirty days or a duration of treatment supported by current evidence-

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

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1 based treatment guidelines appropriate to the specific disease state
2 being treated;

3 (iv) be imposed on an insured if a therapeutic equivalent to the
4 prescribed drug is not available, or if the health care plan has
5 documentation that it has covered the drug for the [~~enrollee~~] insured
6 within the past three hundred sixty-five days;

7 (v) require a newly enrolled insured to repeat a step therapy protocol
8 for a prescribed drug where that insured already completed a step thera-
9 py protocol for that drug under a prior health care plan, so long as the
10 enrollee or provider submits information demonstrating completion of a
11 step therapy protocol of the prior health care plan within the past
12 three hundred sixty-five days; and

13 (vi) be imposed on an insured for a prescribed drug that was previous-
14 ly approved for coverage by [~~a~~] the insured's current health care plan
15 for a specific medical condition after the insured's current health care
16 plan implements a formulary change or utilization management that
17 impacts the coverage criteria for the prescribed drug until the approved
18 override expires, unless a specifically identified and current
19 evidence-based safety concern exists and a different therapeutic alter-
20 native drug exists.

21 (16) When establishing a step therapy protocol, a utilization review
22 agent shall ensure that the protocol accepts any written or electronic
23 attestation submitted by the insured's health care professional, as
24 defined in section four thousand nine hundred of this title, who
25 prescribed the drug and stating that a required drug has failed, as
26 [~~prima-facie~~] evidence that the required drug has failed.

27 § 2. Subsections (c-3) and (g) of section 4903 of the insurance law,
28 as amended by a chapter of the laws of 2024 amending the insurance law
29 and the public health law, relating to requiring a utilization review
30 agent to follow certain rules when establishing a step therapy protocol,
31 as proposed in legislative bills numbers S. 1267-A and A. 901-A, are
32 amended to read as follows:

33 (c-3) Upon a determination that the step therapy protocol should be
34 overridden, the health care plan shall authorize immediate coverage for
35 the prescription drug prescribed by the insured's treating health care
36 professional. Any approval of a step therapy protocol override determi-
37 nation request shall be honored until the lesser of either treatment
38 duration based on current evidence-based treatment guidelines or twelve
39 months following the date of the approval of the request or renewal of
40 the insured's coverage.

41 (g) Failure by the utilization review agent to make a determination
42 within the time periods prescribed in this section shall be deemed to be
43 an adverse determination subject to appeal pursuant to section four
44 thousand nine hundred four of this title, provided, however, that fail-
45 ure to meet such time periods for a step therapy protocol as defined in
46 subsection (g-9) of section forty-nine hundred of this title or a step
47 therapy protocol override determination pursuant to subsections (c-1),
48 (c-2) and (c-3) of this section shall be deemed to be an override of the
49 step therapy protocol. A utilization review agent's failure to comply
50 with any of the step therapy protocol requirements required in
51 [~~subsections~~] paragraphs fifteen and sixteen of subsection (a) of
52 section four thousand nine hundred two of this title shall be considered
53 a basis for granting an override of the step therapy protocol, absent
54 fraud.

55 § 3. Subdivisions 5 and 6 of section 4902 of the public health law, as
56 added by a chapter of the laws of 2024 amending the insurance law and

1 the public health law, relating to requiring a utilization review agent
2 to follow certain rules when establishing a step therapy protocol, as
3 proposed in legislative bills numbers S. 1267-A and A. 901-A, are
4 amended to read as follows:

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

7 (a) require a prescription drug that has not been approved by the
8 United States Food and Drug Administration [~~and/or~~] for the medical
9 condition being treated or is not supported by current evidence-based
10 guidelines for the medical condition being treated;

11 (b) require an enrollee to try and fail on more than two drugs [~~within~~
12 ~~one therapeutic category~~] used to treat the same medical condition or
13 disease before providing coverage to the [~~insured~~] enrollee for the
14 prescribed drug;

15 (c) require the use of a step therapy-required drug for longer than
16 thirty days or a duration of treatment supported by current evidence-
17 based treatment guidelines appropriate to the specific disease state
18 being treated;

19 (d) be imposed on an enrollee if a therapeutic equivalent to the
20 prescribed drug is not available; or if the health care plan has
21 documentation that it has covered the drug for the enrollee within the
22 past three hundred sixty-five days;

23 (e) require a newly enrolled enrollee to repeat a step therapy proto-
24 col for a prescribed drug where that enrollee already completed a step
25 therapy protocol for that drug under a prior health care plan, so long
26 as the enrollee or provider [~~submit~~] submits information demonstrating
27 completion of a step therapy protocol of the prior health care plan
28 within the past three hundred sixty-five days; and

29 (f) be imposed on an enrollee for a prescribed drug that was previous-
30 ly approved for coverage by [~~a~~] the enrollee's current health care plan
31 for [~~a~~] the enrollee's specific medical condition after the enrollee's
32 current health care plan implements a formulary or utilization manage-
33 ment change that impacts the coverage criteria for the prescribed drug
34 until the approved override expires, unless a specifically identified
35 and evidence-based safety concern exists and a different therapeutic
36 alternative drug exists.

37 6. When establishing a step therapy protocol, a utilization review
38 agent shall ensure that the protocol accepts any written or electronic
39 attestation submitted by the enrollee's health care professional, as
40 defined in section forty-nine hundred of this title, who prescribed the
41 drug and stating that a required drug has failed, as [~~prima facie~~]
42 evidence that the required drug has failed.

43 § 4. Subdivision 3-c of section 4903 of the public health law as
44 amended by a chapter of the laws of 2024 amending the insurance law and
45 the public health law, relating to requiring a utilization review agent
46 to follow certain rules when establishing a step therapy protocol, as
47 proposed in legislative bills numbers S. 1267-A and A. 901-A, is amended
48 to read as follows:

49 3-c. Upon a determination that the step therapy protocol should be
50 overridden, the health care plan shall authorize immediate coverage for
51 the prescription drug or drugs prescribed by the enrollee's treating
52 health care professional. Any approval of a step therapy protocol over-
53 ride determination request shall be honored until the lesser of either
54 treatment duration based on current evidence-based treatment guidelines
55 or twelve months following the date of the approval of the request or
56 renewal of the enrollee's coverage.

1 § 5. Section 5 of a chapter of the laws of 2024 amending the insurance
2 law and the public health law, relating to requiring a utilization
3 review agent to follow certain rules when establishing a step therapy
4 protocol, as proposed in legislative bills numbers S. 1267-A and A.
5 901-A, is amended to read as follows:

6 § 5. This act shall take effect [~~on the one hundred twentieth day~~
7 ~~after it shall have become a law~~] January 1, 2026 and shall apply to all
8 policies issued, renewed, modified, altered or amended on or after such
9 date.

10 § 6. This act shall take effect immediately; provided, however that
11 the provisions of sections one, two, three and four of this act shall
12 take effect on the same date and in the same manner as a chapter of the
13 laws of 2024 amending the insurance law and the public health law,
14 relating to requiring a utilization review agent to follow certain rules
15 when establishing a step therapy protocol, as proposed in legislative
16 bills numbers S. 1267-A and A. 901-A, takes effect.