

# STATE OF NEW YORK

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2676

2025-2026 Regular Sessions

## IN SENATE

January 22, 2025

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Introduced by Sen. BAILEY -- 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 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-  
19 based treatment guidelines appropriate to the specific disease state  
20 being treated;

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

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

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

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

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

§ 2. Subsections (c-3) and (g) of section 4903 of the insurance law, as amended by 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, are amended to read as follows:

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

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

§ 3. Subdivisions 5 and 6 of section 4902 of the public health law, as added by 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

1 proposed in legislative bills numbers S. 1267-A and A. 901-A, are  
2 amended to read as follows:

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

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

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

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

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

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

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

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

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

47 3-c. Upon a determination that the step therapy protocol should be  
48 overridden, the health care plan shall authorize immediate coverage for  
49 the prescription drug or drugs prescribed by the enrollee's treating  
50 health care professional. Any approval of a step therapy protocol over-  
51 ride determination request shall be honored until the lesser of either  
52 treatment duration based on current evidence-based treatment guidelines  
53 or twelve months following the date of the approval of the request or  
54 renewal of the enrollee's coverage.

55 § 5. Section 5 of a chapter of the laws of 2024 amending the insurance  
56 law and the public health law, relating to requiring a utilization

1 review agent to follow certain rules when establishing a step therapy  
2 protocol, as proposed in legislative bills numbers S. 1267-A and A.  
3 901-A, is amended to read as follows:

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

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