

CHAPTER 133

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 23-1183

BY REPRESENTATIVE(S) Jodeh and Sirota, Amabile, Bacon, Bird, Boesenecker, Brown, Daugherty, Epps, Garcia, Gonzales-Gutierrez, Hamrick, Herod, Lieder, Lindsay, Lindstedt, Mabrey, Mauro, Michaelson Jenet, Ortiz, Ricks, Sharbini, Snyder, Story, Titone, Valdez, Velasco, Weinberg, Weissman, Woodrow, Young, McCluskie, English, Joseph, Kipp, McCormick, Willford;
also SENATOR(S) Winter F., Buckner, Cutter, Exum, Fields, Ginal, Hansen, Kolker, Marchman, Moreno, Priola, Rodriguez.

AN ACT

CONCERNING MEDICAID PRIOR AUTHORIZATION REQUESTS FOR A STEP-THERAPY EXCEPTION AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add 25.5-4-428** as follows:

25.5-4-428. Prior authorization for a step-therapy exception - rules - definition. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "STEP THERAPY" MEANS A PROTOCOL THAT REQUIRES A RECIPIENT TO USE A PRESCRIPTION DRUG OR SEQUENCE OF PRESCRIPTION DRUGS, OTHER THAN THE DRUG THAT THE RECIPIENT'S HEALTH-CARE PROVIDER RECOMMENDS FOR THE RECIPIENT'S TREATMENT, BEFORE THE STATE DEPARTMENT PROVIDES COVERAGE FOR THE RECOMMENDED PRESCRIPTION DRUG.

(2)(a) THE STATE DEPARTMENT SHALL REVIEW AND DETERMINE IF AN EXCEPTION TO STEP THERAPY IS GRANTED IF THE PRESCRIBING PROVIDER SUBMITS A PRIOR AUTHORIZATION REQUEST WITH JUSTIFICATION AND SUPPORTING CLINICAL DOCUMENTATION FOR TREATMENT OF A SERIOUS OR COMPLEX MEDICAL CONDITION, IF REQUIRED, THAT STATES:

(1) THE PROVIDER ATTESTS THAT THE REQUIRED PRESCRIPTION DRUG IS CONTRAINDICATED, OR WILL LIKELY CAUSE INTOLERABLE SIDE EFFECTS, A SIGNIFICANT DRUG-DRUG INTERACTION, OR AN ALLERGIC REACTION TO THE RECIPIENT;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(II) THE REQUIRED PRESCRIPTION DRUG LACKS EFFICACY BASED ON THE KNOWN CLINICAL CHARACTERISTICS OF THE RECIPIENT AND THE KNOWN CHARACTERISTICS OF THE PRESCRIPTION DRUG REGIMEN;

(III) THE RECIPIENT HAS TRIED THE REQUIRED PRESCRIPTION DRUG, AND THE USE OF THE PRESCRIPTION DRUG BY THE RECIPIENT WAS DISCONTINUED DUE TO INTOLERABLE SIDE EFFECTS, A SIGNIFICANT DRUG-DRUG INTERACTION, OR AN ALLERGIC REACTION; OR

(IV) THE RECIPIENT IS STABLE ON A PRESCRIPTION DRUG SELECTED BY THE PRESCRIBING PROVIDER FOR THE MEDICAL CONDITION.

(b) (I) EXCEPT AS PROVIDED IN SUBSECTION (2)(b)(II) OF THIS SECTION, THE STATE DEPARTMENT SHALL PROVIDE A RESPONSE TO A PRIOR AUTHORIZATION REQUEST FOR A STEP-THERAPY EXCEPTION WITHIN TWENTY-FOUR HOURS AFTER RECEIPT OF THE REQUEST.

(II) IF A PRIOR AUTHORIZATION REQUEST FOR A STEP-THERAPY EXCEPTION IS INCOMPLETE OR IF ADDITIONAL CLINICALLY RELEVANT INFORMATION IS REQUIRED, THE STATE DEPARTMENT SHALL NOTIFY THE PRESCRIBING PROVIDER WITHIN TWENTY-FOUR HOURS AFTER THE SUBMISSION OF THE REQUEST THAT THE REQUEST IS INCOMPLETE OR THAT ADDITIONAL CLINICALLY RELEVANT INFORMATION IS REQUIRED. THE STATE DEPARTMENT SHALL SPECIFY THE ADDITIONAL INFORMATION THAT IS REQUIRED IN ORDER TO CONSIDER THE PRIOR AUTHORIZATION REQUEST. IF THE STATE DEPARTMENT DOES NOT RECEIVE A RESPONSE WITHIN SEVENTY-TWO HOURS AFTER THE STATE DEPARTMENT'S REQUEST FOR ADDITIONAL INFORMATION, THE PRIOR AUTHORIZATION REQUEST IS DENIED. IF THE STATE DEPARTMENT RECEIVES A TIMELY RESPONSE FROM THE PROVIDER, THE STATE DEPARTMENT SHALL PROVIDE A RESPONSE WITHIN TWENTY-FOUR HOURS AFTER RECEIVING THE RESPONSE.

(c) IF THE PRIOR AUTHORIZATION REQUEST FOR A STEP-THERAPY EXCEPTION IS DENIED, THE STATE DEPARTMENT SHALL INFORM THE RECIPIENT IN WRITING THAT THE RECIPIENT HAS THE RIGHT TO APPEAL THE ADVERSE DETERMINATION PURSUANT TO STATE DEPARTMENT RULES.

(3) IF THE PRIOR AUTHORIZATION REQUEST FOR A STEP-THERAPY EXCEPTION REQUEST IS GRANTED, THE STATE DEPARTMENT SHALL AUTHORIZE COVERAGE FOR THE PRESCRIPTION DRUG PRESCRIBED BY THE RECIPIENT'S PRESCRIBING PROVIDER.

(4) THE STATE DEPARTMENT SHALL MAKE THE PRIOR AUTHORIZATION REQUIREMENTS FOR COVERAGE OF PRESCRIPTION DRUGS AND A DESCRIPTION OF THE STEP-THERAPY EXEMPTION PROCESS AVAILABLE ON THE STATE DEPARTMENT'S WEBSITE.

(5) THIS SECTION DOES NOT PROHIBIT:

(a) THE STATE DEPARTMENT FROM REQUIRING A RECIPIENT TO TRY A GENERIC EQUIVALENT OF A BRAND NAME DRUG, A BIOSIMILAR DRUG AS DEFINED IN 42 U.S.C. SEC. 262 (i)(2), OR AN INTERCHANGEABLE BIOLOGICAL PRODUCT AS DEFINED IN 42 U.S.C. SEC. 262 (i)(3), UNLESS SUCH A REQUIREMENT MEETS ANY OF THE CRITERIA

SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION FOR AN EXCEPTION TO STEP THERAPY AND A PRIOR AUTHORIZATION REQUEST IS GRANTED FOR THE REQUESTED DRUG;

(b) THE STATE DEPARTMENT FROM DENYING A PRIOR AUTHORIZATION REQUEST FOR A STEP-THERAPY EXCEPTION WHEN THE REQUEST DOES NOT MEET ONE OF THE CRITERIA SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION BASED ON THE JUSTIFICATION AND SUPPORTING CLINICAL DOCUMENTATION SUBMITTED BY THE PROVIDER, IF APPLICABLE; OR

(c) A PROVIDER FROM PRESCRIBING A DRUG THAT, IN THE PROVIDER'S CLINICAL JUDGMENT, IS DETERMINED TO BE MEDICALLY APPROPRIATE.

(6) THE STATE BOARD MAY PROMULGATE RULES TO IMPLEMENT THIS SECTION.

SECTION 2. Appropriation. (1) For the 2023-24 state fiscal year, \$56,250 is appropriated to the department of health care policy and financing. This appropriation is from the general fund. To implement this act, the department may use this appropriation for Medicaid management information system maintenance and projects.

(2) For the 2023-24 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$168,750 in federal funds for Medicaid management information system maintenance and projects to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds, which is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 1, 2023