SENATE, No. 1031



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED FEBRUARY 8, 2016

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Restricts health insurers from limiting access to pain medication.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning health benefits coverage for the treatment of pain and supplementing various parts of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. a. Notwithstanding any other provision of law to the contrary, every hospital service corporation contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1938, c.366 (C.17:48-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The hospital service corporation shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the hospital service corporation shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the hospital service corporation.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the hospital service corporation.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a hospital service corporation from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the contract, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the hospital service corporation or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all contracts in which the hospital service corporation has reserved the right to change the premium.

2. a. Notwithstanding any other provision of law to the contrary, every medical service corporation contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The medical service corporation shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the medical service corporation shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the medical service corporation.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the medical service corporation.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a medical service corporation from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the contract, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the medical service corporation or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all contracts in which the medical service corporation has reserved the right to change the premium.

3. a. Notwithstanding any other provision of law to the contrary, every health service corporation contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The health service corporation shall not require a covered person to try and fail on more than one pain medicationbefore providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the health service corporation shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the health service corporation.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the health service corporation.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a health service corporation from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the contract, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the health service corporation or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all contracts in which the health service corporation has reserved the right to change the premium.

4. a. Notwithstanding any other provision of law to the contrary, every individual health insurance policy that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to chapter 26 of Title 17B of the New Jersey Statutes, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the policy restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The insurer shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the insurer shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the insurer.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the insurer.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit an insurer from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the policy, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the insurer or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

5. a. Notwithstanding any other provision of law to the contrary, every group health insurance policy that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to chapter 27 of Title 17B of the New Jersey Statutes, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the policy restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The insurer shall not require a covered person to try and fail on more than one pain medicationbefore providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the insurer shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the insurer.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the insurer.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit an insurer from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the policy, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the insurer or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

6. a. Notwithstanding any other provision of law to the contrary, an individual health benefits plan that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, renewed, or approved for issuance or renewal in this State pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the health benefits plan restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The carrier shall not require a covered person to try and fail on more than one pain medicationbefore providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the carrier shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the carrier.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the carrier.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a carrier from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the health benefits plan, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the carrier or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to those health benefits plans in which the carrier has reserved the right to change the premium.

7. a. Notwithstanding any other provision of law to the contrary, a small employer health benefits plan that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, renewed, or approved for issuance or renewal in this State pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the health benefits plan restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The carrier shall not require a covered person to try and fail on more than one pain medicationbefore providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the carrier shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the carrier.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the carrier.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a carrier from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the health benefits plan, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the carrier or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to those health benefits plans in which the carrier has reserved the right to change the premium.

8. a. Notwithstanding any other provision of law to the contrary, a health maintenance organization enrollee agreement that provides coverage for the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the enrollee agreement restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The health maintenance organization shall not require a covered person to try and fail on more than one pain medicationbefore providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the health maintenance organization shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the health maintenance organization.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the health maintenance organization.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a health maintenance organization from charging a covered person a copayment or deductible for prescription drug coverage or from setting forth, in the enrollee agreement, limitations on maximum coverage of prescription drugs as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the health maintenance organization or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to those enrollee agreements in which the health maintenance organization has reserved the right to change the premium.

9. a. Notwithstanding any other provision of law to the contrary, the State Health Benefits Commission shall ensure that every contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs, which is purchased by the commission on or after the effective date of this act, shall provide coverage pursuant to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The contract shall not require a covered person to try and fail on more than one pain medicationbefore providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the contract shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the commission or its agent.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the commission or its agent.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit the contract from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the commission or its agent or to prohibit generic drug substitutions pursuant to law.

10. a. Notwithstanding any other provision of law to the contrary, the School Employees’ Health Benefits Commission shall ensure that every contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs, which is purchased by the commission on or after the effective date of this act, shall provide coverage pursuant to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The contract shall not require a covered person to try and fail on more than one pain medicationbefore providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the contract shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the commission or its agent.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the commission or its agent.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit the contract from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the commission or its agent or to prohibit generic drug substitutions pursuant to law.

11. This act shall take effect on the 90th day after enactment and shall apply to policies or contracts issued or renewed on or after the effective date.

STATEMENT

This bill requires certain health insurers, under every policy or contract that provides coverage for outpatient prescription drugs, to provide coverage for prescription drugs used to treat pain in accordance with its provisions. The bill’s provisions apply to the following insurers and programs that provide coverage for outpatient prescription drugs under a policy or contract: health, hospital and medical service corporations; commercial individual and group health insurers; health maintenance organizations; health benefits plans issued pursuant to the New Jersey Individual Health Coverage and Small Employer Health Benefits Programs; the State Health Benefits Program (SHBP) and the School Employees’ Health Benefits Program (SEHBP).

The bill provides that if the insurer or program, in its policy or contract, restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol, the duration of the step therapy or fail-first protocol is to be determined by the prescriber. The insurer or program may not require a covered person to try and fail on more than one pain medication before providing coverage for the medication that has been prescribed. Once a covered person has tried and failed on one pain medication, the insurer or program may no longer require prior authorization for coverage of pain medication for the person, and the prescriber may write a prescription for the appropriate pain medication. The prescriber is to note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this will suffice as prior authorization from the insurer or program. If a prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the insurer or program.

The bill provides that nothing in its provisions is to be construed to prohibit an insurer or program from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the policy or contract, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation, and further provides that nothing in the bill is to be construed to require coverage of prescription drugs that are not in the drug formulary of the insurer or program or to prohibit generic drug substitutions pursuant to law.