

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 337**

FINAL READING

Introduced by Kolterman, 24.

Read first time January 13, 2021

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to prescription drug coverage; to adopt the
- 2 Step-Therapy Reform Act; and to provide a duty for the Revisor of
- 3 Statutes.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 7 of this act shall be known and may be  
2 cited as the Step-Therapy Reform Act.

3           Sec. 2. For purposes of the Step-Therapy Reform Act:

4           (1) Clinical practice guidelines means a systematically developed  
5 statement to assist decisionmaking by health care providers and decisions  
6 by covered persons about appropriate health care for specific clinical  
7 circumstances and conditions;

8           (2) Clinical review criteria means the written screening procedures,  
9 decision abstracts, clinical protocols, and clinical practice guidelines  
10 used by a health carrier or utilization review organization to determine  
11 the medical necessity and appropriateness of health care services;

12           (3) Health carrier means an entity subject to the insurance laws and  
13 regulations of this state, or subject to the jurisdiction of the Director  
14 of Insurance, that contracts or offers to contract to provide, deliver,  
15 arrange for, pay for, or reimburse any of the costs of health care  
16 services, including a sickness and accident insurance company, a health  
17 maintenance organization, a nonprofit hospital and health service  
18 corporation, or any other entity providing a plan of health insurance,  
19 health benefits, or health care services. Health carrier does not include  
20 a managed care organization;

21           (4) Pharmaceutical sample means a unit of a prescription drug that  
22 is not intended to be sold and is intended to promote the sale of the  
23 drug;

24           (5) Step-therapy override exception means that a step-therapy  
25 protocol should be overridden in favor of coverage of the prescription  
26 drug selected by a health care provider within the applicable timeframes,  
27 based on a review of the request of the health care provider or covered  
28 person for an override, along with supporting rationale and  
29 documentation;

30           (6) Step-therapy protocol means a protocol, policy, or program that  
31 establishes the specific sequence in which prescription drugs for a

1 specified medical condition and medically appropriate for a particular  
2 covered person are covered under a pharmacy or medical benefit by a  
3 health carrier or a utilization review organization, including self-  
4 administered drugs and drugs administered by a health care provider; and

5 (7) Utilization review organization means an entity that conducts a  
6 utilization review other than a health carrier performing a review for  
7 its own health benefit plans.

8 Sec. 3. A health carrier or utilization review organization shall  
9 consider available recognized evidence-based and peer-reviewed clinical  
10 practice guidelines when establishing a step-therapy protocol. Upon  
11 written request of a covered person, a health carrier or utilization  
12 review organization shall provide any clinical review criteria applicable  
13 to a specific prescription drug covered by the health carrier or  
14 utilization review organization.

15 Sec. 4. When coverage of a prescription drug for the treatment of  
16 any medical condition is restricted for use by a health carrier or  
17 utilization review organization through the use of a step-therapy  
18 protocol, the prescribing health care provider and the covered person  
19 shall have access to a clear, readily accessible, and convenient process  
20 to request a step-therapy override exception. A health carrier or  
21 utilization review organization may use its existing medical exceptions  
22 process to satisfy this requirement. The process used shall be easily  
23 accessible on the Internet site of the health carrier or utilization  
24 review organization.

25 Sec. 5. (1) A step-therapy override exception shall be approved by  
26 a health carrier or utilization review organization if any of the  
27 following circumstances apply:

28 (a) The prescription drug required under the step-therapy protocol  
29 is contraindicated pursuant to the drug manufacturer's prescribing  
30 information for the drug or, due to a documented adverse event with a  
31 previous use or a documented medical condition, including a comorbid

1 condition, is likely to do any of the following:

2 (i) Cause an adverse reaction to the covered individual;

3 (ii) Decrease the ability of the covered individual to achieve or  
4 maintain reasonable functional ability in performing daily activities; or

5 (iii) Cause physical or mental harm to the covered individual;

6 (b) The prescription drug required under the step-therapy protocol  
7 is expected to be ineffective based on the known clinical characteristics  
8 of the covered person, such as the covered person's adherence to or  
9 compliance with the covered person's individual plan of care, and any of  
10 the following:

11 (i) The known characteristics of the prescription drug regimen as  
12 described in peer-reviewed literature or in the manufacturer's  
13 prescribing information for the drug;

14 (ii) The health care provider's medical judgment based on clinical  
15 practice guidelines or peer-reviewed journals; or

16 (iii) The covered person's documented experience with the  
17 prescription drug regimen;

18 (c) The covered person has had a trial of a therapeutically  
19 equivalent dose of the prescription drug under the step-therapy protocol  
20 while under the covered person's current or previous health benefit plan  
21 for a period of time to allow for a positive treatment outcome, and such  
22 prescription drug was discontinued by the covered person's health care  
23 provider due to lack of effectiveness; or

24 (d) The covered person is currently receiving a positive therapeutic  
25 outcome on a prescription drug selected by the covered person's health  
26 care provider for the medical condition under consideration while under  
27 the covered person's current or previous health benefit plan. Nothing in  
28 the Step-Therapy Reform Act shall prohibit the distribution of a  
29 pharmaceutical sample, except that the pharmaceutical sample may not be  
30 used to meet the requirements of this subdivision.

31 (2) Upon the approval of a step-therapy override exception, the

1 health carrier or utilization review organization shall authorize  
2 coverage for the prescription drug selected by the covered person's  
3 prescribing health care provider if the prescription drug is a covered  
4 prescription drug under the covered person's health benefit plan.

5 (3) Except in the case of an urgent care request, a health carrier  
6 or utilization review organization shall make a determination to approve  
7 or deny a request for a step-therapy override exception within five  
8 calendar days after receipt of complete, clinically relevant written  
9 documentation supporting a step-therapy override exception under  
10 subsection (1) of this section. In the case of an urgent care request, a  
11 health carrier or utilization review organization shall approve or deny a  
12 request for a step-therapy override exception within seventy-two hours  
13 after receipt of such documentation. If a request for a step-therapy  
14 override exception is incomplete or additional clinically relevant  
15 information is required, the health carrier or utilization review  
16 organization may request such information within the applicable time  
17 period provided in this section. Once the information is submitted, the  
18 applicable time period for approval or denial shall begin again. If a  
19 health carrier or utilization review organization fails to respond to the  
20 request for a step-therapy override exception within the applicable time,  
21 the step-therapy override exception shall be deemed granted.

22 (4) If a request for a step-therapy override exception is denied,  
23 the health carrier or utilization review organization shall provide the  
24 covered person or the covered person's authorized representative and the  
25 covered person's prescribing health care provider with the reason for the  
26 denial and information regarding the procedure to request external review  
27 of the denial pursuant to the Health Carrier External Review Act. Any  
28 denial of a request for a step-therapy override exception that is upheld  
29 on an internal appeal shall be considered a final adverse determination  
30 for purposes of the Health Carrier External Review Act and is eligible  
31 for a request for external review by a covered person or the covered

1 person's authorized representative pursuant to the Health Carrier  
2 External Review Act.

3 (5) This section shall not be construed to prevent:

4 (a) A health carrier or utilization review organization from  
5 requiring a pharmacist to effect substitutions of prescription drugs  
6 consistent with section 28-414.01, 38-28,111, or 71-2478;

7 (b) A health care provider from prescribing a prescription drug that  
8 is determined to be medically appropriate; or

9 (c) A health carrier or utilization review organization from  
10 requiring a covered person to try a prescription drug with the same  
11 generic name and demonstrated bioavailability or a biological product  
12 that is an interchangeable biological product pursuant to the Nebraska  
13 Drug Product Selection Act prior to providing coverage for the equivalent  
14 branded prescription drug.

15 Sec. 6. The Director of Insurance may adopt and promulgate rules  
16 and regulations necessary to enforce the Step-Therapy Reform Act.

17 Sec. 7. (1) The Step-Therapy Reform Act applies to all individual  
18 and group health insurance policies, contracts, and certificates issued  
19 by health carriers, self-funded nonfederal governmental plans, and state  
20 employee health plans offered by the State of Nebraska.

21 (2) The Step-Therapy Reform Act applies to any health insurance or  
22 health benefit plans delivered, issued for delivery, or renewed on or  
23 after January 1, 2022.

24 Sec. 8. The Revisor of Statutes shall assign sections 1 to 7 of  
25 this act to Chapter 44.