

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 337**

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

27           (5) Step-therapy protocol means a protocol, policy, or program that  
28 establishes the specific sequence in which prescription drugs for a  
29 specified medical condition and medically appropriate for a particular  
30 covered person are covered under a pharmacy or medical benefit by a  
31 health carrier or a utilization review organization, including self-

1 administered drugs and drugs administered by a health care provider; and  
2 (6) Utilization review organization means an entity that conducts a  
3 utilization review other than a health carrier performing a review for  
4 its own health benefit plans.

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

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

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

25 (a) The prescription drug required under the step-therapy protocol  
26 is contraindicated pursuant to the drug manufacturer's prescribing  
27 information for the drug or, due to a documented adverse event with a  
28 previous use or a documented medical condition, including a comorbid  
29 condition, is likely to do any of the following:

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

31 (ii) Decrease the ability of the covered individual to achieve or

1 maintain reasonable functional ability in performing daily activities; or  
2 (iii) Cause physical or mental harm to the covered individual;  
3 (b) The prescription drug required under the step-therapy protocol  
4 is expected to be ineffective based on the known clinical characteristics  
5 of the covered person, such as the covered person's adherence to or  
6 compliance with the covered person's individual plan of care, and any of  
7 the following:  
8 (i) The known characteristics of the prescription drug regimen as  
9 described in peer-reviewed literature or in the manufacturer's  
10 prescribing information for the drug;  
11 (ii) The health care provider's medical judgment based on clinical  
12 practice guidelines or peer-reviewed journals; or  
13 (iii) The covered person's documented experience with the  
14 prescription drug regimen;  
15 (c) The covered person has had a trial of a therapeutically  
16 equivalent dose of the prescription drug under the step-therapy protocol  
17 while under the covered person's current or previous health benefit plan  
18 for a period of time to allow for a positive treatment outcome, and such  
19 prescription drug was discontinued by the covered person's health care  
20 provider due to lack of effectiveness; or  
21 (d) The covered person is currently receiving a positive therapeutic  
22 outcome on a prescription drug selected by the covered person's health  
23 care provider for the medical condition under consideration while under  
24 the covered person's current or previous health benefit plan.  
25 (2) Upon the approval of a step-therapy override exception, the  
26 health carrier or utilization review organization shall authorize  
27 coverage for the prescription drug selected by the covered person's  
28 prescribing health care provider if the prescription drug is a covered  
29 prescription drug under the covered person's health benefit plan.  
30 (3) Except in the case of an urgent care request, a health carrier  
31 or utilization review organization shall make a determination to approve

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

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

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

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

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

3       (c) A health carrier or utilization review organization from  
4 requiring a covered person to try a prescription drug with the same  
5 generic name and demonstrated bioavailability or a biological product  
6 that is an interchangeable biological product pursuant to the Nebraska  
7 Drug Product Selection Act prior to providing coverage for the equivalent  
8 branded prescription drug.

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

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

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

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