LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: C.J. Dupont ₵
₵ 02-21-17 2:10 PM ₵

H.B. 266
1st Sub. (Buff)

Representative Eric K. Hutchings proposes the following substitute bill:

PHARMACEUTICAL STEP THERAPY

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends health insurance provisions in the Insurance Code.

Highlighted Provisions:

This bill:

- creates definitions;
- prohibits the use of step therapy for pharmaceuticals unless certain conditions are met;
- requires a health insurer to authorize bypass of a step drug when certain conditions are met; and
- addresses adverse benefit determinations.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

31a-22-645, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31a-22-645** is enacted to read:

31a-22-645. Step therapy.

(1) As used in this section:

(a) "AB-rated generic equivalent of a drug" means a drug that is therapeutically equivalent to another drug, as set forth in the latest edition of, or supplement to, the federal Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations.

(b) "Drug" means the same as that term is defined in Section 58-17b-102.

(c) "Health care provider" means a health care provider, as defined in Section 78B-3-403, with authority to prescribe a step drug.

(d) "Health insurer" means an insurer, as defined in Subsection 31A-22-634(1).

(e) "Hospice" means the same as that term is defined in Section 26-21-2.

(f) "Medically necessary" means appropriate, under the applicable standard of care:

(i) to preserve or improve health, life, or function;

(ii) to slow the deterioration of health, life, or function; or

(iii) for the early screening, prevention, evaluation, diagnosis, or treatment of a disease, condition, illness, or injury.

(g) "Step drug" means a drug described in Subsection (1)(h) that must be used before an insured's health benefit plan will pay for a drug ordered by the insured's health care provider.

(h) "Step therapy" means a fail-first protocol that requires an insured to use a drug, or several drugs in a particular order, before the insured's health benefit plan will pay for a drug ordered by the insured's health care provider.

(2) A health insurer may not offer a health benefit plan that includes step therapy unless the health insurer:

(a) notifies each insured covered by the plan of the process described in Subsections (3) through (7) for bypassing use of a step drug; and

(b) makes available on the health insurer's website forms for an insured to make a request to bypass use of a step drug.

(3) Except as provided in Subsection (5)(a), a health insurer shall authorize an insured to bypass use of one or more step drugs if, for each step drug to be bypassed, the insured Ĥ→ **or the insured's physician** ←Ĥ

submits to the health insurer information documenting to the satisfaction of the health insurer that one or more of the following conditions have been satisfied:

(a) the step drug:

(i) is contraindicated;

(ii) will likely cause an adverse reaction by the insured;

(iii) will likely cause physical or mental harm to the insured;

(iv) is expected to be ineffective, based on the known clinical characteristics of the insured and the known clinical characteristics of the step drug regimen;

(v) is not medically necessary; or

(vi) was used by the insured previously while the insured was covered by the health benefit plan, another health benefit plan, or no health benefit plan, and the use was discontinued due to an adverse event or a lack of efficacy, including diminished efficacy; or

(b) another drug belonging to the same class of drugs and having the same mechanism of action was used by the insured previously while the insured was covered by the health benefit plan, another health benefit plan, or no health benefit plan, and the use was discontinued due to an adverse event or a lack of efficacy, including diminished efficacy.

(4) Except as provided in Subsection (5)(a), a health insurer shall authorize an insured to bypass use of all step drugs if the insured submits to the health insurer information documenting that the insured has been admitted to hospice.

(5) (a) A health insurer is not required to authorize bypass of a step drug under Subsection (3) or (4) if the step drug is an AB-rated generic equivalent of a drug that would be covered by the health benefit plan if the bypass were authorized.

(b) An authorization to bypass use of one or more step drugs is not an authorization for coverage of a drug that is not otherwise covered by the health benefit plan.

(6) Within three business days of receipt of an insured's request to bypass use of a step drug, including receipt of all information necessary for the health insurer to determine whether at least one of the conditions under Subsection (3) has been satisfied or the insured has been admitted to hospice, the health insurer shall notify the insured of whether the request has been authorized.

(7) If an insured disagrees with a health insurer's determination made under Subsection (3) or (4), the insured may, in accordance with Section 31A-22-629, submit an adverse benefit

determination:

(a) to the insurer; or

(b) for independent review.

(8) This section may not be construed to limit a health care provider's authority to prescribe drugs.

(9) This section applies to a health benefit plan renewed or entered into on or after January 1, 2018.