

SENATE BILL 990

J5, J1, J4

4r3118
CF 4r3119

By: **Senator Lam**

Introduced and read first time: February 2, 2024

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program and Health Insurance – Step Therapy,**
3 **Fail–First Protocols, and Prior Authorization – Prescription Drugs to Treat**
4 **Serious Mental Illness**

5 FOR the purpose of prohibiting the Maryland Medical Assistance Program and certain
6 insurers, nonprofit health service plans, health maintenance organizations, and
7 managed care organizations from applying a prior authorization requirement, step
8 therapy protocol, or fail–first protocol for prescription drugs used to treat certain
9 mental illnesses; and generally relating to health insurance and coverage of
10 prescription drugs to treat serious mental illness.

11 BY adding to
12 Article – Health – General
13 Section 15–102.3(m) and 15–155
14 Annotated Code of Maryland
15 (2023 Replacement Volume)

16 BY repealing and reenacting, with amendments,
17 Article – Insurance
18 Section 15–142
19 Annotated Code of Maryland
20 (2017 Replacement Volume and 2023 Supplement)

21 BY adding to
22 Article – Insurance
23 Section 15–851.1
24 Annotated Code of Maryland
25 (2017 Replacement Volume and 2023 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
27 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Health – General

15–102.3.

(M) THE PROVISIONS OF §§ 15–142(E)(2) AND 15–851.1 OF THE INSURANCE ARTICLE APPLY TO MANAGED CARE ORGANIZATIONS.

15–155.

BEGINNING JULY 1, 2024, THE PROGRAM MAY NOT APPLY A PRIOR AUTHORIZATION REQUIREMENT, FAIL–FIRST PROTOCOL, OR STEP THERAPY PROTOCOL FOR A PRESCRIPTION DRUG USED TO TREAT AN ENROLLEE’S DIAGNOSIS OF:

(1) BIPOLAR DISORDER;

(2) SCHIZOPHRENIA;

(3) MAJOR DEPRESSION;

(4) POST–TRAUMATIC STRESS DISORDER; OR

(5) A MEDICATION–INDUCED MOVEMENT DISORDER ASSOCIATED WITH THE TREATMENT OF A SERIOUS MENTAL ILLNESS.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Insurance

15–142.

(a) (1) In this section the following words have the meanings indicated.

(2) “Step therapy drug” means a prescription drug or sequence of prescription drugs required to be used under a step therapy or fail–first protocol.

(3) “Step therapy exception request” means a request to override a step therapy or fail–first protocol.

(4) (i) “Step therapy or fail–first protocol” means a protocol established by an insurer, a nonprofit health service plan, or a health maintenance organization that requires a prescription drug or sequence of prescription drugs to be used by an insured or

1 an enrollee before a prescription drug ordered by a prescriber for the insured or the enrollee
2 is covered.

3 (ii) “Step therapy or fail–first protocol” includes a protocol that
4 meets the definition under subparagraph (i) of this paragraph regardless of the name, label,
5 or terminology used by the insurer, nonprofit health service plan, or health maintenance
6 organization to identify the protocol.

7 (5) “Supporting medical information” means:

8 (i) a paid claim from an entity subject to this section for an insured
9 or an enrollee;

10 (ii) a pharmacy record that documents that a prescription has been
11 filled and delivered to an insured or an enrollee, or a representative of an insured or an
12 enrollee; or

13 (iii) other information mutually agreed on by an entity subject to this
14 section and the prescriber of an insured or an enrollee.

15 (b) (1) This section applies to:

16 (i) insurers and nonprofit health service plans that provide hospital,
17 medical, or surgical benefits to individuals or groups on an expense–incurred basis under
18 health insurance policies or contracts that are issued or delivered in the State; and

19 (ii) health maintenance organizations that provide hospital,
20 medical, or surgical benefits to individuals or groups under contracts that are issued or
21 delivered in the State.

22 (2) An insurer, a nonprofit health service plan, or a health maintenance
23 organization that provides coverage for prescription drugs through a pharmacy benefits
24 manager is subject to the requirements of this section.

25 (c) An entity subject to this section may not impose a step therapy or fail–first
26 protocol on an insured or an enrollee if:

27 (1) the step therapy drug has not been approved by the U.S. Food and Drug
28 Administration for the medical condition being treated; or

29 (2) a prescriber provides supporting medical information to the entity that
30 a prescription drug covered by the entity:

31 (i) was ordered by a prescriber for the insured or enrollee within the
32 past 180 days; and

1 (ii) based on the professional judgment of the prescriber, was
2 effective in treating the insured's or enrollee's disease or medical condition.

3 (d) Subsection (c) of this section may not be construed to require coverage for a
4 prescription drug that is not:

5 (1) covered by the policy or contract of an entity subject to this section; or

6 (2) otherwise required by law to be covered.

7 (e) An entity subject to this section may not impose a step therapy or fail-first
8 protocol on an insured or an enrollee for a prescription drug approved by the U.S. Food and
9 Drug Administration if:

10 (1) (I) the prescription drug is used to treat the insured's or enrollee's
11 stage four advanced metastatic cancer; and

12 [(2)] (II) use of the prescription drug is:

13 [(i)] 1. consistent with the U.S. Food and Drug
14 Administration-approved indication or the National Comprehensive Cancer Network
15 Drugs & Biologics Compendium indication for the treatment of stage four advanced
16 metastatic cancer; and

17 [(ii)] 2. supported by peer-reviewed medical literature; OR

18 (2) THE PRESCRIPTION DRUG IS USED TO TREAT THE INSURED'S OR
19 ENROLLEE'S DIAGNOSIS OF:

20 (I) BIPOLAR DISORDER;

21 (II) SCHIZOPHRENIA;

22 (III) MAJOR DEPRESSION;

23 (IV) POST-TRAUMATIC STRESS DISORDER; OR

24 (V) A MEDICATION-INDUCED MOVEMENT DISORDER
25 ASSOCIATED WITH THE TREATMENT OF A SERIOUS MENTAL ILLNESS.

26 (f) (1) An entity subject to this section shall establish a process for requesting
27 an exception to a step therapy or fail-first protocol that is:

1 (i) clearly described, including the specific information and
2 documentation, if needed, that must be submitted by the prescriber to be considered a
3 complete step therapy exception request;

4 (ii) easily accessible to the prescriber; and

5 (iii) posted on the entity's website.

6 (2) A step therapy exception request shall be granted if, based on the
7 professional judgment of the prescriber and any information and documentation required
8 under paragraph (1)(i) of this subsection:

9 (i) the step therapy drug is contraindicated or will likely cause an
10 adverse reaction to the insured or enrollee;

11 (ii) the step therapy drug is expected to be ineffective based on the
12 known clinical characteristics of the insured or enrollee and the known characteristics of
13 the prescription drug regimen;

14 (iii) the insured or enrollee is stable on a prescription drug prescribed
15 for the medical condition under consideration while covered under the policy or contract of
16 the entity or under a previous source of coverage; or

17 (iv) while covered under the policy or contract of the entity or a
18 previous source of coverage, the insured or enrollee has tried a prescription drug that:

19 1. is in the same pharmacologic class or has the same
20 mechanism of action as the step therapy drug; and

21 2. was discontinued by the prescriber due to lack of efficacy
22 or effectiveness, diminished effect, or an adverse event.

23 (3) On granting a step therapy exception request, an entity subject to this
24 section shall authorize coverage for the prescription drug ordered by the prescriber for an
25 insured or enrollee.

26 (4) An enrollee or insured may appeal a step therapy exception request
27 denial in accordance with Subtitle 10A or Subtitle 10B of this title.

28 (5) This subsection may not be construed to:

29 (i) prevent:

30 1. an entity subject to this section from requiring an insured
31 or enrollee to try an AB-rated generic equivalent or interchangeable biological product
32 before providing coverage for the equivalent branded prescription drug; or

1 2. a health care provider from prescribing a prescription
2 drug that is determined to be medically appropriate; or

3 (ii) require an entity subject to this section to provide coverage for a
4 prescription drug that is not covered by a policy or contract of the entity.

5 (6) An entity subject to this section may use an existing step therapy
6 exception process that satisfies the requirements under this subsection.

7 **15-851.1.**

8 **(A) (1) THIS SECTION APPLIES TO:**

9 **(I) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT**
10 **PROVIDE COVERAGE FOR PRESCRIPTION DRUGS UNDER INDIVIDUAL, GROUP, OR**
11 **BLANKET HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE ISSUED OR**
12 **DELIVERED IN THE STATE; AND**

13 **(II) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE**
14 **COVERAGE FOR PRESCRIPTION DRUGS UNDER INDIVIDUAL OR GROUP CONTRACTS**
15 **THAT ARE ISSUED OR DELIVERED IN THE STATE.**

16 **(2) AN INSURER, A NONPROFIT HEALTH SERVICE PLAN, OR A HEALTH**
17 **MAINTENANCE ORGANIZATION THAT PROVIDES COVERAGE FOR PRESCRIPTION**
18 **DRUGS THROUGH A PHARMACY BENEFITS MANAGER IS SUBJECT TO THE**
19 **REQUIREMENTS OF THIS SECTION.**

20 **(B) AN ENTITY SUBJECT TO THIS SECTION MAY NOT APPLY A PRIOR**
21 **AUTHORIZATION REQUIREMENT FOR A PRESCRIPTION DRUG USED TO TREAT THE**
22 **INSURED'S OR ENROLLEE'S DIAGNOSIS OF:**

23 **(1) BIPOLAR DISORDER;**

24 **(2) SCHIZOPHRENIA;**

25 **(3) MAJOR DEPRESSION;**

26 **(4) POST-TRAUMATIC STRESS DISORDER; OR**

27 **(5) A MEDICATION-INDUCED MOVEMENT DISORDER ASSOCIATED**
28 **WITH THE TREATMENT OF A SERIOUS MENTAL ILLNESS.**

29 SECTION 3. AND BE IT FURTHER ENACTED, That:

1 (a) On or before January 31, 2026, and each January 1 thereafter through 2030,
2 the Maryland Department of Health shall report to the Department of Legislative Services
3 on any cost increase to the Maryland Medical Assistance Program from the immediately
4 preceding fiscal year that results from the implementation of Section 1 of this Act.

5 (b) On or before April 30 of the year in which a report is submitted under
6 subsection (a) of this section, the Department of Legislative Services shall determine, based
7 on the report, whether the implementation of Section 1 of this Act resulted in a cost increase
8 to the Maryland Medical Assistance Program of more than \$2,000,000 from the
9 immediately preceding fiscal year.

10 (c) If the Department of Legislative Services determines that the implementation
11 of Section 1 of this Act resulted in a cost increase to the Maryland Medical Assistance
12 Program of more than \$2,000,000 from the immediately preceding fiscal year, with no
13 further action required by the General Assembly, at the end of April 30 of the year the
14 determination is made, Section 1 of this Act shall be abrogated and of no further force and
15 effect.

16 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
17 apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the
18 State on or after January 1, 2025.

19 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
20 effect January 1, 2025.

21 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section
22 5 of this Act, this Act shall take effect July 1, 2024.