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May 10, 2021

Hon. Steven Sweeney
New Jersey Senate
State of New Jersey
Trenton, NJ 08625

Dear Senate President Sweeney,

I am writing to respectfully request your support for S3051/A4815, legislation to reform the practice of step therapy in New Jersey. This legislation would ensure that when step therapy is used in New Jersey it is safe for patients, clinically grounded, and transparent to patients and health care providers.

Step therapy policies, also known as fail first, are used by health insurers to force patients to try medications that insurance companies choose, requiring the patient to “fail first” before gaining access to the medicine originally prescribed by their health care provider. This insurance practice undermines a doctor’s ability to appropriately treat patients with serious diseases and can greatly impede patient recovery.

Numerous New Jersey patients and health care providers have come forward to share their stories of delays in care, unnecessary suffering, and mental and financial stress due to step therapy. Stories like that of Liz Parlett Butcher and her diabetic son Shane of Egg Harbor Township, 7-year old Kinsley Geurds of Pennington battling a rare disease, or 22-year old Emma Frost suffering from Uveitis have brought the issue of step therapy to the attention of patient and provider advocacy groups and policymakers alike.

Step therapy policies are commonly found in small and large group commercial plans, individual plans found on the New Jersey individual insurance market as well as ERISA, Medicaid, and state employee plans. Attached you will find some examples of the use of step therapy in New Jersey regulated health insurance plans.

A search of New Jersey regulated commercial plans conducted between 3/31/2021-4/6/2021 found numerous examples of step therapy requirements involving a variety of different drug classes & categories including: antineoplastics, central nervous system agents – analgesics, opiates, and gastrointestinal drugs – antiemetics, 5ht3 receptor antagonists.

While many plans refer to their requirements as a request for “prior authorization,” when you look closely at the details and examine the prior authorization forms you’ll see that there are a series of questions asking about the patient’s failure on other drugs. Some plans are more explicit than others in saying a patient must have failed on one drug before prior authorization will be given for the drugs requested. Others are less obvious but ultimately have the same result. It’s also important to note that

many health insurance carriers and plans utilize step therapy protocols and this should not be considered an exhaustive list.

Here are a few examples of New Jersey regulated commercial plans in the individual market with step therapy protocols.

1. **Insurer A** requires patients to complete a prior authorization form that indicates there is a step therapy requirement for antineoplastics (also called anticancer, chemotherapy, chemo, cytotoxic). On the form patients are asked in the Patient Treatment History section if the patient had an inadequate response to or inability to tolerate other medications.
2. **Insurer B** requires patients to complete a prior authorization form that indicates there is a step therapy requirement for many different types of self-administered oncology drugs. The form asks if the patient has had an inadequate response to other oncology drugs.
3. **Insurer C** states in their clinical guidelines on their main website that for all commercial plans "Approval for non-preferred medications may require that the member has a contraindication to the preferred medication(s); has tried and failed the preferred medication(s); had an inadequate response to the preferred medication(s); or had an intolerable adverse event with the preferred medication(s)." This is the definition of step therapy.

Many small group plans regulated by New Jersey also require step therapy before approving certain drugs. Some examples include:

1. **Insurer A** requires patients to complete a prior authorization form that indicates there is a step therapy requirement for most Select plans. For example, the prior authorization form for immune modulating drugs asks for every drug type if the patient has had an insufficient response to preferred drugs.
2. **Insurer B** explicitly states that their formulary applies to both individual and group plans. This would mean that the step therapy requirement identified in the individual market would also apply to the small group market.
3. **Insurer C** offers off-exchange Small Group Plans. We chose a bronze plan at random and found that the corresponding "Summary of Benefits and Coverage" document indicates that "Preauthorization/step therapy may be required. If you don't get preauthorization payment for care may be denied." The prior authorization form used across all Insurer C plans has clear evidence of step therapy.

As you can see, the practice of step therapy is occurring in New Jersey and needs to be reformed. The practice of step therapy has grown increasingly difficult, causing many New Jerseyans with chronic diseases to suffer lengthy delays in access to the right treatment, which could result in possible irreversible progression of disease and adverse effects. This may ultimately lead to increases in unnecessary health care costs associated with additional provider visits, ER visits, hospitalizations, and other costs.

While New Jersey may only reform step therapy policies included in state regulated plans, millions of New Jerseyans would stand to benefit from New Jersey establishing in law protections against step therapy. Reforming step therapy is critical to improving access to care in New Jersey.

To ensure that step therapy practices in all state regulated plans balance cost containment with patient needs New Jersey should once and for all establish in law common-sense protocols to govern the step therapy practice in New Jersey. A4815/S3051 will accomplish this goal.

Specifically, the legislation will:

1. Ensure that step therapy protocols are based on widely accepted medical and clinical practice guidelines.
2. Create a clear and expeditious process to request a medical exception and require a response by the patient's health plan within 72 hours for non-emergency and 24 hours for emergency situations; and
3. Provide certain circumstances for a patient to override the step therapy protocol when the drug required under the step therapy protocol:
 - Is contraindicated or will likely cause an adverse reaction of physical or mental harm;
 - Is expected to be ineffective; was previously tried and discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event;
 - Is not in the best interest of the patient based on medical necessity; or
 - If the patient is currently stable on a medication prescribed by their healthcare provider
4. Create appropriate exceptions to step therapy to improve patient care, reduce unnecessary treatments, and ultimately reduce health care costs by returning prescription decision-making back to health care providers and their patients.

Living with Arthritis, Autoimmune Disorders, Cancer, Crohn's and Colitis, Diabetes, Eczema, Epilepsy, Heart Disease, HIV/AIDS, Mental Illness, Multiple Sclerosis, Psoriasis, or other diseases and chronic conditions is hard enough.

It is not enough for the State of New Jersey to say it discourages insurers from using step therapy yet allow the practice to continue unimpeded under the guise of prior authorization. Only a clear and concise step therapy reform law will ensure that patients get the right medicine at the right time. It is time for step therapy reform in New Jersey.

We respectfully request that you support A4815/S3051.

Sincerely,



Michael Davoli
New York City & New Jersey Government Relations Director
American Cancer Society Cancer Action Network

CC:

Craig Coughlin, Speaker, New Jersey General Assembly
Herb Conaway, Assembly member, New Jersey General Assembly
Loretta Weinberg, Majority Leader, New Jersey Senate
Thomas H. Kean Jr., Republican Leader, New Jersey Senate
Nellie Pou, Senator & Chairperson, New Jersey Senate Commerce Committee
Joseph Vitale, Senator, New Jersey Senate