Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

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Senator Stack

SYNOPSIS
Restricts health insurers from limiting access to pain medication.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 1/14/2014)
AN ACT concerning health benefits coverage for the treatment of pain and supplementing various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. Notwithstanding any other provision of law to the contrary, every hospital service corporation contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1938, c.366 (C.17:48-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

   (1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

   (2) The hospital service corporation shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

   (3) Once a covered person has tried and failed on one pain medication, the hospital service corporation shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the hospital service corporation.

   (4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the hospital service corporation.

b. As used in this section:

   “Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

   “Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a hospital service corporation from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the contract, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.
d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the hospital service corporation or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all contracts in which the hospital service corporation has reserved the right to change the premium.

2. a. Notwithstanding any other provision of law to the contrary, every medical service corporation contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The medical service corporation shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the medical service corporation shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the medical service corporation.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the medical service corporation.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a medical service corporation from charging a covered person a copayment or deductible for prescription drug benefits or from
setting forth, in the contract, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the medical service corporation or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all contracts in which the medical service corporation has reserved the right to change the premium.

3. a. Notwithstanding any other provision of law to the contrary, every health service corporation contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

   (1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

   (2) The health service corporation shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

   (3) Once a covered person has tried and failed on one pain medication, the health service corporation shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the health service corporation.

   (4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the health service corporation.

b. As used in this section:

   “Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

   “Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a health
service corporation from charging a covered person a copayment or
deductible for prescription drug benefits or from setting forth, in the
contract, limitations on maximum coverage of prescription drug
benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require
coverage of prescription drugs that are not in the drug formulary of
the health service corporation or to prohibit generic drug
substitutions pursuant to law.

e. The provisions of this section shall apply to all contracts in
which the health service corporation has reserved the right to
change the premium.

4. a. Notwithstanding any other provision of law to the
contrary, every individual health insurance policy that provides
benefits for expenses incurred in the purchase of outpatient
prescription drugs and is delivered, issued, executed, or renewed in
this State pursuant to chapter 26 of Title 17B of the New Jersey
Statutes, or approved for issuance or renewal in this State by the
Commissioner of Banking and Insurance, on or after the effective
date of this act, shall be subject to the provisions of this section if
the policy restricts coverage for medications for the treatment of
pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be
determined by the prescriber.

(2) The insurer shall not require a covered person to try and fail
on more than one pain medication before providing coverage to the
covered person for the pain medication, including a generic drug
product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain
medication, the insurer shall no longer require prior authorization
for coverage of pain medication for the covered person, and the
prescriber may write the prescription for the appropriate pain
medication. The prescriber shall note in the covered person’s
medical record that the person tried and failed on the step therapy or
fail-first protocol, and this shall suffice as prior authorization from
the insurer.

(4) When the prescriber notes on the prescription that the step
therapy or fail-first protocols have been met, a pharmacist may
process the prescription without additional communication with the
insurer.

b. As used in this section:

“Generic drug product” means a drug product that is approved
and designated by the federal Food and Drug Administration as a
therapeutic equivalent for a reference listed drug product, including
a drug product listed in the New Jersey Generic Formulary by the
Drug Utilization Review Council pursuant to P.L.1977, c.240
(C.24:6E-1 et al.).
“Prescriber” means a licensed health care professional who is
authorized to prescribe the medication pursuant to State law.
c. Nothing in this section shall be construed to prohibit an
insurer from charging a covered person a copayment or deductible
for prescription drug benefits or from setting forth, in the policy,
limitations on maximum coverage of prescription drug benefits as
permitted under law or regulation.
d. Nothing in this section shall be construed to require
coverage of prescription drugs that are not in the drug formulary of
the insurer or to prohibit generic drug substitutions pursuant to law.
e. The provisions of this section shall apply to all policies in
which the insurer has reserved the right to change the premium.

5. a. Notwithstanding any other provision of law to the
contrary, every group health insurance policy that provides benefits
for expenses incurred in the purchase of outpatient prescription
drugs and is delivered, issued, executed, or renewed in this State
pursuant to chapter 27 of Title 17B of the New Jersey Statutes, or
approved for issuance or renewal in this State by the Commissioner
of Banking and Insurance, on or after the effective date of this act,
shall be subject to the provisions of this section if the policy
restricts coverage for medications for the treatment of pain pursuant
to a step therapy or fail-first protocol.

   (1) The duration of the step therapy or fail-first protocol shall be
determined by the prescriber.
   (2) The insurer shall not require a covered person to try and fail
on more than one pain medication before providing coverage to the
covered person for the pain medication, including a generic drug
product, which has been prescribed.
   (3) Once a covered person has tried and failed on one pain
medication, the insurer shall no longer require prior authorization
for coverage of pain medication for the covered person, and the
prescriber may write the prescription for the appropriate pain
medication. The prescriber shall note in the covered person’s
medical record that the person tried and failed on the step therapy or
fail-first protocol, and this shall suffice as prior authorization from
the insurer.
   (4) When the prescriber notes on the prescription that the step
therapy or fail-first protocols have been met, a pharmacist may
process the prescription without additional communication with the
insurer.

b. As used in this section:
“Generic drug product” means a drug product that is approved
and designated by the federal Food and Drug Administration as a
therapeutic equivalent for a reference listed drug product, including
a drug product listed in the New Jersey Generic Formulary by the
Drug Utilization Review Council pursuant to P.L.1977, c.240
(C.24:6E-1 et al.).
“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit an insurer from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the policy, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the insurer or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

6. a. Notwithstanding any other provision of law to the contrary, an individual health benefits plan that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, renewed, or approved for issuance or renewal in this State pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the health benefits plan restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

   (1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

   (2) The carrier shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

   (3) Once a covered person has tried and failed on one pain medication, the carrier shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the carrier.

   (4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the carrier.

b. As used in this section:

   “Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a carrier from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the health benefits plan, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the carrier or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to those health benefits plans in which the carrier has reserved the right to change the premium.

7. a. Notwithstanding any other provision of law to the contrary, a small employer health benefits plan that provides benefits for expenses incurred in the purchase of outpatient prescription drugs and is delivered, issued, executed, renewed, or approved for issuance or renewal in this State pursuant to P.L. 1992, c.162 (C.17B:27A-17 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the health benefits plan restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The carrier shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the carrier shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the carrier.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the carrier.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a
therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a carrier from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the health benefits plan, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the carrier or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to those health benefits plans in which the carrier has reserved the right to change the premium.

8. a. Notwithstanding any other provision of law to the contrary, a health maintenance organization enrollee agreement that provides coverage for the purchase of outpatient prescription drugs and is delivered, issued, executed, or renewed in this State pursuant to P.L.1973, c.337 (C.26:26J-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of this act, shall be subject to the provisions of this section if the enrollee agreement restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

   (1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

   (2) The health maintenance organization shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

   (3) Once a covered person has tried and failed on one pain medication, the health maintenance organization shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the health maintenance organization.

   (4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the health maintenance organization.

b. As used in this section:
“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit a health maintenance organization from charging a covered person a copayment or deductible for prescription drug coverage or from setting forth, in the enrollee agreement, limitations on maximum coverage of prescription drugs as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the health maintenance organization or to prohibit generic drug substitutions pursuant to law.

e. The provisions of this section shall apply to those enrollee agreements in which the health maintenance organization has reserved the right to change the premium.

9. a. Notwithstanding any other provision of law to the contrary, the State Health Benefits Commission shall ensure that every contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs, which is purchased by the commission on or after the effective date of this act, shall provide coverage pursuant to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The contract shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the contract shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the commission or its agent.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the commission or its agent.

b. As used in this section:
“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

Nothing in this section shall be construed to prohibit the contract from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth limitations on maximum coverage of prescription drug benefits as permitted under law or regulation.

d. Nothing in this section shall be construed to require coverage of prescription drugs that are not in the drug formulary of the commission or its agent or to prohibit generic drug substitutions pursuant to law.

10. a. Notwithstanding any other provision of law to the contrary, the School Employees’ Health Benefits Commission shall ensure that every contract that provides benefits for expenses incurred in the purchase of outpatient prescription drugs, which is purchased by the commission on or after the effective date of this act, shall provide coverage pursuant to the provisions of this section if the contract restricts coverage for medications for the treatment of pain pursuant to a step therapy or fail-first protocol.

(1) The duration of the step therapy or fail-first protocol shall be determined by the prescriber.

(2) The contract shall not require a covered person to try and fail on more than one pain medication before providing coverage to the covered person for the pain medication, including a generic drug product, which has been prescribed.

(3) Once a covered person has tried and failed on one pain medication, the contract shall no longer require prior authorization for coverage of pain medication for the covered person, and the prescriber may write the prescription for the appropriate pain medication. The prescriber shall note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this shall suffice as prior authorization from the commission or its agent.

(4) When the prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the commission or its agent.

b. As used in this section:

“Generic drug product” means a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including
a drug product listed in the New Jersey Generic Formulary by the
Drug Utilization Review Council pursuant to P.L.1977, c.240
(C.24:6E-1 et al.).

“Prescriber” means a licensed health care professional who is
authorized to prescribe the medication pursuant to State law.

c. Nothing in this section shall be construed to prohibit the
contract from charging a covered person a copayment or deductible
for prescription drug benefits or from setting forth limitations on
maximum coverage of prescription drug benefits as permitted under
law or regulation.

d. Nothing in this section shall be construed to require
coverage of prescription drugs that are not in the drug formulary of
the commission or its agent or to prohibit generic drug substitutions
pursuant to law.

11. This act shall take effect on the 90th day after enactment and
shall apply to policies or contracts issued or renewed on or after the
effective date.

STATEMENT

This bill requires certain health insurers, under every policy or
contract that provides coverage for outpatient prescription drugs, to
provide coverage for prescription drugs used to treat pain in
accordance with its provisions. The bill’s provisions apply to the
following insurers and programs that provide coverage for
outpatient prescription drugs under a policy or contract: health,
hospital and medical service corporations; commercial individual
and group health insurers; health maintenance organizations; health
benefits plans issued pursuant to the New Jersey Individual Health
Coverage and Small Employer Health Benefits Programs; the State
Health Benefits Program (SHBP) and the School Employees’
Health Benefits Program (SEHBP).

The bill provides that if the insurer or program, in its policy or
contract, restricts coverage for medications for the treatment of pain
pursuant to a step therapy or fail-first protocol:

- The duration of the step therapy or fail-first protocol is to be
determined by the prescriber.
- The insurer or program will not require a covered person to try
and fail on more than one pain medication before providing
coverage to the covered person for the pain medication,
including a generic drug product, which has been prescribed.
- Once a covered person has tried and failed on one pain
medication, the insurer or program will no longer require
prior authorization for coverage of pain medication for the
covered person, and the prescriber may write the
prescription for the appropriate pain medication. The
prescriber is to note in the covered person’s medical record that the person tried and failed on the step therapy or fail-first protocol, and this is to suffice as prior authorization from the insurer or program.

- If a prescriber notes on the prescription that the step therapy or fail-first protocols have been met, a pharmacist may process the prescription without additional communication with the insurer or program.

The bill defines:

“generic drug product” to mean a drug product that is approved and designated by the federal Food and Drug Administration as a therapeutic equivalent for a reference listed drug product, including a drug product listed in the New Jersey Generic Formulary by the Drug Utilization Review Council pursuant to P.L.1977, c.240 (C.24:6E-1 et al.); and

“prescriber” to mean a licensed health care professional who is authorized to prescribe the medication pursuant to State law.

The bill provides that nothing in the bill is to be construed to prohibit an insurer or program from charging a covered person a copayment or deductible for prescription drug benefits or from setting forth, in the policy or contract, limitations on maximum coverage of prescription drug benefits as permitted under law or regulation, and further provides that nothing in the bill is to be construed to require coverage of prescription drugs that are not in the drug formulary of the insurer or program or to prohibit generic drug substitutions pursuant to law.

The bill takes effect on the 90th day after enactment and applies to policies or contracts issued or renewed on or after the effective date.