Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2290

Introduced by

Senators J. Lee, Anderson, Hogan

Representatives Dockter, Westlind

A BILL for an Act to amend and reenact section 50-24.6-04 of the North Dakota Century Code, relating to authorization of a Medicaid step therapy program based on the Medicare part B step therapy program; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.6-04 of the North Dakota Century Code is amended and reenacted as follows:

50-24.6-04. Prior authorization program.

1. The department shall develop and implement a prior authorization program that meets the requirements of 42 U.S.C. 1396r-8(d) to determine coverage of drug products ~~when~~if a medical assistance recipient's health care provider prescribes a drug that is identified as requiring prior authorization. Authorization must be granted for provision of the drug if:
   a. The drug not requiring prior authorization has not been effective, or with reasonable certainty is not expected to be effective, in treating the recipient's condition;
   b. The drug not requiring prior authorization causes or is reasonably expected to cause adverse or harmful reactions to the health of the recipient; or
   c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.
2. For ~~any~~a drug placed on the prior authorization program, the department shall provide medical and clinical criteria, cost information, and utilization data to the drug use review board for review and consideration. The board may consider department data

and information from other sources to make a decision about placement of the drug on prior authorization.

3. a. For individuals twenty-one years of age and older, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, or generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, the department may not prior authorize the following medication classes:
   (1) Antipsychotics;
   (2) Antidepressants;
   (3) Anticonvulsants;
   (4) Antiretrovirals, for the treatment of human immunodeficiency virus; and
   (5) ~~Antineoplastic agents, for the treatment of cancer; and~~
   ~~(6)~~ Stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder.

   b. For individuals under twenty-one years of age, except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert, brand name drugs with a generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, or generic drugs with a brand name equivalent drug for which the cost to the state postrebate is less than the generic drug, the department may not prior authorize the following medication classes:
   (1) Antipsychotics;
   (2) Antidepressants;
   (3) Anticonvulsants;
   (4) Antiretrovirals, for the treatment of human immunodeficiency virus; and
   (5) ~~Antineoplastic agents, for the treatment of cancer; and~~
   ~~(6)~~ Stimulant medication used for the treatment of attention deficit hyperactivity disorder.

c. The restrictions of subdivision b do not apply for individuals under twenty-one years of age, who have five or more concurrent prescriptions for psychotropic medications.

d. Prior authorization for individuals under twenty-one years of age is required for five or more concurrent prescriptions for antipsychotics, antidepressants, anticonvulsants, benzodiazepines, mood stabilizers, sedative, hypnotics, or medications used for the treatment of attention deficit hyperactivity disorder. The department shall grant authorization to exceed the limits after a prescriber requesting authorization consults with a board certified pediatric psychiatrist approved by the department.

4. The prior authorization program may not prior authorize antineoplastic agents for the treatment of cancer, except through step therapy. If the department implements step therapy under this subsection:

a. Step therapy is limited to new prescriptions or administrations and may not disrupt ongoing therapies.

b. The department shall provide a prescriber an opportunity to submit a request for an expedited exception if the provider believes it is necessary for the recipient to have direct access to a drug that otherwise would be available only after trying an alternative drug. Notwithstanding section 50-24.6-07 and chapter 28-32, the department shall provide an expedited reconsideration process and the office of administrative hearings shall provide an expedited administrative appeal process for step therapy determinations.

c. In establishing a prior authorization step therapy program, the department shall model the program on step therapy allowed under Medicare part B plans and the program must comply with the requirements of 42 U.S.C. 1396r-8.

5. The department may use contractors to collect and analyze the documentation required under this section and to facilitate the prior authorization program.

~~5.~~6. The department shall consult with the board in the course of adopting rules to implement the prior authorization program. The rules must:

a. Establish policies and procedures necessary to implement the prior authorization program.

b. Develop a process that allows prescribers to furnish documentation required to obtain approval for a drug without interfering with patient care activities.

c. Allow the board to establish panels of physicians and pharmacists which provide expert guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

~~6.~~7. The department may negotiate additional rebates from drug manufacturers to supplement the rebates required by federal law governing the medical assistance program. Additionally, the department may join a multistate supplemental drug rebate pool, and if the department negotiates additional rebates outside this pool, any other manufacturer must be allowed to match those rebates.

SECTION 2. CONTINGENT EFFECTIVE DATE. Section 1 of this Act becomes effective on the date the executive director of the department of human services certifies to the legislative council a Medicare advantage plan operating in the state has implemented a prior authorization step therapy program protocol for Medicare part B.