



General Assembly

January Session, 2019

Committee Bill No. 37

LCO No. 5682



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Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:
(INS)

**AN ACT REQUIRING HEALTH INSURANCE COVERAGE OF A
PRESCRIBED DRUG DURING ADVERSE DETERMINATION REVIEWS
AND EXTERNAL REVIEW PROCESSES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 38a-591d of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *January 1, 2020*):

4 (b) With respect to a nonurgent care request:

5 (1) (A) For a prospective or concurrent review request, a health
6 carrier shall make a determination within a reasonable period of time
7 appropriate to the covered person's medical condition, but not later
8 than fifteen calendar days after the date the health carrier receives such
9 request, and shall notify the covered person and, if applicable, the
10 covered person's authorized representative of such determination,
11 whether or not the carrier certifies the provision of the benefit.

12 (B) If the review under subparagraph (A) of this subdivision is a
13 review of a grievance involving a concurrent review request, pursuant
14 to 45 CFR 147.136, as amended from time to time, the treatment shall

15 be continued without liability to the covered person until the covered
16 person has been notified of the review decision.

17 (C) (i) Notwithstanding subparagraph (B) of this subdivision, if a
18 covered person or the covered person's authorized representative files
19 any grievance or requests any review of an adverse determination
20 pursuant to this section relating to the dispensation of a drug, other
21 than a schedule II or III controlled substance, prescribed by a licensed
22 participating provider, the health carrier shall issue immediate
23 electronic authorization to the covered person's pharmacy to dispense
24 a temporary supply of the drug sufficient for the duration of the
25 grievance or review. The authorization shall include confirmation of
26 the availability of payment for such supply of such drug.

27 (ii) Not later than twenty-four hours after the health carrier has
28 issued such authorization to the pharmacy and prior to the pharmacy's
29 dispensation of such drug, such health carrier shall confirm with the
30 licensed participating provider the provider's concurrence with the
31 dispensing of such temporary supply of such drug. If such licensed
32 participating provider does not concur, the health carrier shall cancel
33 such authorization.

34 (iii) The provisions of this subparagraph shall not apply to a
35 grievance or review of an adverse determination under this section
36 concerning the substitution of a generic drug or another brand name
37 drug for a prescribed brand name drug unless the prescribing licensed
38 participating provider has specified that there shall be no substitution
39 for the specified brand name drug.

40 (2) For a retrospective review request, a health carrier shall make a
41 determination within a reasonable period of time, but not later than
42 thirty calendar days after the date the health carrier receives such
43 request.

44 (3) The time periods specified in subdivisions (1) and (2) of this
45 subsection may be extended once by the health carrier for up to fifteen

46 calendar days, provided the health carrier:

47 (A) Determines that an extension is necessary due to circumstances
48 beyond the health carrier's control; and

49 (B) Notifies the covered person and, if applicable, the covered
50 person's authorized representative prior to the expiration of the initial
51 time period, of the circumstances requiring the extension of time and
52 the date by which the health carrier expects to make a determination.

53 (4) (A) If the extension pursuant to subdivision (3) of this subsection
54 is necessary due to the failure of the covered person or the covered
55 person's authorized representative to provide information necessary to
56 make a determination on the request, the health carrier shall:

57 (i) Specifically describe in the notice of extension the required
58 information necessary to complete the request; and

59 (ii) Provide the covered person and, if applicable, the covered
60 person's authorized representative with not less than forty-five
61 calendar days after the date of receipt of the notice to provide the
62 specified information.

63 (B) If the covered person or the covered person's authorized
64 representative fails to submit the specified information before the end
65 of the period of the extension, the health carrier may deny certification
66 of the benefit requested.

67 Sec. 2. Subsection (c) of section 38a-591e of the general statutes is
68 repealed and the following is substituted in lieu thereof (*Effective*
69 *January 1, 2020*):

70 (c) (1) (A) When conducting a review of an adverse determination
71 under this section, the health carrier shall ensure that such review is
72 conducted in a manner to ensure the independence and impartiality of
73 the clinical peer or peers involved in making the review decision.

74 (B) If the adverse determination involves utilization review, the
75 health carrier shall designate an appropriate clinical peer or peers to
76 review such adverse determination. Such clinical peer or peers shall
77 not have been involved in the initial adverse determination.

78 (C) The clinical peer or peers conducting a review under this section
79 shall take into consideration all comments, documents, records and
80 other information relevant to the covered person's benefit request that
81 is the subject of the adverse determination under review, that are
82 submitted by the covered person or the covered person's authorized
83 representative, regardless of whether such information was submitted
84 or considered in making the initial adverse determination.

85 (D) Prior to issuing a decision, the health carrier shall provide free
86 of charge, by facsimile, electronic means or any other expeditious
87 method available, to the covered person or the covered person's
88 authorized representative, as applicable, any new or additional
89 documents, communications, information and evidence relied upon
90 and any new or additional scientific or clinical rationale used by the
91 health carrier in connection with the grievance. Such documents,
92 communications, information, evidence and rationale shall be
93 provided sufficiently in advance of the date the health carrier is
94 required to issue a decision to permit the covered person or the
95 covered person's authorized representative, as applicable, a reasonable
96 opportunity to respond prior to such date.

97 (2) If the review under subdivision (1) of this subsection is an
98 expedited review, all necessary information, including the health
99 carrier's decision, shall be transmitted between the health carrier and
100 the covered person or the covered person's authorized representative,
101 as applicable, by telephone, facsimile, electronic means or any other
102 expeditious method available.

103 (3) If the review under subdivision (1) of this subsection is an
104 expedited review of a grievance involving an adverse determination of
105 a concurrent review request, pursuant to 45 CFR 147.136, as amended

106 from time to time, the treatment shall be continued without liability to
107 the covered person until the covered person has been notified of the
108 review decision.

109 (4) (A) Notwithstanding subdivision (3) of this subsection, if a
110 covered person or the covered person's authorized representative files
111 any grievance or requests any review of an adverse determination
112 pursuant to this section relating to the dispensation of a drug, other
113 than a schedule II or III controlled substance, prescribed by a licensed
114 participating provider, the health carrier shall issue immediate
115 electronic authorization to the covered person's pharmacy to dispense
116 a temporary supply of the drug sufficient for the duration of the
117 grievance or review. The authorization shall include confirmation of
118 the availability of payment for such supply of such drug.

119 (B) Not later than twenty-four hours after the health carrier has
120 issued such authorization to the pharmacy and prior to the pharmacy's
121 dispensation of such drug, such health carrier shall confirm with the
122 licensed participating provider the provider's concurrence with the
123 dispensing of such temporary supply of such drug. If such licensed
124 participating provider does not concur, the health carrier shall cancel
125 such authorization.

126 (C) The provisions of this subdivision shall not apply to a grievance
127 or review of an adverse determination under this section concerning
128 the substitution of a generic drug or another brand name drug for a
129 prescribed brand name drug unless the prescribing licensed
130 participating provider has specified that there shall be no substitution
131 for the specified brand name drug.

132 Sec. 3. Subsection (b) of section 38a-591f of the general statutes is
133 repealed and the following is substituted in lieu thereof (*Effective*
134 *January 1, 2020*):

135 (b) (1) A covered person or the covered person's authorized
136 representative may file a grievance of an adverse determination that

137 was not based on medical necessity with the health carrier not later
138 than one hundred eighty calendar days after the covered person or the
139 covered person's representative, as applicable, receives the notice of an
140 adverse determination.

141 (2) (A) If a covered person or the covered person's authorized
142 representative files any grievance or requests any review of an adverse
143 determination pursuant to this section relating to the dispensation of a
144 drug, other than a schedule II or III controlled substance, prescribed by
145 a licensed participating provider, the health carrier shall issue
146 immediate electronic authorization to the covered person's pharmacy
147 to prescribe a temporary supply of the drug sufficient for the duration
148 of the grievance or review. The authorization shall include
149 confirmation of the availability of payment for such supply of such
150 drug.

151 (B) Not later than twenty-four hours after the health carrier has
152 issued such authorization to the pharmacy and prior to the pharmacy's
153 dispensation of such drug, such health carrier shall confirm with the
154 licensed participating provider the provider's concurrence with the
155 dispensing of such temporary supply of such drug. If such licensed
156 participating provider does not concur, the health carrier shall cancel
157 such authorization.

158 (C) The provisions of this subdivision shall not apply to a grievance
159 or review of an adverse determination under this section concerning
160 the substitution of a generic drug or another brand name drug for a
161 prescribed brand name drug unless the prescribing licensed
162 participating provider has specified that there shall be no substitution
163 for the specified brand name drug.

164 [(2)] (3) The health carrier shall notify the covered person and, if
165 applicable, the covered person's authorized representative not later
166 than three business days after the health carrier receives a grievance
167 the covered person or the covered person's authorized representative,
168 as applicable, is entitled to submit written material to the health carrier

169 to be considered when conducting a review of the grievance.

170 ~~[(3)]~~ (4) (A) Upon receipt of a grievance, a health carrier shall
171 designate an individual or individuals to conduct a review of the
172 grievance.

173 (B) The health carrier shall not designate the same individual or
174 individuals who denied the claim or handled the matter that is the
175 subject of the grievance to conduct the review of the grievance.

176 (C) The health carrier shall provide the covered person and, if
177 applicable, the covered person's authorized representative with the
178 name, address and telephone number of the individual or the
179 organizational unit designated to coordinate the review on behalf of
180 the health carrier.

181 Sec. 4. Subsection (b) of section 38a-591g of the general statutes is
182 repealed and the following is substituted in lieu thereof (*Effective*
183 *January 1, 2020*):

184 (b) (1) Except as otherwise provided under subdivision (2) of this
185 subsection or subsection (d) of this section, a covered person or a
186 covered person's authorized representative shall not file a request for
187 an external review or an expedited external review until the covered
188 person or the covered person's authorized representative has
189 exhausted the health carrier's internal grievance process.

190 (2) A health carrier may waive its internal grievance process and the
191 requirement for a covered person to exhaust such process prior to
192 filing a request for an external review or an expedited external review.

193 (3) (A) If a covered person or the covered person's authorized
194 representative files any grievance or requests any review of an adverse
195 determination pursuant to this section relating to the dispensation of a
196 drug, other than a schedule II or III controlled substance, prescribed by
197 a licensed participating provider, the health carrier shall issue
198 immediate electronic authorization to the covered person's pharmacy

199 to dispense a temporary supply of the drug sufficient for the duration
200 of the grievance or review. The authorization shall include
201 confirmation of the availability of payment for such supply of such
202 drug.

203 (B) Not later than twenty-four hours after the health carrier has
204 issued such authorization to the pharmacy and prior to the pharmacy's
205 dispensation of such drug, such health carrier shall confirm with the
206 licensed participating provider the provider's concurrence with the
207 dispensing of such temporary supply of such drug. If such licensed
208 participating provider does not concur, the health carrier shall cancel
209 such authorization.

210 (C) The provisions of this subdivision shall not apply to a grievance
211 or review of an adverse determination under this section concerning
212 the substitution of a generic drug or another brand name drug for a
213 prescribed brand name drug unless the prescribing licensed
214 participating provider has specified that there shall be no substitution
215 for the specified brand name drug.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2020</i>	38a-591d(b)
Sec. 2	<i>January 1, 2020</i>	38a-591e(c)
Sec. 3	<i>January 1, 2020</i>	38a-591f(b)
Sec. 4	<i>January 1, 2020</i>	38a-591g(b)

Statement of Purpose:

To require health insurance coverage of prescribed drugs during adverse determination reviews and external review processes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: SEN. LOONEY, 11th Dist.

S.B. 37