SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 188

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE PRIOR AUTHORIZATION ACT; REQUIRING THE OFFICE OF SUPERINTENDENT OF INSURANCE TO STANDARDIZE AND STREAMLINE THE PRIOR AUTHORIZATION PROCESS FOR NON-EMERGENCY MEDICAL CARE, PHARMACEUTICAL BENEFITS OR RELATED BENEFITS; IMPOSING REQUIREMENTS ON HEALTH INSURERS WITH RESPECT TO PRIOR AUTHORIZATION; REQUIRING THE OFFICE OF SUPERINTENDENT OF INSURANCE TO REPORT DATA ON PRIOR AUTHORIZATION; PROHIBITING CONTRACTUAL ARRANGEMENTS THAT VIOLATE THE PRIOR AUTHORIZATION ACT; ENACTING NEW SECTIONS OF THE HEALTH CARE PURCHASING ACT AND THE PUBLIC ASSISTANCE ACT TO PROVIDE FOR APPLICABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Health Care Purchasing Act is enacted to read:

"[NEW MATERIAL] PRIOR AUTHORIZATION ACT.--Benefits

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administrators of group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act are subject to and shall comply with the Prior Authorization Act."

SECTION 2. A new section of the Public Assistance Act is enacted to read:

"[NEW MATERIAL] MEDICAL ASSISTANCE--MANAGED CARE ORGANIZATION CONTRACTS--APPLICABILITY OF PRIOR AUTHORIZATION ACT.--The secretary shall ensure that contracts with managed care organizations to provide medical assistance to medicaid recipients are subject to and comply with the Prior Authorization Act."

SECTION 3. [NEW MATERIAL] SHORT TITLE.--Sections 3 through 7 of this act may be cited as the "Prior Authorization Act".

SECTION 4. [NEW MATERIAL] DEFINITIONS.--As used in the Prior Authorization Act:

A. "adjudicate" means to approve or deny a request for prior authorization;

B. "auto-adjudicate" means to use technology and automation to make a real-time determination to approve or deny a request for prior authorization;

C. "chronic condition" means a medical condition that has persisted after reasonable efforts have been made to relieve or cure its cause and that, based on reasonable medical

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probability, will continue for an entire or the remaining policy year;

D. "covered person" means an individual who is insured under a health benefits plan;

E. "emergency care" means a health care procedure, treatment or service delivered to a covered person after the sudden onset of what reasonably appears to be a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could be reasonably expected by a reasonable layperson to result in jeopardy to a person's health, serious impairment of bodily functions, serious dysfunction of a bodily organ or part or disfigurement to a person;

F. "health benefits plan" means a policy, contract, certificate or agreement, entered into, offered or issued by a health insurer to provide, deliver, arrange for, pay for or reimburse any of the costs of medical care, pharmaceutical benefits or related benefits;

G. "health care professional" means an individual who is licensed or otherwise authorized by the state to provide health care services;

H. "health care provider" means a health care professional, corporation, organization, facility or institution licensed or otherwise authorized by the state to provide health care services;

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I. "health insurer" means a health maintenance organization, nonprofit health care plan, provider service network, medicaid managed care organization or third-party payer or its agent;

J. "medical care, pharmaceutical benefits or related benefits" means medical, behavioral, hospital, surgical, physical rehabilitation and home health services, and includes pharmaceuticals, durable medical equipment, prosthetics, orthotics and supplies;

K. "medical necessity" means the appropriateness of medical care, pharmaceutical benefits or related benefits according to:

(1) applicable, generally accepted principles and practices of good medical care;

(2) practice guidelines developed by the federal government or national or professional medical societies, boards or associations; or

(3) applicable clinical protocols or practice guidelines developed by the health insurer consistent with federal, national and professional practice guidelines, which shall apply to the diagnosis, direct care and treatment of a physical or behavioral health condition, illness, injury or disease;

L. "medical peer review" means review by a health care professional from the same or similar practice specialty

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that typically manages the medical condition, procedure or treatment under review for prior authorization;

M. "office" means the office of superintendent of insurance;

N. "pharmacy benefits manager" means an agent responsible for handling prescription drug benefits for a health insurer; and

O. "prior authorization" means advance approval that is required by a health insurer as a condition precedent to payment for medical care, pharmaceutical benefits or related benefits rendered to a covered person, including prospective or utilization review conducted prior to the provision of covered medical care, pharmaceutical benefits or related benefits.

SECTION 5. [NEW MATERIAL] EMERGENCY CARE.--Emergency care provided to a covered person, regardless of where the emergency care is provided, shall not be subject to prior authorization requirements.

SECTION 6. [NEW MATERIAL] DUTIES OF OFFICE--PRESCRIBING PENALTIES.--

A. To reduce the administrative burden on health care providers and reduce unnecessary delays in authorizing payment for medical care, pharmaceutical benefits or related benefits to covered persons, the office shall standardize and streamline the prior authorization process across all health insurers.

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1 B. On or before September 1, 2019, the office
2 shall, in collaboration with health insurers and health care
3 providers, promulgate a uniform prior authorization form for
4 medical care, pharmaceutical benefits or related benefits to be
5 used by every health insurer and health care provider after
6 January 1, 2020; provided that the uniform prior authorization
7 form shall conform to the requirements established for medicare
8 and medicaid medical and pharmacy prior authorization requests.
9 C. The office shall maintain a log of complaints
10 against health insurers for failure to comply with the Prior
11 Authorization Act. The office may levy a fine of not more than
12 one thousand dollars ($1,000) on a health insurer that fails to
13 comply with industry standard metrics for compliance with the
14 provisions of that act.
15 D. By September 1, 2019, and each September 1
16 thereafter, the office shall provide an annual written report
17 to the governor and the legislature to include, at a minimum:
18 (1) prior authorization data for each health
19 insurer individually and for health insurers collectively;
20 (2) the number and nature of complaints
21 against individual health insurers for failure to follow the
22 Prior Authorization Act; and
23 (3) actions taken by the office, including the
24 imposition of fines, against individual health insurers to
25 enforce compliance with the Prior Authorization Act.

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1 E. The annual written report shall be posted on the
2 office's website.
3 **SECTION 7.** [NEW MATERIAL] PRIOR AUTHORIZATION
4 REQUIREMENTS.--
5 A. A health insurer that requires prior
6 authorization shall:
7 (1) use the uniform prior authorization forms
8 developed by the office for medical care, pharmaceutical
9 benefits or related benefits pursuant to Section 6 of this 2019
10 act and for prescription drugs pursuant to Section 59A-2-9.8
11 NMSA 1978;
12 (2) establish and maintain an internal portal
13 system for:
14 (a) the secure electronic transmission
15 of prior authorization requests on a twenty-four-hour, seven-
16 day-a-week basis, for medical care, pharmaceutical benefits or
17 related benefits; and
18 (b) by July 1, 2020, auto-adjudication
19 of prior authorization requests;
20 (3) provide an electronic receipt to the
21 health care provider and assign a tracking number to the health
22 care provider for the health care provider's use in tracking
23 the status of the prior authorization request, regardless of
24 whether or not the request is tracked electronically, through a
25 call center or by facsimile;

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(4) by July 1, 2020, auto-adjudicate all electronically transmitted prior authorization requests; and

(5) accept requests for medical care, pharmaceutical benefits or related benefits that are not electronically transmitted.

B. Prior authorization shall be deemed granted for determinations not made within five business days; provided that:

(1) an adjudication shall be made within twenty-four hours, or shall be deemed granted if not made within twenty-four hours, when a covered person's health care professional requests an expedited prior authorization and submits to the health insurer a statement that, in the health care professional's opinion that is based on reasonable medical probability, delay in the treatment for which prior authorization is requested could:

(a) seriously jeopardize the covered person's life or overall health;

(b) affect the covered person's ability to regain maximum function; or

(c) subject the covered person to severe and intolerable pain; and

(2) the adjudication time line shall commence only when the health insurer receives all necessary and relevant documentation supporting the prior authorization

request.

C. A health insurer shall have in place policies and procedures for annual review of its prior authorization practices to validate that the prior authorization requirements advance the principles of lower cost and improved quality, safety and service.

D. The office of superintendent of insurance shall establish by rule protocols and criteria pursuant to which a covered person's health care professional may request expedited independent review following medical peer review of a prior authorization request pursuant to the Prior Authorization Act.

SECTION 8. APPLICABILITY.--The provisions of the Prior Authorization Act apply to an individual or group policy, contract, certificate or agreement to provide, deliver, arrange for, pay for or reimburse any of the costs of medical care, pharmaceutical benefits or related benefits that is entered into, offered or issued by a health insurer on or after July 1, 2019, pursuant to any of the following:

A. Chapter 59A, Article 22 NMSA 1978;

B. Chapter 59A, Article 23 NMSA 1978;

C. the Health Maintenance Organization Law;

D. the Nonprofit Health Care Plan Law; or

E. the Health Care Purchasing Act.

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