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AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** ___
Correction ___ **Substitute** ___

Date 1/26/24
Bill No: SB 135

Sponsor: Thompson

Short Title: Guidelines for Step Therapy for Prescription Drug Coverage

Agency Name and Code Number: Office of Superintendent of Insurance - 440

Person Writing Viara Ianakieva

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
N/A	N/A	N/A		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A			

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 185
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1: Amends the Health Care Purchasing Act.

Section 2: Amends the Public Assistance Act.

Section 3: Amends Article 22 of the Insurance Code to authorize a step-therapy exception request to apply for the lifetime of an enrollee for a prescription drug that is subject of a step therapy exception request. Changes the effective date of this section to apply to contracts delivered, issued for delivery or renewed on or after January 1, 2025.

Section 4: Expands the prohibition against step therapy or prior authorization for substance use disorders to include autoimmune disorders, behavioral health conditions, and cancer.

Section 5:Amends Article 23 of the Insurance Code to authorize a step-therapy exception request to apply for the lifetime of an enrollee for a prescription drug that is the subject of an exception request. Changes the effective date of this section to apply to contracts delivered, issued for delivery or renewed on or after January 1, 2025.

Section 6: Amends Article 46 of the Insurance Code to authorize a step-therapy exception request to apply for a lifetime of an enrollee for a prescription drug that is the subject of an exception request. Changes the effective date of this section to apply to contracts delivered, issued for delivery or renewed on or after January 1, 2025.

Section 7: Amends Article 47 of the Insurance Code to authorize a step-therapy exception request to apply for a lifetime of an enrollee for a prescription drug that is the subject of an exception request. Changes the effective date of this section to apply to contracts delivered, issued for delivery or renewed on or after January 1, 2025.

Section 8: Specifies that the proposed amendments do not apply to short-term plans.

Section 9: Requires that the OSI perform annual audits beginning in 2026.

Section 10: The effective date of this bill is January 1, 2025.

FISCAL IMPLICATIONS
OSI is unaware of any fiscal impact of this bill.

SIGNIFICANT ISSUES
Sections 3, 5, 6, and 7 appear to introduce new material. However, these sections amend existing provisions of the Insurance Code.

- Section 3 is codified in the Insurance Code's Health Insurance Article at NMSA 59A-22-53.1.
- Section 5 is codified in the Insurance Code's Group Contracts Article at NMSA 59A-23-12.1.
- Section 6 is codified in the Insurance Code's HMO Article at NMSA 59A-46-52.1.
- Section 7 is codified in the Insurance Code's Non-Profit Health Care Plan Article at NMSA 59A-47-47.1.

There are existing state and federal laws requiring annual compliance review of health insurance carriers subject to OSI jurisdiction, which Section 9's requirement for an undefined annual audit would duplicate. OSI currently divides this work into two distinct bureaus in the Life & Health Division.

- The Managed Health Care Compliance Bureau conducts thorough annual audits of major medical insurance operations, to ensure compliance with both state and federal law. Carriers must successfully pass these annual compliance review audits in order to be deemed eligible to offer insurance on the New Mexico Health Insurance Exchange.
- The Life and Health Products Filing Bureau reviews and approves health insurance policies subject to OSI's jurisdiction prior to their issuance in New Mexico. This review ensures that policies comply with both state and federal law prior to delivery.

Section 4A states that coverage for medication approved by the federal food and drug administration that is prescribed for the treatment of an autoimmune disorder, a behavioral health condition, cancer or a substance use disorder, pursuant to a health care provider's medical necessity determination, shall not be subject to prior authorization, except in cases in which a generic version is available. This creates a conflict with the definition of medical necessity in the Prior Authorization Act, NMSA 1978, §59A-22B-2J, and throughout NMSA and NMAC, where medical necessity is defined as "determined by a health care provider, in consultation with the health insurer, to be appropriate or necessary according to…".

PERFORMANCE IMPLICATIONS
OSI performs compliance review of the operations of the health plans, as well as the insurance contracts issued and delivered in New Mexico. Therefore, OSI recommends that the audit requirement is removed.

ADMINISTRATIVE IMPLICATIONS
The expansion of prior authorization and step therapy prohibitions found in Section 4 would alleviate administrative burdens on providers and insurance companies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP
Duplicate of HB 185.

Section 4A states that coverage for medication approved by the federal food and drug administration that is prescribed for the treatment of an autoimmune disorder, a behavioral health condition, cancer or a substance use disorder, pursuant to a health care provider's medical necessity determination, shall not be subject to prior authorization, except in cases in which a generic version

is available. This creates a conflict with the definition of medical necessity in the Prior Authorization Act, NMSA 1978, §59A-22B-2J, and throughout NMSA and NMAC, where medical necessity is defined as “determined by a health care provider, in consultation with the health insurer, to be appropriate or necessary according to…”.

TECHNICAL ISSUES

As noted above, Section 4A states that coverage for medication approved by the federal food and drug administration that is prescribed for the treatment of an autoimmune disorder, a behavioral health condition, cancer or a substance use disorder, pursuant to a health care provider's medical necessity determination, shall not be subject to prior authorization, except in cases in which a generic version is available. This creates a conflict with the definition of medical necessity in the Prior Authorization Act, NMSA 1978, §59A-22B-2J, and throughout NMSA and NMAC, where medical necessity is defined as “determined by a health care provider, in consultation with the health insurer, to be appropriate or necessary according to…”.

OTHER SUBSTANTIVE ISSUES

As noted above, Section 4A changes the definition of medical necessity and creates a conflict with other sections in the Insurance Code and New Mexico Administrative Codes, where medical necessity is defined as “determined by a health care provider, in consultation with the health insurer.

Section 8 restates responsibilities found elsewhere in the Insurance Code and federal law.

ALTERNATIVES

Indicate that Sections 3, 5, 6 and 7 amend existing language and are not new material.

Add language requiring insurance companies to state in the insurance contract (policy or certificate) that they will accept step-therapy exceptions granted by another carrier. This will inform insureds of their rights and require insurance companies to accept exceptions when granted by prior carriers.

Remove the audit requirement and add language requiring OSI to ensure compliance and take enforcement action when merited.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill were not enacted, covered persons will be subject to multiple step therapy exception requests, which may impose unnecessary barriers to care. In addition, existing prior authorization and step therapy requirements for treatment of cancer, autoimmune disorders, and behavioral health conditions would remain in place.

AMENDMENTS

OSI recommends the following amendments:

- Indicate that Sections 3,5,6 and 7 amend existing language and are not new material;
- Add language requiring insurance companies to state in the insurance contract (policy or certificate) that they will accept step-therapy exceptions granted by another carrier. This will inform insureds of their rights and require insurance companies to accept exceptions when granted by prior carriers; and
- Remove the audit requirement and add language requiring OSI to ensure compliance and take enforcement action when merited.