

By: Senator(s) Blackwell

To: Insurance

SENATE BILL NO. 2257

1 AN ACT TO CREATE NEW SECTION 83-9-36.3, MISSISSIPPI CODE OF
 2 1972, TO REQUIRE A HEALTH BENEFIT PLAN TO IMPLEMENT A CLEAR AND
 3 TRANSPARENT PROCESS FOR A PARTICIPANT, BENEFICIARY OR THE
 4 PRESCRIBING HEALTH CARE PROVIDER ON BEHALF OF THE PARTICIPANT OR
 5 BENEFICIARY, WITH CRF-COPD TO REQUEST AN EXCEPTION TO A STEP
 6 THERAPY PROTOCOL; TO SET CERTAIN PROCEDURES RELATED THERETO; TO
 7 PROVIDE CERTAIN EXCEPTIONS TO A TREATMENT STEP THERAPY PROTOCOL
 8 FOR TREATMENT OF CRF-COPD; TO REQUIRE HEALTH BENEFIT PLANS TO MAKE
 9 CERTAIN INFORMATION REGARDING SUCH PROCEDURES AVAILABLE ON THEIR
 10 WEBSITE; TO REQUIRE HEALTH BENEFIT PLANS TO RESPOND TO A
 11 REQUESTING PRESCRIBER WITHIN SEVENTY-TWO HOURS AFTER RECEIVING AN
 12 INITIAL EXCEPTION REQUEST; TO REQUIRE HEALTH BENEFIT PLANS TO
 13 RESPOND TO SUCH REQUEST WITHIN ONE BUSINESS DAY WHEN THE STEP
 14 THERAPY PROTOCOL MAY JEOPARDIZE THE LIFE OR HEALTH OF THE
 15 BENEFICIARY; TO AMEND SECTION 83-9-36, MISSISSIPPI CODE OF 1972,
 16 TO CONFORM TO THE PROVISIONS OF THE ACT; AND FOR RELATED PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** The following shall be codified as Section
 19 83-9-36.3, Mississippi Code of 1972:

20 83-9-36.3. (1) For purposes of this section, the following
 21 definitions shall apply:

22 (a) "Health benefit plan" has the meaning given to that
 23 term in Section 83-9-6.3. Such term shall include those plans
 24 that provide coverage for invasive or noninvasive mechanical
 25 ventilation to treat chronic respiratory failure consequent to



26 chronic obstructive pulmonary disease (CRF-COPD), requiring a step
27 therapy protocol.

28 (b) "Treatment step therapy protocol" means a treatment
29 utilization management protocol or program under which a group
30 health plan or health insurance issuer offering group health
31 insurance coverage of respiratory care treatments requires a
32 participant or beneficiary to try an alternative, plan-preferred
33 treatment and fail on this treatment before the plan or health
34 insurance issuer approves coverage for the non-preferred therapy
35 prescribed by the beneficiary's medical provider.

36 (2) A health benefit plan shall:

37 (a) Implement a clear and transparent process for a
38 participant or beneficiary, or the prescribing health care
39 provider on behalf of the participant or beneficiary, with
40 CRF-COPD to request an exception to such a step therapy protocol;

41 (b) Where the participant, beneficiary or prescribing
42 health care provider's request for an exception to the treatment
43 step therapy protocols satisfies the criteria and requirements of
44 subsection (3) of this section, cover the requested treatment in
45 accordance with the terms established by the health plan or
46 coverage for patient cost-sharing rates or amounts at the time of
47 the participant's or beneficiary's enrollment in the health plan
48 or health insurance coverage.



49 (3) The circumstances requiring an exception to a treatment
50 step therapy protocol, pursuant to a request under subsection (2)
51 of this section, are any of the following:

52 (a) Any treatments otherwise required under the
53 protocol have not been shown to be as effective as other available
54 options in the treatment of the disease or condition or the
55 participant or beneficiary, when prescribed consistent with
56 clinical indications, clinical guidelines or other peer-reviewed
57 evidence;

58 (b) Delay of proven effective treatment would lead to
59 severe or irreversible consequences, and the treatment initially
60 required under the protocol is reasonably expected to be less
61 effective based upon the documented physical or mental
62 characteristics of the participant or beneficiary and the known
63 characteristics of such treatment;

64 (c) Any treatments otherwise required under the
65 protocol are contraindicated for the participant or beneficiary or
66 have caused, or are likely to cause, based on clinical,
67 peer-reviewed evidence, an adverse reaction or other physical harm
68 to the participant or beneficiary;

69 (d) Any treatment otherwise required under the protocol
70 has prevented, will prevent, or is likely to prevent a participant
71 or beneficiary from achieving or maintaining reasonable and safe
72 functional ability in performing occupational responsibilities or
73 activities of daily living; or



74 (e) The patient's disease state is classified as
75 life-threatening.

76 (4) The process required by subsection (2) of this section
77 shall:

78 (a) Provide the prescribing health care provider or
79 beneficiary or designated third-party advocate an opportunity to
80 present such provider's clinical rationale and relevant medical
81 information for the group health plan or health insurance issuer
82 to evaluate such request for exception;

83 (b) Clearly set forth all required information and the
84 specific criteria that will be used to determine whether an
85 exception is warranted, which may require disclosure of the
86 medical history or other health records of the participant or
87 beneficiary demonstrating that the participant or beneficiary
88 seeking an exception:

89 (i) Has tried other qualifying treatments without
90 success; or

91 (ii) Has received the requested treatment for a
92 clinically appropriate amount of time to establish stability, in
93 relation to the condition being treated and guidelines given by
94 the prescribing physician. Other clinical information that may be
95 relevant to conducting the exception review may require
96 disclosure;

97 (c) Not require the submission of any information or
98 supporting documentation beyond what is strictly necessary to



99 determine whether any of the circumstances listed in subsection
100 (3) of this section exist.

101 (5) The health benefit plan shall make information regarding
102 the process required under subsection (2) of this section readily
103 available on the internet website of the group health plan or
104 health insurance issuer. Such information shall include:

105 (a) The requirements for requesting an exception to a
106 treatment step therapy protocol pursuant to this section; and

107 (b) Any forms, supporting information, and contact
108 information, as appropriate.

109 (6) The process required under subsection (2)(a) of this
110 section shall provide for the disposition of requests received
111 under such paragraph in accordance with the following:

112 (a) Subject to paragraph (b) of this subsection, not
113 later than seventy-two (72) hours after receiving an initial
114 exception request, the plan or issuer shall respond to the
115 requesting prescriber with either a determination of exception
116 eligibility or a request for additional required information,
117 strictly necessary to make a determination of whether the
118 conditions specified in subsection (3) of this section are met.

119 The plan or issuer shall respond to the requesting provider with a
120 determination of exception eligibility no later than seventy-two
121 (72) hours after receipt of the additional required information;
122 or



123 (b) In the case of a request under circumstances in
124 which the applicable equipment step therapy protocol may seriously
125 jeopardize the life or health of the participant or beneficiary,
126 the plan or issuer shall conduct a review of the request and
127 respond to the requesting prescriber with either a determination
128 or exception eligibility or a request for additional required
129 information strictly necessary to make a determination of whether
130 the conditions specified in subsection (3) of this section are
131 met, in accordance with the following:

132 (i) If the plan or issuer can make a determination
133 of exception eligibility without additional information, such
134 determination shall be made on an expedited basis and no later
135 than one (1) business day after receipt of such request, or

136 (ii) If the plan or issuer requires additional
137 information before making a determination of exception
138 eligibility, the plan or issuer shall respond to the requesting
139 provider with a request for such information within one (1)
140 business day of the request for a determination, and shall respond
141 with a determination of exception eligibility as quickly as the
142 condition or disease requires and no later than one (1) business
143 day after receipt of the additional required information.

144 (7) This act shall apply with respect to any licensed
145 provider in the State of Mississippi that provides coverage of a
146 treatment pursuant to a policy that meets the definition of
147 treatment step therapy protocol in this act, regardless of whether



148 such policy is described by such group health plan or health
149 insurance coverage as a step therapy protocol.

150 **SECTION 2.** Section 83-9-36, Mississippi Code of 1972, is
151 amended as follows:

152 83-9-36. (1) When medications for the treatment of any
153 medical condition are restricted for use by an insurer by a step
154 therapy or fail-first protocol, the prescribing practitioner shall
155 have access to a clear and convenient process to expeditiously
156 request an override of that restriction from the insurer. An
157 override of that restriction shall be expeditiously granted by the
158 insurer under the following circumstances:

159 (a) The prescribing practitioner can demonstrate, based
160 on sound clinical evidence, that the preferred treatment required
161 under step therapy or fail-first protocol has been ineffective in
162 the treatment of the insured's disease or medical condition; or

163 (b) Based on sound clinical evidence or medical and
164 scientific evidence:

165 (i) The prescribing practitioner can demonstrate
166 that the preferred treatment required under the step therapy or
167 fail-first protocol is expected or likely to be ineffective based
168 on the known relevant physical or mental characteristics of the
169 insured and known characteristics of the drug regimen; or

170 (ii) The prescribing practitioner can demonstrate
171 that the preferred treatment required under the step therapy or



172 fail-first protocol will cause or will likely cause an adverse
173 reaction or other physical harm to the insured.

174 (2) The duration of any step therapy or fail-first protocol
175 shall not be longer than a period of thirty (30) days when the
176 treatment is deemed clinically ineffective by the prescribing
177 practitioner. When the prescribing practitioner can demonstrate,
178 through sound clinical evidence, that the originally prescribed
179 medication is likely to require more than thirty (30) days to
180 provide any relief or an amelioration to the insured, the step
181 therapy or fail-first protocol may be extended up to seven (7)
182 additional days.

183 (3) As used in this section:

184 (a) "Insurer" means any hospital, health, or medical
185 expense insurance policy, hospital or medical service contract,
186 employee welfare benefit plan, contract or agreement with a health
187 maintenance organization or a preferred provider organization,
188 health and accident insurance policy, or any other insurance
189 contract of this type, including a group insurance plan. However,
190 the term "insurer" does not include a preferred provider
191 organization that is only a network of providers and does not
192 define health care benefits for the purpose of coverage under a
193 health care benefits plan.

194 (b) "Practitioner" has the same meaning as defined in
195 Section 73-21-73.



196 (4) The provisions of this section shall not apply to
197 Section 1 of this act.

198 **SECTION 3.** This act shall take effect and be in force from
199 and after July 1, 2024.

