HB 1638-FN - AS INTRODUCED

2026 SESSION

26-3029
07/08

HOUSE BILL ***1638-FN***

AN ACT creating a bypass mechanism for health insurer step therapy protocols when medically necessary.

SPONSORS: Rep. Nagel, Belk. 6; Rep. Lundgren, Rock. 16; Rep. W. MacDonald, Rock. 16; Rep. Miles, Hills. 12; Rep. M. Pearson, Rock. 34; Rep. L. Walsh, Rock. 15; Rep. Woods, Merr. 30; Sen. Avard, Dist 12; Sen. Rosenwald, Dist 13

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill creates a bypass mechanism for health insurer step therapy protocols when medically necessary.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

26-3029
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT creating a bypass mechanism for health insurer step therapy protocols when medically necessary.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Step Therapy. Amend RSA 420-J by inserting after section 26 the following new subdivision:

Step Therapy

420-J:27 Definitions. As used in this subdivision:

I. "Advanced, metastatic cancer" means a cancer that has spread from the primary or original site of the cancer to nearby tissues, lymph nodes, or other areas or parts of the body.

II. "Associated conditions" means the symptoms or side effects associated with advanced, metastatic cancer or its treatment and which, in the judgment of the health care practitioner, further jeopardizes the health of a patient if left untreated.

III. "Clinical practice guidelines" means a systematically developed statement to assist prescriber and enrollee decisions about appropriate health care for specific clinical circumstances and conditions.

IV. "Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols and practice guidelines used by a carrier or utilization review organization to determine the medical necessity and appropriateness of health care services.

V. "Medically necessary," when using in the context of health services and supplies, means appropriate, under the applicable standard of care, to improve or preserve health, life or function; to slow the deterioration of health, life or function; or for the early screening, prevention, evaluation, diagnosis or treatment of a disease, condition, illness or injury.

VI. "Pharmaceutical sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

VII. "Serious mental illness" means a mental disorder, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, that results in serious functional impairment that substantially interferes with or limits one or more major life activities.

VIII. "Stable on a prescription drug" means, with respect to an enrollee, receiving a positive therapeutic outcome on a prescription drug selected by the enrollee's health care provider for the enrollee's medical condition.

IX. "Step therapy override exception determination" means a determination based on a review of an enrollee's or prescriber's request for an override, along with supporting rationale and

documentation, that the step therapy protocol should be overridden in favor of immediate coverage of the health care provider's selected prescription drug.

X. "Step therapy protocol" means a protocol that establishes a specific sequence in which prescription drugs for a specified medical condition are medically necessary for a particular enrollee and are covered under a pharmacy or medical benefit by a carrier, including self-administered and physician-administered drugs.

XI. "Utilization review organization" means an entity that conducts a utilization review, other than a carrier performing a utilization review for its own health benefit plans.

420-J:28 Clinical Review Criteria. Clinical review criteria used to establish a step therapy protocol shall be based on clinical practice guidelines that:

I. Recommend that the prescription drugs be taken in the specific sequence required by the step therapy protocol;

II. Are developed and endorsed by a multidisciplinary panel of experts that manages conflicts of interest among the members of the writing and review groups by:

(a) Requiring members to disclose any potential conflicts of interest with entities, including carriers and pharmaceutical manufacturers, and recuse themselves from voting if they have a conflict of interest;

(b) Using a methodologist to work with writing groups to provide objectivity in data analysis and ranking of evidence through the preparation of evidence tables and facilitating consensus; and

(c) Offering opportunities for public review and comments;

III. Are based on high-quality studies, research and medical practice;

IV. Are created by an explicit and transparent process that:

(a) Minimizes biases and conflicts of interest;

(b) Explains the relationship between treatment options and outcomes;

(c) Rates the quality of the evidence supporting recommendations;

(d) Considers relevant patient subgroups and preferences; and

V. Are continually updated through a review of new evidence, research and newly developed treatments.

420-J:29 Absence of Clinical Practice Guidelines. In the absence of clinical practice guidelines that satisfy the requirements under RSA 420-J:28, peer-reviewed publications may be used as a substitute.

420-J:30 Consideration of Atypical Populations and Diagnoses. When establishing a step therapy protocol, a utilization review organization shall also take into account the needs of atypical patient populations and diagnoses when establishing clinical review criteria.

420-J:31 Construction. This subdivision shall not be construed to require carriers or the state to create a new entity to develop clinical review criteria used for step therapy protocols.

420-J:32 Exceptions Process.

I. When coverage of a prescription drug for the treatment of any medical condition is restricted for use by a carrier or utilization review organization through the use of a step therapy protocol, the enrollee and prescriber shall have access to a clear, readily accessible and convenient process to request a step therapy override exception determination from that carrier or utilization review organization.

II. A carrier or utilization review organization may use its existing medical exceptions process to provide step therapy override exception determinations, and the process established shall be easily accessible on the carrier's or utilization review organization's website.

III. A carrier or utilization review organization shall expeditiously grant a step therapy override exception determination if:

(a) The required prescription drug is contraindicated or will likely cause an adverse reaction in or physical or mental harm to the enrollee;

(b) The required prescription drug is expected to be ineffective based on the known clinical characteristics of the enrollee and the known characteristics of the prescription drug regimen;

(c) The enrollee has tried the required prescription drug while under the enrollee's current or previous health insurance or health plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action, and the prescription drug was discontinued due to lack of efficacy or effectiveness, diminished effect or an adverse reaction;

(d) The required prescription drug is not in the best interest of the enrollee, based on medical necessity;

(e) The enrollee is stable on a prescription drug selected by the enrollee's health care provider for the medical condition under consideration while on a current or previous health insurance or health plan; or

(f) The prescription drug selected by the enrollee's health care provider is intended to assess or treat the enrollee's serious mental illness.

IV. Nothing in this section shall be construed to encourage the use of a pharmaceutical sample for the sole purpose of meeting the requirements for the granting of a step therapy override exception determination.

V. Upon the granting of a step therapy override exception determination, the carrier or utilization review organization shall authorize coverage for the prescription drug prescribed by the prescriber.

VI. A carrier or utilization review organization shall grant or deny a request for a step therapy override exception determination or an appeal of a determination and notify the covered person and the covered person’s health care provider of the determination within 72 hours of obtaining all information necessary to make the determination for an urgent review as defined in

section 420-J:3, XXXIV whether submitted electronically or non-electronically. For a non-urgent request, the health carriers shall approve or deny the request and notify the covered person and the covered person's health care provider of the determination within 7 calendar days for a request submitted electronically and within 14 days for a request filed non-electronically of obtaining all information necessary to make the determination. If emergent circumstances exist, a carrier or utilization review organization shall grant or deny the request within 24 hours after receipt of the request. The carrier shall provide coverage for the prescription drug prescribed by the prescriber during the pendency of the request for a step therapy override exception determination or an appeal of a determination. If a carrier or utilization review organization does not grant or deny the request within the time required under this paragraph, the exception or appeal shall be granted.

VII. An enrollee may appeal a step therapy override exception determination.

VIII. This section shall not prevent:

(a) A carrier or utilization review organization from requiring an enrollee to try a generic drug or an interchangeable biological product prior to providing coverage for the equivalent brand-name prescription drug; or

(b) A health care provider from prescribing a prescription drug that is determined to be medically necessary.

420-J:33 Therapy Protocols Prohibited. Step therapy protocols shall be prohibited for certain prescription drugs to treat advanced, metastatic cancer and associated conditions:

I. Consistent with best practices for the treatment of advanced, metastatic cancer or an associated condition;

II. Supported by peer-reviewed, evidence-based literature; and

III. Approved by the United States Food and Drug Administration.

420-J:34 Rules. The commissioner may adopt rules, pursuant to RSA 541-A, to assist the insurance department with the implement this section.

2 Effective Date. This act shall take effect 90 days after its passage.

LBA
26-3029
12/2/25

HB 1638-FN- FISCAL NOTE
AS INTRODUCED

AN ACT creating a bypass mechanism for health insurer step therapy protocols when medically necessary.

FISCAL IMPACT:

Estimated State Impact				
	FY 2026	**FY 2027**	**FY 2028**	**FY 2029**
Revenue	$0	Indeterminable Increase (not provided by agency)	Indeterminable Increase (not provided by agency)	Indeterminable Increase (not provided by agency)
Revenue Fund(s)	General Fund			
Expenditures*	$0	$0	$0	$0
Funding Source(s)	None			
Appropriations*	$0	$0	$0	$0
Funding Source(s)	None			

***Expenditure = Cost of bill** ***Appropriation = Authorized funding to cover cost of bill**

Estimated Political Subdivision Impact				
	FY 2026	**FY 2027**	**FY 2028**	**FY 2029**
County Revenue	$0	$0	$0	$0
County Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Local Revenue	$0	$0	$0	$0
Local Expenditures	$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill creates a bypass mechanism for health insurer step therapy protocols when medically necessary.

The Insurance Department states the bill imposes new administrative requirements on health carriers, including public review of clinical criteria, expanded exception processing, and adherence to more prescriptive timelines. These requirements will increase administrative burdens on carriers. Because medical loss ratio rules require administrative costs to be absorbed within the carrier's overall premium structure, carriers may adjust premiums or other pricing strategies in response.

Step therapy is a cost management tool, and creating a bypass mechanism for certain conditions is expected to increase utilization of higher-cost drugs. Increased utilization and higher claim costs may lead to higher health insurance premiums, which in turn may result in an indeterminable increase in Insurance Premium Tax revenue. The Department cannot estimate the premium impact because it cannot quantify the number of exception requests, how clinical criteria may change, or how carriers will revise their utilization review processes. The Department is unable to estimate the administrative costs carriers may incur or the corresponding impact on premium tax revenue; therefore, the revenue impact is indeterminable.

To the extent counties and municipalities purchase health insurance, they could see an increase in their health insurance premiums.

AGENCIES CONTACTED:

Insurance Department