H.766

Introduced by Representatives Black of Essex, Houghton of Essex Junction, Andrews of Westford, Berbeco of Winooski, Bos-Lun of Westminster, Carpenter of Hyde Park, Cina of Burlington, Cordes of Lincoln, Demar of Enosburgh, Dodge of Essex, Dolan of Essex Junction, Farlice-Rubio of Barnet, Garofano of Essex, Goldman of Rockingham, Graning of Jericho, McCarthy of St. Albans City, McFaun of Barre Town, Ode of Burlington, Peterson of Clarendon, Roberts of Halifax, and Waters Evans of Charlotte

Referred to Committee on

Date:

Subject: Health; health insurance; prior authorization requirements; prescription drugs; step therapy; claims edits; cost-sharing collections

Statement of purpose of bill as introduced: This bill proposes to modify the time frames within which health plans must respond to prior authorization requests; limit the occasions on which reauthorization is necessary for a previously approved treatment, service, or course of medication; require health plans to grant exceptions to prescription drug step-therapy requirements under certain circumstances; and direct the Department of Financial Regulation to prohibit prior authorization requirements for generic medications and for items

and services with low variation and low denial rates across health care providers. The bill would modify provisions relating to the contracts between health insurers and health care providers and the processing of claims under those contracts. It would also require health insurers, not health care providers, to collect cost-sharing amounts from patients.

An act relating to prior authorization and step therapy requirements, health insurance claims, provider contracts, and collection of cost sharing amounts

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 4089i(e) is amended to read:

(e)(1) A health insurance or other health benefit plan offered by a health insurer or by a pharmacy benefit manager on behalf of a health insurer that provides coverage for prescription drugs and uses step-therapy protocols shall:

(A) not require failure, including discontinuation due to lack of efficacy or effectiveness, diminished effect, or an adverse event, on the same medication on more than one occasion for ~~continuously enrolled members or subscribers~~ insureds who are continuously enrolled in a plan offered by the insurer or its pharmacy benefit manager; and

(B) grant an exception to its step-therapy protocols upon request of an insured or the insured's treating health care professional under the same

time parameters as set forth for prior authorization requests in 18 V.S.A. § 9418b(g)(4) if any one or more of the following conditions apply:

(i) the prescription drug required under the step-therapy protocol is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;

(ii) the prescription drug required under the step-therapy protocol is expected to be ineffective based on the insured's known clinical history, condition, and prescription drug regimen;

(iii) the insured has already tried the prescription drugs on the protocol, or other prescription drugs in the same pharmacologic class or with the same mechanism of action, which have been discontinued due to lack of efficacy or effectiveness, diminished effect, or an adverse event, regardless of whether the insured was covered at the time on a plan offered by the current insurer or its pharmacy benefit manager;

(iv) the insured is stable on a prescription drug selected by the insured's treating health care professional for the medical condition under consideration; or

(v) the step-therapy protocol or a prescription drug required under the protocol is not in the patient's best interests because it will:

(I) pose a barrier to adherence;

(II) likely worsen a comorbid condition; or

(III) likely decrease the insured's ability to achieve or maintain reasonable functional ability.

(2) Nothing in this subsection shall be construed to prohibit the use of tiered co-payments for members or subscribers not subject to a step-therapy protocol.

(3) Notwithstanding any provision of subdivision (1) of this subsection to the contrary, a health insurance or other health benefit plan offered by an insurer or by a pharmacy benefit manager on behalf of a health insurer that provides coverage for prescription drugs shall not utilize a step-therapy, "fail first," or other protocol that requires documented trials of a medication, including a trial documented through a "MedWatch" (FDA Form 3500), before approving a prescription for the treatment of substance use disorder.

Sec. 2. 18 V.S.A. § 9418a is amended to read:

§ 9418a. PROCESSING CLAIMS, DOWNCODING, AND ADHERENCE TO CODING RULES

(a) Health plans, contracting entities, covered entities, and payers shall accept and initiate the processing of all health care claims submitted by a health care provider pursuant to and consistent with the current version of the American Medical Association's Current Procedural Terminology (CPT) codes, reporting guidelines, and conventions; the Centers for Medicare and Medicaid Services Healthcare Common Procedure Coding System (HCPCS);

American Society of Anesthesiologists; the National Correct Coding Initiative (NCCI); the National Council for Prescription Drug Programs coding; or other appropriate nationally recognized standards, guidelines, or conventions approved by the Commissioner.

(b) When editing claims, health plans, contracting entities, covered entities, and payers shall adhere to the edit standards, processes, and guidelines adopted by NCCI except as provided in subsection (c) of this section~~:~~

~~(1) the CPT, HCPCS, and NCCI;~~

~~(2) national specialty society edit standards; or~~

~~(3) other appropriate nationally recognized edit standards, guidelines, or conventions approved by the Commissioner~~.

(c) Adherence to the edit standards in ~~subdivision (b)(1) or (2)~~ subsection (b) of this section is not required:

(1) when necessary to comply with State or federal laws, rules, regulations, or coverage mandates; or

(2) for edits that the payer determines are more favorable to providers than the edit standards in ~~subdivisions (b)(1) through (3)~~ subsection (b) of this section or to address new codes not yet incorporated by a payer's edit management software, provided the edit standards are:

(A) developed with input from the relevant Vermont provider community and national provider organizations;

(B) clearly supported by nationally recognized standards, guidelines, or conventions;

(C) approved by the Commissioner of Financial Regulation; and

(D) ~~provided the edits are~~ available to providers on the plan's websites and in ~~their~~ its newsletters.

(d) Health plans, contracting entities, covered entities, and payers shall not release edits more than once per year, and the annual round of edits shall not be implemented without prior review and approval by the Commissioner of Financial Regulation and at least 90 days' advance notice to providers.

(e) No health plan, contracting entity, covered entity, or payer shall subject any health care provider to prepayment review. As used in this subsection, "prepayment review" means any action by the health plan, contracting entity, covered entity, or payer, or by a contractor, assignee, agent, or other entity acting on its behalf, requiring a health care provider to provide medical record documentation in conjunction with or after submission of a claim for payment for health care services delivered, but before the claim has been adjudicated.

(f) Nothing in this section shall preclude a health plan, contracting entity, covered entity, or payer from determining that any such claim is not eligible for payment in full or in part, based on a determination that:

* * *

~~(e)~~(g) Nothing in this section shall be deemed to require a health plan, contracting entity, covered entity, or payer to pay or reimburse a claim, in full or in part, or to dictate the amount of a claim to be paid by a health plan, contracting entity, covered entity, or payer to a health care provider.

~~(f)~~(h) No health plan, contracting entity, covered entity, or payer shall automatically reassign or reduce the code level of evaluation and management codes billed for covered services (downcoding), except that a health plan, contracting entity, covered entity, or payer may reassign a new patient visit code to an established patient visit code based solely on CPT codes, CPT guidelines, and CPT conventions.

~~(g)~~(i) Notwithstanding the provisions of subsection ~~(d)~~(f) of this section, and other than the edits contained in the conventions in subsections (a) and (b) of this section, health plans, contracting entities, covered entities, and payers shall continue to have the right to deny, pend, or adjust claims for services on other bases and shall have the right to reassign or reduce the code level for selected claims for services based on a review of the clinical information provided at the time the service was rendered for the particular claim or a review of the information derived from a health plan's fraud or abuse billing detection programs that create a reasonable belief of fraudulent or abusive billing practices, provided that the decision to reassign or reduce is based primarily on a review of clinical information.

~~(h)~~(j) ~~Every~~ If adding an edit pursuant to subdivision (c)(1) or (2) of this section, a health plan, contracting entity, covered entity, ~~and~~ or payer shall publish on its provider website and in its provider newsletter ~~if applicable~~ or equivalent electronic provider communications:

(1) the name of any commercially available claims editing software product that the health plan, contracting entity, covered entity, or payer utilizes;

(2) the specific standard or standards~~, pursuant to subsection (b) of this section,~~ that the entity uses for claim edits and how those claim edits are supported by those specific standards;

(3) the payment percentages for modifiers; and

(4) ~~any significant~~ the specific edit or edits~~, as determined by the health plan, contracting entity, covered entity, or payer,~~ added to the claims software product ~~after the effective date of this section, which are made at the request of the health plan, contracting entity, covered entity, or payer~~.

~~(i)~~(k) Upon written request, the health plan, contracting entity, covered entity, or payer shall also directly provide the information in subsection ~~(h)~~(j) of this section to a health care provider who is a participating member in the health plan's, contracting entity's, covered entity's, or payer's provider network.

~~(j)~~(l) For purposes of this section, "health plan" includes a workers' compensation policy of a casualty insurer licensed to do business in Vermont.

~~(k)~~(m) ~~BlueCross BlueShield of Vermont and the Vermont Medical Society are requested to continue convening a work group consisting of~~ There is established a working group comprising the health plans, contracting entities, covered entities, and payers subject to the reporting requirement in subsection 9414a(b) of this title; representatives of hospitals and health care providers~~,~~; representatives of the Department of Financial Regulation and of other relevant State agencies~~,~~; and other interested parties to study ~~the edit standards in subsection (b) of this section, the edit standards in national class action settlements, and edit standards and edit transparency standards established by other states to determine the most appropriate way to ensure that health care providers can access information about the edit standards applicable to the health care services they provide~~ trends in coding and billing that health plans, contracting entities, covered entities, or payers, or a combination of them, seek to address through claim editing. The work group is requested to provide an annual progress report to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

~~(l)~~(n) With respect to the work group established under subsection ~~(k)~~(m) of this section and to the extent required to avoid violations of federal antitrust

laws, the Department shall facilitate and supervise the participation of members of the work group.

Sec. 3. 18 V.S.A. § 9418b(g)(4) is amended to read:

~~(4) A health plan shall respond to a completed prior authorization request from a prescribing health care provider within 48 hours after receipt for urgent requests and within two business days after receipt for nonurgent requests. The health plan shall notify a health care provider of or make available to a health care provider a receipt of the request for prior authorization and any needed missing information within 24 hours after receipt.~~

(A)(i) For urgent prior authorization requests, a health plan shall approve, deny, or inform the insured or health care provider if any information is missing from a prior authorization request from an insured or a prescribing health care provider within 24 hours following receipt.

(ii) If a health plan informs an insured or a health care provider that more information is necessary for the health plan to make a determination on the request, the health plan shall have 24 hours to approve or deny the request upon receipt of the necessary information.

(B) For nonurgent prior authorization requests:

(i) A health plan shall approve or deny a completed prior authorization request from an insured or a prescribing health care provider within two business days following receipt.

(ii) A health plan shall acknowledge receipt of the prior authorization request within 24 hours following receipt and shall inform the insured or health care provider at that time if any information is missing that is necessary for the health plan to make a determination on the request.

(iii) If a health plan notifies an insured or a health care provider that more information is necessary pursuant to subdivision (ii) of this subdivision (4)(B), the health plan shall have 24 hours to approve or deny the request upon receipt of the necessary information.

(C) If a health plan does not, within the time limits set forth in this section, respond to a completed prior authorization request, acknowledge receipt of the request for prior authorization, or request missing information, the prior authorization request shall be deemed to have been granted.

(D) Prior authorization approval for a prescribed treatment, service, or course of medication shall be valid for the duration of a prescribed or ordered course of treatment or one year, whichever is longer.

(E) For an insured who is stable on a treatment, service, or course of medication, as determined by a health care provider, that was approved for coverage under a previous health plan, a health plan shall not restrict coverage

of that treatment, service, or course of medication for at least 90 days upon the insured's enrollment in the new health plan.

Sec. 4. 18 V.S.A. § 9418b(i) is added to read:

(i)(1) The Department of Financial Regulation shall adopt rules, bulletins, or other guidance that prohibits carriers from imposing prior authorization requirements for any generic medication or for any admission, item, service, treatment, procedure, or medication, or for any category of these, that have low variation across health care providers and denial rates of less than 10 percent across carriers.

(2) In developing its rules, bulletins, or other guidance, the Department may rely on prior authorization data submitted by the health plans pursuant to subsection (h) of this section and to section 9414a of this chapter.

(3) It is the intent of the General Assembly that the rules, bulletins, or other guidance that the Department develops pursuant to this subsection should be designed to apply to frequently used medications and services, especially those ordered by primary care providers, and to achieve consistency in prior authorization exemptions across health plans in order to meaningfully reduce the administrative burden on health care providers.

Sec. 5. 18 V.S.A. § 9418c is amended to read:

§ 9418c. FAIR CONTRACT STANDARDS

(a) Required information.

(1) Each contracting entity shall provide and each health care contract shall obligate the contracting entity to provide participating health care providers information sufficient for the participating provider to determine the compensation or payment terms for health care services, including all of the following:

(A) The manner of payment, such as fee-for-service, capitation, case rate, or risk.

(B) On request, the fee-for-service dollar amount allowable for each CPT code for those CPT codes that a provider in the same specialty typically uses or that the requesting provider actually bills. Fee schedule information may be provided ~~by CD-ROM or~~ electronically, at the election of the contracting entity, but a provider may elect to receive a hard copy of the fee schedule information instead of the ~~CD-ROM or~~ electronic version.

(C) A clearly understandable, readily available mechanism, such as a specific website address, that includes the following information:

(i) the name of the commercially available claims editing software product that the health plan, contracting entity, covered entity, or payer uses;

(ii) the specific standard or standards from subsection 9418a(c) of this title that the entity uses for claim edits and how those claim edits are supported by those specific standards;

(iii) payment percentages for modifiers; and

(iv) any significant edits, as determined by the health plan, contracting entity, covered entity, or payer, added to the claims software product, which are made at the request of the health plan, contracting entity, covered entity, or payer, and which have been approved by the Commissioner pursuant to subsection 9418a(b) or (c) of this title.

(D) Any policies for prepayment or postpayment audits, or both, including whether the policies include limits on the number of medical records a contracting entity may request for audit in any calendar year.

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(5) If a contracting entity uses policies or manuals to augment the content of the contract with a health care provider, the contracting entity shall ensure that those policies or manuals contain sufficient information to allow providers to understand and comply with the content. The contracting entity shall treat any new policy or manual, and any change to an existing policy or manual, as a contract amendment and shall comply with the requirements for contract amendments set forth in section 9418d of this title.

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Sec. 6. 18 V.S.A. § 9418d is amended to read:

§ 9418d. CONTRACT AMENDMENTS

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(f) For purposes of this section, a health care contract is deemed to be amended when a contracting entity institutes a new policy or manual, or amends an existing policy or manual that is incorporated into a contract by reference, and the new or amended policy or manual impacts the health care provider's reimbursement.

Sec. 7. 18 V.S.A. § 9423 is added to read:

§ 9423. COLLECTION OF COST-SHARING BY HEALTH PLAN OR OTHER PAYER

(a) As used in this section:

(1) "Cost sharing" means the share of costs covered by a health plan for which an insured is financially responsible.

(2)(A) "Cost sharing" includes deductibles, coinsurance, co-payments, and similar charges.

(B) "Cost sharing" does not include premiums, balance billing amounts for out-of-network providers, or the cost of noncovered health care services.

(3) "Health benefit plan" means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other plan offered, issued, or renewed for any person in this State by a health plan or other payer, as those terms are described in section 9418 of this title. The term does not

include benefit plans providing coverage for a specific disease or other limited benefit coverage.

(4) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a physical, dental, behavioral, or mental health condition or substance use disorder, including procedures, products, devices, and medications.

(b) A health plan or other payer shall:

(1) pay a health care provider the full amount due for health care services under the terms of a health benefit plan, including any cost sharing;

(2) have the sole responsibility for collecting cost sharing from an insured; and

(3) upon request of an insured, collect cost sharing throughout the plan year in increments defined by the health plan or other payer.

(c) A health plan or other payer shall not:

(1) withhold any amount for cost sharing from the payment to a health care provider; or

(2) require a health care provider to offer additional discounts to insureds outside the terms of the health care contract between the health plan or other payer and the health care provider.

(d) Any value of a co-payment assistance coupon or similar assistance program shall be applied to an enrollee's annual cost-sharing requirement and may be paid directly to the health plan or other payer on the insured's behalf.

(e) A health plan or other payer shall not cancel the health benefit plan of an insured who does not remit or otherwise pay a cost-sharing amount due for services rendered.

(f) Any expenses related to implementation of this section by a health plan or other payer shall not be used as justification to increase premiums or decrease payments to a health care provider.

(g) A violation of this section is an unfair or deceptive act or practice in the business of insurance in violation of 8 V.S.A. § 4723. All remedies, penalties, and authority granted to the Commissioner of Financial Regulation under 8 V.S.A. § 4726 shall be available to the Commissioner to enforce this section.

(h) The Department of Financial Regulation may adopt rules in accordance with 3 V.S.A. chapter 25 as needed to implement and administer this section.

Sec. 8. EFFECTIVE DATES

(a) Sec. 4 (18 V.S.A. § 9418b(i)) and this section shall take effect on passage, with the Department of Financial Regulation's rules, bulletins, or other guidance to be adopted on or before March 1, 2025 and applicable to all health plans issued on and after January 1, 2026.

(b) The remaining sections shall take effect on January 1, 2025 and shall apply to all health plans issued on and after that date, to all health care provider contracts entered into or renewed on and after that date, and to all claims processed on and after that date.