

SUMMARY

ARKANSAS INSURANCE DEPARTMENT PROPOSED RULE 107

Regulation of Medication Step Therapy Protocols

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To: Arkansas Legislative Council & Arkansas Bureau of Legislative Research

From: Crystal Phelps, Associate Counsel, Arkansas Insurance Department

CC: Alan McClain, Arkansas Insurance Commissioner; Steve Porch, General Counsel, Arkansas Department of Commerce; Russ Galbraith, Deputy Insurance Commissioner; Jim Brader, General Counsel; Jennifer Bruce, Public and Legislative Affairs Director

Date: July 22, 2021

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LEGISLATIVE AUTHORITY FOR RULE

This proposed Rule implements Act 97 of 2021, Section 7(a), which requires the Arkansas Insurance Department to issue rules implementing Act 97.

BACKGROUND AND PURPOSE OF RULE

The purpose of this Rule is to implement Act 97 of 2021, which requires healthcare insurers to base medication step therapy protocols on appropriate clinical practice guidelines or published peer-reviewed medical literature and to offer a fair, transparent process for requesting a step therapy protocol exception.

EXPLANATION OF THE PROPOSED RULE

Health insurers often control healthcare costs through implementing medication step therapy protocols to encourage insureds to choose lower-priced medications before taking more expensive drugs. A health insurer may not cover the higher-priced medication until patient experience demonstrates that lower-priced options do not work for the patient. Sometimes requiring a person to follow a step therapy protocol may have adverse or dangerous consequences for a patient who may be forced to take an inappropriate drug prior to coverage of a more expensive drug. Step therapy protocols may also interfere with a health care provider's right to make treatment decisions.

These protocols are becoming more common and are not always applied consistently. This proposed Rule establishes standards for developing clinical review criteria for medication step therapy protocols. It also describes the process for requesting an exception to a step therapy protocol and the circumstances that require an insurer to grant an exception. The Rule provides a timeline for responding to exception requests and deems any insurer who fail to respond to a request within a specified time period to have approved the request for exception.

Violations of this rule are considered to be unfair or deceptive acts under Ark. Code Ann. § 23-66-206, the Trade Practices Act. Therefore, the penalties, actions, or orders, including but not limited to monetary fines, suspension, or revocation of license, as authorized under Ark. Code Ann. §§ 23-66-209 and 23-66-210, apply to violations of this Rule.