

State Corporation Commission

2017 Fiscal Impact Statement

1. Bill Number: HB1755

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Davis

3. Committee: Commerce and Labor

4. Title: Step therapy protocols; disclosures.

5. Summary: Requires health insurers that limit coverage for prescription drugs through the use of a step therapy protocol to have in place a process for a prescribing provider to request an override of the protocol for a patient. A step therapy protocol is a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition are medically appropriate for a particular patient and are covered by a health benefit plan or that conditions coverage of a prescription medication on a patient first trying an alternative medication without success. The measure requires the granting of a step therapy protocol override in certain circumstances. Finally, the measure requires an insurer that offers a health benefit plan that uses a step therapy protocol to provide (i) written notice of a determination that the protocol requires denial of coverage of a provider's selected prescription drug, (ii) an explanation of the basis for such determination, and (iii) notice of the procedures for submitting a request for an override of the restrictions of the step therapy protocol.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

8. Fiscal Implications: There is no fiscal impact on the State Corporation Commission. However, based on data provided by the Commonwealth's insurance carrier to the Department of Human Resource Management, establishing a provider override process for step therapy protocols could result in a fiscal impact to the state health plan; however, such impact is currently indeterminate.

Step therapy protocols generally require health insurance plan members to try less expensive but therapeutically comparable medications or treatments before the insurance provider will approve payment for more expensive medications or treatments. The Commonwealth's insurance carrier indicates that a step therapy override process may result in additional costs to the state health insurance plan as these less expensive treatments may not be the first treatment that a plan member receives.

The Commonwealth's insurance carrier indicated that for every one percent (1%) of step therapy cases that are overridden, the state's health insurance plan costs would increase by \$47,000. This amount is scalable such that if two percent (2%) of step therapy cases were overridden, the cost would double to \$94,000. These amounts are provided for informational purposes as neither DHRM nor the Commonwealth's insurance carrier can currently estimate how many step therapy overrides will be requested, because they cannot identify any reliable indicators to accurately predict prescriber behavior.

Current health insurance fund splits assume that the general fund share of any cost increase to the plan is approximately 41 percent. Therefore, approximately 41 percent of any increased costs due to step therapy overrides would be paid by the general fund. At this time, the potential number of step therapy overrides is unknown therefore the fiscal impact of this legislation is indeterminate.

9. Specific Agency or Political Subdivisions Affected: Department of Human Resource Management, Administration of Health Insurance, State Corporation Commission Bureau of Insurance

10. Technical Amendment Necessary: Consideration should be given to amending the definition of “step therapy protocol override” on lines 31 and 32 as follows:

“...rationale and documentation, that ~~as to whether a step therapy protocol should apply in a particular situation or whether~~ the step therapy protocol...”

This amendment would clarify that a “step therapy protocol override” means a determination that step therapy should be overridden instead of applied (see line 39 which refers to granting an override).

11. Other Comments: Delegate Davis introduced House Bill 362 in the 2016 Session, which was carried over and referred to the Health Insurance Reform Commission (HIRC). Health care prescribers testified before HIRC that step therapy can be a danger to patients in both medical and mental health scenarios whereas health carriers argue that step therapy ensures that patients are given receive medications which have been studied and used by numerous patients rather than new medications pushed by pharmacy providers that may be riskier and more expensive.

2016 House Bill 362 is similar to House Bill 1755, and all technical comments recommended by the Bureau of Insurance to the 2016 bill have been incorporated into House Bill 1755. One new provision in the bill allows a patient to opt to pay for the prescribed treatment for the duration of the step therapy period. At the end of that period, the carrier must cover the prescribed treatment as it would have been covered had the person gone through step therapy. Any carrier that imposes a step therapy protocol in a specific situation must provide to the prescribing provider and patient, written notice of the protocol and the procedures for submitting an override request.

The Bureau receives complaints related to carrier step therapy protocols and assists individuals in the appeals process to obtain prescribed medications that are subject to step therapy protocols.

House Bill 1755 is assigned to Commerce & Labor Subcommittee #2.

Date: 01/19/17/V. Tompkins