

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
S.P. 460 - L.D. 1100

**An Act to Clarify the Requirements for Accessing Nonformulary Drugs and
Drugs Used to Treat Serious Mental Illness**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §4304, sub-§2-C, as enacted by PL 2021, c. 345, §1, is amended to read:

2-C. Prior authorization of prescription drugs used for assessment and treatment of serious mental illness. Notwithstanding any requirement of this section to the contrary, a carrier shall approve a prior authorization request for medication on the carrier's prescription drug formulary that is prescribed to assess or treat an enrollee's serious mental illness. If a drug shortage makes a formulary drug prescribed to assess or treat an enrollee's serious mental illness unavailable and there is no equivalent formulary drug available, the carrier shall approve an equivalent nonformulary drug prescribed to assess and treat the enrollee's serious mental illness for the period of time that a formulary drug is unavailable. For the purposes of this subsection, "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. The superintendent may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 24-A MRSA §4311, sub-§1-A, as corrected by RR 2023, c. 2, Pt. A, §38, is amended to read:

1-A. Access to Request for clinically appropriate prescription drugs. For plan years beginning on or after March 19, 2019, a carrier must allow an enrollee, the enrollee's designee or the person who has issued a valid prescription for the enrollee to request ~~and gain access to~~ a clinically appropriate drug not otherwise covered by the health plan. The carrier's process must comply with section 4304 and with this subsection. If the carrier approves a request under this subsection for a drug not otherwise covered by the health plan, the carrier must treat the drug as an essential health benefit, including counting any

cost sharing toward the plan's annual limit on cost sharing and including it when calculating the plan's actuarial value.

A. The carrier must determine whether it will cover the drug requested and notify the enrollee, the enrollee's designee, if applicable, and the person who has issued the valid prescription for the enrollee of its coverage decision within 72 hours or 2 business days, whichever is less, following receipt of the request. A carrier that grants coverage under this paragraph must provide coverage of the drug for the duration of the prescription, including refills.

B. The carrier must have a process by which an expedited review may be requested in exigent circumstances. Exigent circumstances exist when an enrollee is suffering from a health condition that may seriously jeopardize the enrollee's life, health or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a nonformulary drug. When an expedited review has been requested, the carrier must determine whether it will cover the drug requested and notify the enrollee, the enrollee's designee, if applicable, and the person who has provided a valid prescription for the enrollee of its coverage decision within 24 hours following receipt of the request. A carrier that grants coverage under this paragraph must provide coverage of the drug for the duration of the exigency.