

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care to which was referred House Bill No. 766
3 entitled “An act relating to prior authorization and step therapy requirements,
4 health insurance claims, provider contracts, and collection of cost sharing
5 amounts” respectfully reports that it has considered the same and recommends
6 that the bill be amended by striking out all after the enacting clause and
7 inserting in lieu thereof the following:

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

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

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

17 (B) grant an exception to its step-therapy protocols upon request of
18 an insured or the insured’s treating health care professional under the same
19 time parameters as set forth for prior authorization requests in 18 V.S.A.
20 § 9418b(g)(4) if any one or more of the following conditions apply:

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

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

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

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

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

18 (I) pose a barrier to adherence;

19 (II) likely worsen a comorbid condition; or

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

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

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

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

12 § 9418a. PROCESSING CLAIMS, DOWNCODING, AND ADHERENCE
13 TO CODING RULES

14 (a) Health plans, contracting entities, covered entities, and payers shall
15 accept and initiate the processing of all health care claims submitted by a
16 health care provider pursuant to and consistent with the current version of the
17 American Medical Association’s Current Procedural Terminology (CPT)
18 codes, reporting guidelines, and conventions; the Centers for Medicare and
19 Medicaid Services Healthcare Common Procedure Coding System (HCPCS);
20 American Society of Anesthesiologists; the National Correct Coding Initiative
21 (NCCI); the National Council for Prescription Drug Programs coding; or other

1 appropriate nationally recognized standards, guidelines, or conventions
2 approved by the Commissioner.

3 (b)(1) ~~When~~ Except as provided in subsection (c) of this section, when
4 editing claims, health plans, contracting entities, covered entities, and payers
5 shall adhere to require not more than the following edit standards, processes,
6 and guidelines except as provided in subsection (c) of this section:

7 ~~(1)(A)~~ the CPT, HCPCS, and for claims for outpatient and professional
8 services, the NCCI as in effect for Medicare;

9 ~~(2)(B)~~ national specialty society edit standards for facility claims, the
10 Medicare Code Editor as in effect for Medicare; ~~or~~ and

11 ~~(3)(C)~~ for any other claim not addressed by subdivision (1) or (2) of this
12 subsection (b), other appropriate nationally recognized edit standards,
13 guidelines, or conventions approved by the Commissioner.

14 (2) For outpatient services, professional services, and facility claims, a
15 health plan, contracting entity, covered entity, or payer shall apply the relevant
16 edit standards, processes, and guidelines from NCCI or Medicare Code Editor
17 pursuant to subdivisions (1)(A) and (B) of this subsection that were in effect
18 for Medicare on the date of the claim submission; provided, however, that if
19 Medicare has changed an applicable edit standard, process, or guideline within
20 90 days prior to the date of the claim submission, the health plan, contracting
21 entity, covered entity, or payer may use the version of the edit standard,

1 process, or guideline that Medicare had applied prior to the most recent change
2 if the health plan, contracting entity, covered entity, or payer has not yet
3 released an updated version of its edits in accordance with subsection (d) of
4 this section.

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

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

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

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

15 (B) clearly supported by nationally recognized standards, guidelines,
16 or conventions; (C) approved by the Commissioner of Financial Regulation;

17 and

18 (C) provided the edits are available to providers on the plan's
19 websites and in their ~~its~~ newsletters or equivalent electronic communications.

20 (d) Health plans, contracting entities, covered entities, and payers shall not
21 release edits more than quarterly, to take effect on January 1, April 1, July 1, or

1 October 1, as applicable, and the edits shall not be implemented without **prior**
2 **review and approval by the filing with the** Commissioner of Financial
3 Regulation **to ensure consistency with nationally recognized standards**
4 **guidelines, and conventions,** and at least 30 days’ advance notice to
5 providers. Whenever Medicare changes an edit standard, process, or guideline
6 that it applies to outpatient service, professional service, or facility claims,
7 each health plan, contracting entity, covered entity, or payer shall incorporate
8 those modifications into its next quarterly release of edits.

9 **(e)(1) Except as otherwise provided in subdivision (2) of this**
10 **subsection, no** health plan, contracting entity, covered entity, or payer shall
11 subject any health care provider to prepayment coding validation edit review.
12 As used in this subsection, “prepayment coding validation edit review” means
13 any action by the health plan, contracting entity, covered entity, or payer, or by
14 a contractor, assignee, agent, or other entity acting on its behalf, requiring a
15 health care provider to provide medical record documentation in conjunction
16 with or after submission of a claim for payment for health care services
17 delivered, but before the claim has been adjudicated.

18 **(2)** Nothing in this subsection shall be construed to prohibit targeted
19 prepayment coding validation edit review of a specific provider, provider
20 group, or facility under certain circumstances, including evaluating high-dollar
21 claims; verifying complex financial arrangements; investigating member

1 questions; conducting post-audit monitoring; addressing a reasonable belief of
2 fraud, waste, or abuse; or other circumstances determined by the
3 Commissioner through a bulletin or guidance.

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

7 * * *

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

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

18 ~~(g)~~(i) Notwithstanding the provisions of subsection ~~(d)~~(f) of this section,
19 and other than the edits contained in the conventions in subsections (a) and (b)
20 of this section, health plans, contracting entities, covered entities, and payers
21 shall continue to have the right to deny, pend, or adjust claims for services on

1 other bases and shall have the right to reassign or reduce the code level for
2 selected claims for services based on a review of the clinical information
3 provided at the time the service was rendered for the particular claim or a
4 review of the information derived from a health plan’s fraud or abuse billing
5 detection programs that create a reasonable belief of fraudulent or abusive
6 billing practices, provided that the decision to reassign or reduce is based
7 primarily on a review of clinical information.

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

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

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

18 (3) the payment percentages for modifiers; and

19 (4) ~~any significant~~ the specific edit or edits, as determined by the health
20 ~~plan, contracting entity, covered entity, or payer,~~ added to the claims software

1 product ~~after the effective date of this section, which are made at the request of~~
2 ~~the health plan, contracting entity, covered entity, or payer.~~

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

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

10 (k)(m) ~~BlueCross BlueShield of Vermont and the Vermont Medical~~
11 ~~Society are requested to continue convening a work group consisting of~~ There
12 is established a working group comprising the health plans, contracting
13 entities, covered entities, and payers subject to the reporting requirement in
14 subsection 9414a(b) of this title; representatives of hospitals and health care
15 providers; representatives of the Department of Financial Regulation and of
16 other relevant State agencies; and other interested parties to study the edit
17 standards in subsection (b) of this section, the edit standards in national class
18 action settlements, and edit standards and edit transparency standards
19 established by other states to determine the most appropriate way to ensure that
20 health care providers can access information about the edit standards
21 applicable to the health care services they provide trends in coding and billing

1 that health plans, contracting entities, covered entities, or payers, or a
2 combination of them, seek to address through claim editing. The ~~work~~
3 working group is requested to shall provide an annual a progress report to the
4 House Committee on Health Care and the Senate Committees on Health and
5 Welfare and on Finance upon request.

6 ~~(4)(n)~~ With respect to the ~~work~~ working group established under subsection
7 ~~(k)(m)~~ of this section and to the extent required to avoid violations of federal
8 antitrust laws, the Department shall facilitate and supervise the participation of
9 members of the ~~work~~ working group.

10 Sec. 3. 18 V.S.A. § 9418b(c) and (d) are amended to read:

11 ~~(c) A health plan shall furnish, upon request from a health care provider, a~~
12 ~~current list of services and supplies requiring prior authorization.~~

13 (1) It is the intent of the General Assembly to reduce variability in prior
14 authorization requirements by aligning to the greatest extent possible with the
15 prior authorization requirements in Vermont's Medicaid program.

16 (2) A health plan shall not impose any prior authorization requirement
17 for any admission, item, service, treatment, or procedure that is more
18 restrictive than the prior authorization requirements that the Department of
19 Vermont Health Access would apply for the same admission, item, service,
20 treatment, or procedure under Vermont's Medicaid program.

1 (3) Each health plan shall review the prior authorization requirements in
2 effect in Vermont’s Medicaid program at least once every six months to ensure
3 that the health plan is maintaining the prior authorization alignment required
4 by subdivision (2) of this subsection.

5 (4) Nothing in this subsection shall be construed to:

6 (A) require prior authorization alignment with Vermont Medicaid
7 for prescription drugs;

8 (B) prohibit prior authorization requirements for any admission, item,
9 service, treatment, or procedure that is not covered by Vermont Medicaid;

10 (C) prohibit prior authorization requirements for an admission, item,
11 service, treatment, or procedure that is provided out-of-network; or

12 (D) require a health plan to maintain the same provider network as
13 Vermont Medicaid.

14 (d)(1) A health plan shall furnish, upon request from a health care provider,
15 a current list of services and supplies requiring prior authorization.

16 (2) A health plan shall **post make** a current list of services and supplies
17 requiring prior authorization **available** to **the public on** the insurer’s website.

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

19 ~~(4) A health plan shall respond to a completed prior authorization~~
20 ~~request from a prescribing health care provider within 48 hours after receipt for~~
21 ~~urgent requests and within two business days after receipt for nonurgent~~

1 ~~requests. The health plan shall notify a health care provider of or make~~
2 ~~available to a health care provider a receipt of the request for prior~~
3 ~~authorization and any needed missing information within 24 hours after~~
4 ~~receipt.~~

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

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

13 (B) For nonurgent prior authorization requests:

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

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

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

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

9 (D) Prior authorization approval for a prescribed or ordered
10 treatment, service, or course of medication shall be valid for the duration of the
11 prescribed or ordered treatment, service, or course of medication or one year,
12 whichever is longer; provided, however, that for a prescribed or ordered
13 treatment, service, or course of medication that continues for more than one
14 year, a health plan shall not require renewal of the prior authorization approval
15 more frequently than once every five years.

16 (E) For an insured who is stable on a treatment, service, or course of
17 medication, as determined by a health care provider, that was approved for
18 coverage under a previous health plan, a health plan shall not restrict coverage
19 of that treatment, service, or course of medication for at least 90 days upon the
20 insured's enrollment in the new health plan.

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

1 § 9418c. FAIR CONTRACT STANDARDS

2 (a) Required information.

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

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

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

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

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

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

4 (iii) payment percentages for modifiers; and

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

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

13 * * *

14 (5)(A) If a contracting entity uses policies or manuals to augment the
15 content of the contract with a health care provider, the contracting entity shall
16 ensure that those policies or manuals contain sufficient information to allow
17 providers to understand and comply with the content.

18 (B) For any new policy or manual, or any change to an existing
19 policy or manual, the contracting entity shall do all of the following:

20 (i) Provide notice of the new policy, manual, or change to each
21 participating provider in writing not fewer than 60 days prior to the effective

1 date of the policy, manual, or change, which notice shall be conspicuously
2 entitled “Notice of Policy Change” and shall include:

3 (I) a summary of the new policy, manual, or change;
4 (II) an explanation of the policy, manual, or change;
5 (III) the effective date of the policy, manual, or change; and
6 (IV) a notice of the right to object in writing to the policy,
7 manual, or change, along with a timeframe for objection and where and how to
8 send the objection.

9 (ii) Provide the participating provider 60 days after receiving the
10 notice and summary to object in writing to the new policy, manual, or change.
11 If the participating provider objects to the new policy, manual, or change, the
12 contracting entity shall provide an initial substantive response to the objection
13 within 30 days following the contracting entity’s receipt of the written
14 objection, and the contracting entity shall work together with the provider to
15 achieve a reasonable resolution to the objection within 60 days following the
16 provider’s receipt of contracting entity’s initial substantive response. If the
17 provider is not satisfied with the proposed resolution, the provider may pursue
18 any remedy available to the provider under the health care contract or under
19 applicable law.

20 * * *

1 Sec. 6. REDUCING ADMINISTRATIVE BURDENS; WORKING

2 GROUP; REPORT

3 The Director of Health Care Reform in the Agency of Human Services shall
4 convene a working group comprising representatives of health insurers; health
5 care providers, including pharmacists; the Office of the Health Care Advocate;
6 the Department of Vermont Health Access; the Green Mountain Care Board;
7 and the Department of Financial Regulation to consider ways in which health
8 benefit plan designs and methods of collecting patient cost sharing may be
9 developed in a manner that reduces the administrative burdens on patients,
10 health care providers, and payers, including a consideration of payers billing
11 patients directly for their cost sharing amounts. On or before January 15,
12 2025, the Director of Health Care Reform shall provide the working group's
13 findings and recommendations to the House Committee on Health Care and the
14 Senate Committees on Health and Welfare and on Finance.

15 Sec. 7. PRIOR AUTHORIZATION; **INSURER** IMPACT REPORTS

16 On or before January 15, 2027, each health insurer with at least 2,000
17 covered lives in Vermont shall report to the House Committee on Health Care
18 and the Senate Committees on Health and Welfare and on Finance regarding
19 the impact of the prior authorization provisions of this act on the following
20 during plan years 2025 and 2026:

21 (1) utilization of health care services covered by the insurer's plans;

1 (2) development of the insurer’s premium rates for future plan years;

2 and

3 (3) the insurer’s estimated avoided costs, including:

4 (A) the specific methodologies that the insurer uses to determine
5 the amount of “savings” from avoided costs;

6 (B) the costs of the alternative tests, procedures, medications, and
7 other items or services ordered for insureds as a result of the insurer’s
8 denials of requests for prior authorizations; and

9 (C) the costs of emergency department visits and inpatient stays,
10 including stays in intensive care units, as a result of the insurer’s denials
11 of requests for prior authorizations.

12 **Sec. 8. PRIOR AUTHORIZATION; PROVIDER IMPACT REPORTS**

13 **(a) The General Assembly requests that organizations representing**
14 **Vermont’s hospital-employed, federally qualified health center-employed,**
15 **and independent health care providers who are affected by the prior**
16 **authorization provisions of this act gather information from their**
17 **members on or before January 1, 2025 and on or before July 1, 2026**
18 **regarding current circumstances and the impact of the prior**
19 **authorization provisions of this act on their provider members and the**
20 **members’ practices. To the extent practicable, the information gathered**
21 **should align with national survey questions and include information**

1 **regarding the impact of prior authorization processes and requirements**
2 **on care delivery, quality of care, and staffing.**

3 **(b) On or before January 15, 2027, each provider organization that**
4 **gathered information from its members in accordance with subsection (a)**
5 **of this section is requested to summarize and report on that information to**
6 **the House Committee on Health Care and the Senate Committees on**
7 **Health and Welfare and on Finance, including providing a summary of**
8 **the impact of the prior authorization provisions of this act on the**
9 **organization’s members’ practices.**

10 Sec. 9. REPEAL

11 18 V.S.A. § 9418(m) and (n) (claims edit working group) are repealed on
12 January 1, 2028.

13 Sec. 10. EFFECTIVE DATES

14 (a) Secs. 6 (administrative burdens working group) and 7 (prior
15 authorization; insurer impact reports), and 8 (prior authorization; provider
16 impact reports) and this section shall take effect on passage.

17 (b) Sec. 3 (18 V.S.A. § 9418b(g)(4); prior authorization time frames) shall
18 take effect on January 1, 2025, except that a health plan that must modify its
19 technology in order to continue administering its own internal utilization
20 review process for certain services shall have until not later than January 1,

1 2026 to come into compliance with the provisions of Sec. 3 as to those
2 services.

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

7 and that after passage the title of the bill be amended to read: “An act relating
8 to prior authorization and step therapy requirements, health insurance claims,
9 and provider contracts”

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE