

ASSEMBLY, No. 1993

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

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SYNOPSIS

Restricts medical expense coverage for opioid drugs unless prescribing health care professional follows certain guidelines.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning opioid drugs, supplementing various parts of
2 the statutory law, and amending P.L.1972, c.70.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) a. Medical expense benefits provided
8 pursuant to R.S.34:15-15 shall not include coverage of opioid drugs
9 unless the prescribing health care professional provides
10 documentation, consistent with regulations adopted by the State
11 Board of Medical Examiners pursuant to section 4 of P.L. , c.
12 (C.)(pending before the Legislature as this bill), of the
13 following:

14 (1) a thorough medical history, physical examination, and
15 medical decision-making plan, with particular attention focused on
16 determining the cause of the patient's pain;

17 (2) the professional has documented that non-opioid medication
18 and non-pharmacological pain management approaches were
19 inadequate;

20 (3) the professional has accessed the relevant prescription
21 monitoring information under the Prescription Monitoring Program
22 pursuant to section 8 of P.L.2015, c.74 (C. 45:1-46.1);

23 (4) except in the case of patients receiving palliative or hospice
24 care, the prescribed dosage of opioid drug is not more than 90
25 morphine milligram equivalents per day; and

26 (5) the patient has been warned of the following:

27 (a) opioids are highly addictive, even when taken as prescribed;
28 and

29 (b) taking more opioids than prescribed, or mixing sedatives or
30 alcohol with opioids, can result in fatal respiratory depression.

31 b. An employer, its carrier, or its third party administrator may
32 disqualify from participation in any network it has established to
33 provide medical expense benefits pursuant to R.S.34:15-15 any
34 health care professional who fails to provide the documentation
35 required by subsection a. of this section.

36 c. This section shall not apply to a prescription for opioid drugs
37 that prescribes less than a four day supply of the opioid drug.

38

39 2. (New section) a. A carrier which offers a managed care plan
40 shall not provide benefits or coverage, as applicable, for opioid
41 drugs unless the prescribing health care professional provides
42 documentation, consistent with regulations adopted by the Board of
43 Medical Examiners pursuant to section 4 of P.L. , c. (C.)(pending
44 before the Legislature as this bill), of the following:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (1) a thorough medical history, physical examination, and
2 medical decision-making plan, with particular attention focused on
3 determining the cause of the patient's pain;
- 4 (2) the professional has documented that non-opioid medication
5 and non-pharmacological pain management approaches were
6 inadequate;
- 7 (3) the professional has accessed the relevant prescription
8 monitoring information under the Prescription Monitoring Program
9 pursuant to section 8 of P.L.2015, c.74 (C. 45:1-46.1);
- 10 (4) except in the case of patients receiving palliative or hospice
11 care, the prescribed dosage of opioid drug is not more than 90
12 morphine milligram equivalents per day; and
- 13 (5) the patient has been warned of the following:
- 14 (a) opioids are highly addictive, even when taken as prescribed;
15 and
- 16 (b) taking more opioids than prescribed, or mixing sedatives or
17 alcohol with opioids, can result in fatal respiratory depression.
- 18 b. A carrier may disqualify from participation in any network it
19 has established to provide medical expense benefits any health care
20 professional who fails to provide the documentation required by
21 subsection a. of this section.
- 22 c. This section shall not apply to a prescription for opioid drugs
23 that prescribes less than a four day supply of the opioid drug.
- 24 d. For the purposes of this section, a "carrier" shall include the
25 State Health Benefits Program and the School Employees' Health
26 Benefits Program.
- 27
- 28 3. (New section) a. The State Medicaid and NJ FamilyCare
29 programs shall not provide benefits or coverage, as applicable, for
30 opioid drugs unless the prescribing health care professional
31 provides documentation, consistent with regulations adopted by the
32 State Board of Medical Examiners pursuant to section 4 of P.L. ,
33 c. (C.)(pending before the Legislature as this bill), of the
34 following:
- 35 (1) a thorough medical history, physical examination, and
36 medical decision-making plan, with particular attention focused on
37 determining the cause of the patient's pain;
- 38 (2) the professional has documented that non-opioid medication
39 and non-pharmacological pain management approaches were
40 inadequate;
- 41 (3) the professional has accessed the relevant prescription
42 monitoring information under the Prescription Monitoring Program
43 pursuant to section 8 of P.L.2015, c.74 (C. 45:1-46.1);
- 44 (4) except in the case of patients receiving palliative or hospice
45 care, the prescribed dosage of opioid drug is not more than 90
46 morphine milligram equivalents per day; and
- 47 (5) the patient has been warned of the following:

1 (a) opioids are highly addictive, even when taken as prescribed;
2 and

3 (b) taking more opioids than prescribed, or mixing sedatives or
4 alcohol with opioids, can result in fatal respiratory depression.

5 b. The Commissioner of Human Services, in consultation with
6 the Commissioner of Children and Families, shall apply for such
7 State plan amendments or waivers as may be necessary to
8 implement the provisions of this section, and shall secure federal
9 financial participation for State expenditures under the federal
10 Medicaid program and Children's Health Insurance Program.

11 c. The State Medicaid and NJ FamilyCare programs may
12 disqualify from participation in any network it has established to
13 provide medical expense benefits any health care professional who
14 fails to provide the documentation required by subsection a. of this
15 section.

16 d. This section shall not apply to a prescription for opioid drugs
17 that prescribes less than a four day supply of the opioid drug.

18

19 4. (New section) a. The State Board of Medical Examiners, in
20 consultation with the Department of Health, shall adopt regulations
21 pursuant to P.L. , c. (C.)(pending before the Legislature as
22 this bill), to direct physicians licensed pursuant to chapter 9 of Title
23 45 of the Revised Statutes, when prescribing opioid drugs, to
24 provide documentation of the following:

25 (1) a thorough medical history, physical examination, and
26 medical decision-making plan, with particular attention focused on
27 determining the cause of the patient's pain;

28 (2) the professional has documented that non-opioid medication
29 and non-pharmacological pain management approaches were
30 inadequate;

31 (3) the professional has accessed the relevant prescription
32 monitoring information under the Prescription Monitoring Program
33 pursuant to section 8 of P.L.2015, c.74 (C. 45:1-46.1);

34 (4) except in the case of patients receiving palliative or hospice
35 care, the prescribed dosage of opioid drug is not more than 90
36 morphine milligram equivalents per day; and

37 (5) the patient has been warned of the following:

38 (a) opioids are highly addictive, even when taken as prescribed;
39 and

40 (b) taking more opioids than prescribed, or mixing sedatives or
41 alcohol with opioids, can result in fatal respiratory depression.

42 The board's regulations shall specify the form and content of the
43 documentation required pursuant to this section.

44 b. This section shall not apply to a prescription for opioid drugs
45 that prescribes less than a four day supply of the opioid drug.

46

47 5. Section 4 of P.L.1972, c.70 (C.39:6A-4) is amended to read
48 as follows:

1 4. Personal injury protection coverage, regardless of fault.

2 Except as provided by section 45 of P.L.2003, c.89 (C.39:6A-
3 3.3) and section 4 of P.L.1998, c.21 (C.39:6A-3.1), every standard
4 automobile liability insurance policy issued or renewed on or after
5 the effective date of P.L.1998, c.21 (C.39:6A-1.1 et al.) shall
6 contain personal injury protection benefits for the payment of
7 benefits without regard to negligence, liability or fault of any kind,
8 to the named insured and members of his family residing in his
9 household who sustain bodily injury as a result of an accident while
10 occupying, entering into, alighting from or using an automobile, or
11 as a pedestrian, caused by an automobile or by an object propelled
12 by or from an automobile, and to other persons sustaining bodily
13 injury while occupying, entering into, alighting from or using the
14 automobile of the named insured, with permission of the named
15 insured.

16 "Personal injury protection coverage" means and includes:

17 a. Payment of medical expense benefits in accordance with a
18 benefit plan provided in the policy and approved by the
19 commissioner, for reasonable, necessary, and appropriate treatment
20 and provision of services to persons sustaining bodily injury, in an
21 amount not to exceed \$250,000 per person per accident. In the
22 event benefits paid by an insurer pursuant to this subsection are in
23 excess of \$75,000 on account of bodily injury to any one person in
24 any one accident, that excess shall be paid by the insurer and shall
25 be reimbursable to the insurer from the Unsatisfied Claim and
26 Judgment Fund pursuant to section 2 of P.L.1977, c.310 (C.39:6-
27 73.1). The policy form, which shall be subject to the approval of
28 the commissioner, shall set forth the benefits provided under the
29 policy, including eligible medical treatments, diagnostic tests and
30 services as well as such other benefits as the policy may provide.
31 The commissioner shall set forth by regulation a statement of the
32 basic benefits which shall be included in the policy. Medical
33 treatments, diagnostic tests, and services provided by the policy
34 shall be rendered in accordance with commonly accepted protocols
35 and professional standards and practices which are commonly
36 accepted as being beneficial for the treatment of the covered injury.
37 Protocols and professional standards and practices and lists of valid
38 diagnostic tests which are deemed to be commonly accepted
39 pursuant to this section shall be those recognized by national
40 standard setting organizations, national or state professional
41 organizations of the same discipline as the treating provider, or
42 those designated or approved by the commissioner in consultation
43 with the professional licensing boards in the Division of Consumer
44 Affairs in the Department of Law and Public Safety. The
45 commissioner, in consultation with the Commissioner of the
46 Department of Health **[and Senior Services]** and the applicable
47 licensing boards, may reject the use of protocols, standards and
48 practices or lists of diagnostic tests set by any organization deemed

1 not to have standing or general recognition by the provider
2 community or the applicable licensing boards. Protocols shall be
3 deemed to establish guidelines as to standard appropriate treatment
4 and diagnostic tests for injuries sustained in automobile accidents,
5 but the establishment of standard treatment protocols or protocols
6 for the administration of diagnostic tests shall not be interpreted in
7 such a manner as to preclude variance from the standard when
8 warranted by reason of medical necessity. The policy form may
9 provide for the precertification of certain procedures, treatments,
10 diagnostic tests, or other services or for the purchase of durable
11 medical goods, as approved by the commissioner, provided that the
12 requirement for precertification shall not be unreasonable, and no
13 precertification requirement shall apply within ten days of the
14 insured event. The policy may provide that certain benefits
15 provided by the policy which are in excess of the basic benefits
16 required by the commissioner to be included in the policy may be
17 subject to reasonable copayments in addition to the copayments
18 provided for pursuant to subsection e. of this section, provided that
19 the copayments shall not be unreasonable and shall be established
20 in such a manner as not to serve to encourage underutilization of
21 benefits subject to the copayments, nor encourage overutilization of
22 benefits. The policy form shall clearly set forth any limitations on
23 benefits or exclusions, which may include, but need not be limited
24 to, benefits which are otherwise compensable under workers'
25 compensation, or benefits for treatments deemed to be experimental
26 or investigational, or benefits deducted pursuant to section 6 of
27 P.L.1972, c.70 (C.39:6A-6). The commissioner may enlist the
28 services of a benefit consultant in establishing the basic benefits
29 level provided in this subsection, which shall be set forth by
30 regulation no later than 120 days following the enactment date of
31 P.L.1998, c.21 (C.39:6A-1.1 et al.). The commissioner shall not
32 advertise for bids for the consultant as provided in sections 3 and 4
33 of P.L.1954, c.48 (C.52:34-8 and 52:34-9).

34 Notwithstanding the provisions of P.L.2003, c.18, physical
35 therapy treatment shall not be reimbursable as medical expense
36 benefits pursuant to this subsection unless rendered by a licensed
37 physical therapist pursuant to a referral from a licensed physician,
38 dentist, podiatrist or chiropractor within the scope of their
39 respective practices.

40 Notwithstanding the provisions of P.L.2009, c.56 (C.45:2C-19 et
41 al.), acupuncture treatment shall not be reimbursable as medical
42 expense benefits pursuant to this subsection unless rendered by a
43 licensed acupuncturist pursuant to a referral from a licensed
44 physician within the scope of the physician's practice.

45 (1) Medical expense benefits shall not include coverage of opioid
46 drugs unless the prescribing health care professional provides
47 documentation, consistent with regulations adopted by the State
48 Board of Medical Examiners pursuant to section 4 of P.L. ,

- 1 c. (C.)(pending before the Legislature as this bill), of the
2 following:
- 3 (a) a thorough medical history, physical examination, and
4 medical decision-making plan, with particular attention focused on
5 determining the cause of the patient's pain;
- 6 (b) the professional has documented that non-opioid medication
7 and non-pharmacological pain management approaches were
8 inadequate;
- 9 (c) the professional has accessed the relevant prescription
10 monitoring information under the Prescription Monitoring Program
11 pursuant to section 8 of P.L.2015, c.74 (C. 45:1-46.1);
- 12 (d) except in the case of patients receiving palliative or hospice
13 care, the prescribed dosage of opioid drug is not more than 90
14 morphine milligram equivalents per day; and
- 15 (e) the patient has been warned of the following:
- 16 (i) opioids are highly addictive, even when taken as prescribed;
17 and
- 18 (ii) taking more opioids than prescribed, or mixing sedatives or
19 alcohol with opioids, can result in fatal respiratory depression.
- 20 (2) An insurer may disqualify from participation in any network
21 it has established to provide medical expense benefits pursuant to
22 this subsection any health care professional who fails to provide the
23 documentation required by paragraph (1) of this subsection.
- 24 (3) Paragraph (1) of this subsection shall not apply to a
25 prescription for opioid drugs that prescribes less than a four day
26 supply of the opioid drug.
- 27 b. Income continuation benefits. The payment of the loss of
28 income of an income producer as a result of bodily injury disability,
29 subject to a maximum weekly payment of \$100. Such sum shall be
30 payable during the life of the injured person and shall be subject to
31 an amount or limit of \$5,200, on account of injury to any one
32 person in any one accident, except that in no case shall income
33 continuation benefits exceed the net income normally earned during
34 the period in which the benefits are payable.
- 35 c. Essential services benefits. Payment of essential services
36 benefits to an injured person shall be made in reimbursement of
37 necessary and reasonable expenses incurred for such substitute
38 essential services ordinarily performed by the injured person for
39 himself, his family and members of the family residing in the
40 household, subject to an amount or limit of \$12 per day. Such
41 benefits shall be payable during the life of the injured person and
42 shall be subject to an amount or limit of \$4,380, on account of
43 injury to any one person in any one accident.
- 44 d. Death benefits. In the event of the death of an income
45 producer as a result of injuries sustained in an accident entitling
46 such person to benefits under this section, the maximum amount of
47 benefits which could have been paid to the income producer, but for
48 his death, under subsection b. of this section shall be paid to the

1 surviving spouse, or in the event there is no surviving spouse, then
2 to the surviving children, and in the event there are no surviving
3 spouse or surviving children, then to the estate of the income
4 producer.

5 In the event of the death of one performing essential services as a
6 result of injuries sustained in an accident entitling such person to
7 benefits under subsection c. of this section, the maximum amount of
8 benefits which could have been paid to such person, under
9 subsection c., shall be paid to the person incurring the expense of
10 providing such essential services.

11 e. Funeral expenses benefits. All reasonable funeral, burial
12 and cremation expenses, subject to a maximum benefit of \$1,000,
13 on account of the death of any one person in any one accident shall
14 be payable to the decedent's estate.

15 Benefits payable under this section shall:

16 (1) Be subject to any option elected by the policyholder
17 pursuant to section 13 of P.L.1983, c.362 (C.39:6A-4.3);

18 (2) Not be assignable, except to a provider of service benefits
19 under this section in accordance with policy terms approved by the
20 commissioner, nor subject to levy, execution, attachment or other
21 process for satisfaction of debts.

22 Medical expense benefit payments shall be subject to any
23 deductible and any copayment which may be established as
24 provided in the policy. Upon the request of the commissioner or
25 any party to a claim for benefits or payment for services rendered, a
26 provider shall present adequate proof that any deductible or
27 copayment related to that claim has not been waived or discharged
28 by the provider.

29 No insurer or health provider providing benefits to an insured
30 shall have a right of subrogation for the amount of benefits paid
31 pursuant to any deductible or copayment under this section.

32 (cf: P.L.2009, c.56, s.18)

33

34 6. This act shall take effect on the first day of the seventh
35 month next following the date of enactment and shall apply to
36 insurance policies or contracts issued or renewed on or after that
37 date.

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39

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STATEMENT

41

42 This bill establishes restrictions on coverage of opioid drugs
43 under workers' compensation, certain health insurance policies, the
44 State and School Employees' Health Benefits Programs, personal
45 injury protection automobile insurance benefits, and the State
46 Medicaid and NJ FamilyCare programs.

47 Under the bill, medical expense benefits are not to include
48 coverage of opioid drugs unless the prescribing health care

1 professional provides documentation, pursuant to regulations to be
2 adopted by the State Board of Medical Examiners, of the following:

3 (1) a thorough medical history, physical examination, and
4 medical decision-making plan, with particular attention focused on
5 determining the cause of the patient's pain;

6 (2) the professional has documented that non-opioid medication
7 and non-pharmacological pain management approaches were
8 inadequate;

9 (3) the professional has accessed the relevant prescription
10 monitoring information under the Prescription Monitoring Program
11 pursuant to section 8 of P.L.2015, c.74 (C. 45:1-46.1);

12 (4) except in the case of patients receiving palliative or hospice
13 care, the prescribed dosage of opioid drug is not more than 90
14 morphine milligram equivalents per day; and

15 (5) the patient has been warned of the following:

16 (a) opioids are highly addictive, even when taken as prescribed;
17 and

18 (b) taking more opioids than prescribed, or mixing sedatives or
19 alcohol with opioids, can result in fatal respiratory depression.

20 The bill permits the State Medicaid and NJ FamilyCare
21 programs, an employer, or an insurer to disqualify from
22 participation in any network it has established to provide medical
23 expense benefits any health care professional who fails to provide
24 the documentation required by the bill.

25 The provisions of the bill do not apply to a prescription for
26 opioid drugs that prescribes less than a four day supply of the
27 opioid drug.

28 The bill requires the State Board of Medical Examiners, in
29 consultation with the Department of Health, to adopt regulations
30 that specify the form and content of the documentation required
31 pursuant to the bill's provisions.

32 The bill is to take effect on the first day of the seventh month
33 after the date of enactment, and is to apply to insurance policies or
34 contracts issued or renewed on or after that date.