

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 934**

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DATE	D-PG	OFFICIAL STATUS
02/19/2015	358	Introduction and first reading Referred to Health, Human Services and Housing
03/16/2015	793a	Comm report: To pass as amended and re-refer to Commerce
03/19/2015	991a	Comm report: To pass as amended and re-refer to State and Local Government
03/23/2015		Comm report: To pass as amended and re-refer to Finance

A bill for an act

1.1 relating to health care coverage; modifying utilization review and prior  
 1.2 authorization requirements for prescription drug coverage; requiring prescription  
 1.3 drug benefit transparency and disclosure; establishing a prescription drug  
 1.4 advisory council; requiring an annual report; amending Minnesota Statutes 2014,  
 1.5 sections 62J.497, subdivisions 1, 3, 4; 62M.02, subdivisions 12, 14, 15, 17, by  
 1.6 adding subdivisions; 62M.05, subdivisions 3a, 3b, 4; 62M.06, subdivisions 2, 3;  
 1.7 62M.07; 62M.09, subdivisions 3, 6; 62M.10, subdivision 7; 62M.11; 256B.0625,  
 1.8 subdivision 13f; 256B.69, subdivision 6; proposing coding for new law in  
 1.9 Minnesota Statutes, chapters 62M; 62Q.  
 1.10

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. Minnesota Statutes 2014, section 62J.497, subdivision 1, is amended to read:

1.13 Subdivision 1. **Definitions.** For the purposes of this section, the following terms  
 1.14 have the meanings given.

1.15 (a) "Backward compatible" means that the newer version of a data transmission  
 1.16 standard would retain, at a minimum, the full functionality of the versions previously  
 1.17 adopted, and would permit the successful completion of the applicable transactions with  
 1.18 entities that continue to use the older versions.

1.19 (b) "Dispense" or "dispensing" has the meaning given in section 151.01, subdivision  
 1.20 30. Dispensing does not include the direct administering of a controlled substance to a  
 1.21 patient by a licensed health care professional.

1.22 (c) "Dispenser" means a person authorized by law to dispense a controlled substance,  
 1.23 pursuant to a valid prescription.

1.24 (d) "Electronic media" has the meaning given under Code of Federal Regulations,  
 1.25 title 45, part 160.103.

1.26 (e) "E-prescribing" means the transmission using electronic media of prescription  
 1.27 or prescription-related information between a prescriber, dispenser, pharmacy benefit

2.1 manager, or group purchaser, either directly or through an intermediary, including  
2.2 an e-prescribing network. E-prescribing includes, but is not limited to, two-way  
2.3 transmissions between the point of care and the dispenser and two-way transmissions  
2.4 related to eligibility, formulary, and medication history information.

2.5 (f) "Electronic prescription drug program" means a program that provides for  
2.6 e-prescribing.

2.7 (g) "Group purchaser" has the meaning given in section 62J.03, subdivision 6, but  
2.8 does not include workers' compensation plans or the medical component of automobile  
2.9 insurance coverage.

2.10 (h) "HL7 messages" means a standard approved by the standards development  
2.11 organization known as Health Level Seven.

2.12 (i) "National Provider Identifier" or "NPI" means the identifier described under Code  
2.13 of Federal Regulations, title 45, part 162.406.

2.14 (j) "NCPDP" means the National Council for Prescription Drug Programs, Inc.

2.15 (k) "NCPDP Formulary and Benefits Standard" means the National Council for  
2.16 Prescription Drug Programs Formulary and Benefits Standard, Implementation Guide,  
2.17 Version 1, Release 0, October 2005.

2.18 (l) "NCPDP SCRIPT Standard" means the National Council for Prescription Drug  
2.19 Programs Prescriber/Pharmacist Interface SCRIPT Standard, Implementation Guide  
2.20 Version 8, Release 1 (Version 8.1), October 2005, or the most recent standard adopted by  
2.21 the Centers for Medicare and Medicaid Services for e-prescribing under Medicare Part  
2.22 D as required by section 1860D-4(e)(4)(D) of the Social Security Act, and regulations  
2.23 adopted under it. The standards shall be implemented according to the Centers for  
2.24 Medicare and Medicaid Services schedule for compliance. Subsequently released  
2.25 versions of the NCPDP SCRIPT Standard may be used, provided that the new version  
2.26 of the standard is backward compatible to the current version adopted by the Centers for  
2.27 Medicare and Medicaid Services.

2.28 (m) "Pharmacy" has the meaning given in section 151.01, subdivision 2.

2.29 (n) "Prescriber" means a licensed health care practitioner, other than a veterinarian,  
2.30 as defined in section 151.01, subdivision 23.

2.31 (o) "Prescription-related information" means information regarding eligibility for  
2.32 drug benefits, medication history, or related health or drug information.

2.33 (p) "Provider" or "health care provider" has the meaning given in section 62J.03,  
2.34 subdivision 8.

2.35 (q) "Utilization review organization" has the meaning given in section 62M.02,  
2.36 subdivision 21.

3.1 Sec. 2. Minnesota Statutes 2014, section 62J.497, subdivision 3, is amended to read:

3.2 Subd. 3. **Standards for electronic prescribing.** (a) Prescribers and dispensers  
3.3 must use the NCPDP SCRIPT Standard for the communication of a prescription or  
3.4 prescription-related information. The NCPDP SCRIPT Standard shall be used to conduct  
3.5 the following transactions:

- 3.6 (1) get message transaction;
- 3.7 (2) status response transaction;
- 3.8 (3) error response transaction;
- 3.9 (4) new prescription transaction;
- 3.10 (5) prescription change request transaction;
- 3.11 (6) prescription change response transaction;
- 3.12 (7) refill prescription request transaction;
- 3.13 (8) refill prescription response transaction;
- 3.14 (9) verification transaction;
- 3.15 (10) password change transaction;
- 3.16 (11) cancel prescription request transaction; and
- 3.17 (12) cancel prescription response transaction.

3.18 (b) Providers, group purchasers, prescribers, and dispensers must use the NCPDP  
3.19 SCRIPT Standard for communicating and transmitting medication history information.

3.20 (c) Providers, group purchasers, prescribers, and dispensers must use the NCPDP  
3.21 Formulary and Benefits Standard for communicating and transmitting formulary and  
3.22 benefit information.

3.23 (d) Group purchasers and utilization review organizations must develop processes to  
3.24 ensure notification to prescribers upon denial of a claim for a prescribed drug that is not  
3.25 covered or is not included on the group purchaser's formulary. The process must provide  
3.26 a list of covered drugs from the same class or classes as the drug originally prescribed.  
3.27 If the NCPDP SCRIPT Standard or the NCPDP Formulary and Benefits Standard do  
3.28 not allow for the inclusion of this information, group purchasers and utilization review  
3.29 organizations must develop telephone, facsimile, or other secure electronic processes to  
3.30 communicate this information to the prescriber.

3.31 ~~(d)~~ (e) Providers, group purchasers, prescribers, and dispensers must use the national  
3.32 provider identifier to identify a health care provider in e-prescribing or prescription-related  
3.33 transactions when a health care provider's identifier is required.

3.34 ~~(e)~~ (f) Providers, group purchasers, prescribers, and dispensers must communicate  
3.35 eligibility information and conduct health care eligibility benefit inquiry and response  
3.36 transactions according to the requirements of section 62J.536.

4.1 Sec. 3. Minnesota Statutes 2014, section 62J.497, subdivision 4, is amended to read:

4.2 Subd. 4. **Development and use of uniform formulary exception form.** (a) The  
4.3 commissioner of health, in consultation with the Minnesota Administrative Uniformity  
4.4 Committee, shall develop by July 1, 2009, a uniform formulary exception form that allows  
4.5 health care providers to request exceptions from group purchaser formularies using a  
4.6 uniform form. Upon development of the form, all health care providers must submit  
4.7 requests for formulary exceptions using the uniform form, and all group purchasers must  
4.8 accept this form from health care providers.

4.9 (b) ~~No later than January 1, 2011,~~ The uniform formulary exception form must be  
4.10 accessible and submitted by health care providers, and accepted and processed by group  
4.11 purchasers, through secure electronic transmissions.

4.12 (c) Health care providers, group purchasers, prescribers, dispensers, and utilization  
4.13 review organizations using paper forms for prescription drug prior authorization or for  
4.14 medical exception requests as defined in section 62Q.83, subdivision 5, must only use the  
4.15 uniform formulary exception form.

4.16 Sec. 4. Minnesota Statutes 2014, section 62M.02, is amended by adding a subdivision  
4.17 to read:

4.18 Subd. 10a. **Drug.** "Drug" has the meaning given in section 151.01, subdivision 5.

4.19 Sec. 5. Minnesota Statutes 2014, section 62M.02, is amended by adding a subdivision  
4.20 to read:

4.21 Subd. 11a. **Formulary.** "Formulary" has the meaning given in section 62Q.83,  
4.22 subdivision 1.

4.23 Sec. 6. Minnesota Statutes 2014, section 62M.02, subdivision 12, is amended to read:

4.24 Subd. 12. **Health benefit plan.** "Health benefit plan" means a policy, contract, or  
4.25 certificate issued by a health plan company for the coverage of medical, dental, prescription  
4.26 drug, or hospital benefits. A health benefit plan does not include coverage that is:

4.27 (1) limited to disability or income protection coverage;

4.28 (2) automobile medical payment coverage;

4.29 (3) supplemental to liability insurance;

4.30 (4) designed solely to provide payments on a per diem, fixed indemnity, or  
4.31 nonexpense incurred basis;

4.32 (5) credit accident and health insurance issued under chapter 62B;

4.33 (6) blanket accident and sickness insurance as defined in section 62A.11;

- 5.1 (7) accident only coverage issued by a licensed and tested insurance agent; or  
5.2 (8) workers' compensation.

5.3 Sec. 7. Minnesota Statutes 2014, section 62M.02, subdivision 14, is amended to read:

5.4 Subd. 14. **Outpatient services.** "Outpatient services" means procedures or services  
5.5 performed on a basis other than as an inpatient, and includes obstetrical, psychiatric,  
5.6 chemical dependency, dental, prescription drug, and chiropractic services.

5.7 Sec. 8. Minnesota Statutes 2014, section 62M.02, is amended by adding a subdivision  
5.8 to read:

5.9 Subd. 14b. **Prescription.** "Prescription" has the meaning given in section 151.01,  
5.10 subdivision 16a.

5.11 Sec. 9. Minnesota Statutes 2014, section 62M.02, is amended by adding a subdivision  
5.12 to read:

5.13 Subd. 14c. **Prescription drug order.** "Prescription drug order" has the meaning  
5.14 given in section 151.01, subdivision 16.

5.15 Sec. 10. Minnesota Statutes 2014, section 62M.02, subdivision 15, is amended to read:

5.16 Subd. 15. **Prior authorization.** "Prior authorization" means utilization review  
5.17 conducted prior to the delivery of a service, including an outpatient service. Prior  
5.18 authorization includes, but is not limited to, preadmission review, pretreatment review,  
5.19 quantity limits, step therapy, utilization, and case management. Prior authorization also  
5.20 includes any utilization review organization's requirement that an enrollee or provider  
5.21 notify the utilization review organization prior to providing a service, including an  
5.22 outpatient service.

5.23 Sec. 11. Minnesota Statutes 2014, section 62M.02, subdivision 17, is amended to read:

5.24 Subd. 17. **Provider.** "Provider" means a licensed health care facility, physician,  
5.25 pharmacist, or other health care professional that delivers health care services to an enrollee.

5.26 Sec. 12. Minnesota Statutes 2014, section 62M.02, is amended by adding a subdivision  
5.27 to read:

5.28 Subd. 18a. **Quantity limit.** "Quantity limit" means a limit on the number of doses  
5.29 of a prescription drug that are covered during a specific time period.

6.1 Sec. 13. Minnesota Statutes 2014, section 62M.02, is amended by adding a subdivision  
6.2 to read:

6.3 Subd. 19a. **Step therapy.** "Step therapy" means clinical practice or other  
6.4 evidence-based protocols or requirements that specify the sequence in which different  
6.5 prescription drugs for a given medical condition are to be used by an enrollee before a  
6.6 drug prescribed by a provider is covered.

6.7 Sec. 14. Minnesota Statutes 2014, section 62M.05, subdivision 3a, is amended to read:

6.8 Subd. 3a. **Standard review determination.** (a) Notwithstanding subdivision 3b, an  
6.9 initial determination on all requests for utilization review must be communicated to the  
6.10 provider and enrollee in accordance with this subdivision within ~~ten~~ five business days of  
6.11 the request, provided that all information reasonably necessary to make a determination on  
6.12 the request has been made available to the utilization review organization.

6.13 (b) When an initial determination is made to certify, notification must be provided  
6.14 promptly by telephone to the provider. The utilization review organization shall send  
6.15 written notification to the provider or shall maintain an audit trail of the determination  
6.16 and telephone notification. For purposes of this subdivision, "audit trail" includes  
6.17 documentation of the telephone notification, including the date; the name of the person  
6.18 spoken to; the enrollee; the service, procedure, or admission certified; and the date of  
6.19 the service, procedure, or admission. If the utilization review organization indicates  
6.20 certification by use of a number, the number must be called the "certification number."  
6.21 For purposes of this subdivision, notification may also be made by facsimile to a verified  
6.22 number or by electronic mail to a secure electronic mailbox. These electronic forms of  
6.23 notification satisfy the "audit trail" requirement of this paragraph.

6.24 (c) When an initial determination is made not to certify, notification must be  
6.25 provided by telephone, by facsimile to a verified number, or by electronic mail to a secure  
6.26 electronic mailbox within one working day after making the determination to the attending  
6.27 health care professional and hospital as applicable. Written notification must also be sent  
6.28 to the hospital as applicable and attending health care professional if notification occurred  
6.29 by telephone. For purposes of this subdivision, notification may be made by facsimile to a  
6.30 verified number or by electronic mail to a secure electronic mailbox. Written notification  
6.31 must be sent to the enrollee and may be sent by United States mail, facsimile to a verified  
6.32 number, or by electronic mail to a secure mailbox. The written notification must include  
6.33 the principal reason or reasons for the determination and the process for initiating an appeal  
6.34 of the determination. Upon request, the utilization review organization shall provide the  
6.35 provider or enrollee with the criteria used to determine the necessity, appropriateness,

7.1 and efficacy of the health care service and identify the database, professional treatment  
7.2 parameter, or other basis for the criteria. Reasons for a determination not to certify may  
7.3 include, among other things, the lack of adequate information to certify after a reasonable  
7.4 attempt has been made to contact the provider or enrollee.

7.5 (d) When an initial determination is made not to certify, the written notification must  
7.6 inform the enrollee and the attending health care professional of the right to submit an  
7.7 appeal to the internal appeal process described in section 62M.06 and the procedure for  
7.8 initiating the internal appeal. The written notice shall be provided in a culturally and  
7.9 linguistically appropriate manner consistent with the provisions of the Affordable Care  
7.10 Act as defined under section 62A.011, subdivision 1a.

7.11 Sec. 15. Minnesota Statutes 2014, section 62M.05, subdivision 3b, is amended to read:

7.12 Subd. 3b. **Expedited review determination.** (a) An expedited initial determination  
7.13 must be utilized if the attending health care professional believes that an expedited  
7.14 determination is warranted.

7.15 (b) Notification of an expedited initial determination to either certify or not to certify  
7.16 must be provided to the hospital, the attending health care professional, and the enrollee as  
7.17 expeditiously as the enrollee's medical condition requires, but no later than ~~72~~ 36 hours  
7.18 from the initial request. When an expedited initial determination is made not to certify, the  
7.19 utilization review organization must also notify the enrollee and the attending health care  
7.20 professional of the right to submit an appeal to the expedited internal appeal as described  
7.21 in section 62M.06 and the procedure for initiating an internal expedited appeal.

7.22 Sec. 16. Minnesota Statutes 2014, section 62M.05, subdivision 4, is amended to read:

7.23 Subd. 4. **Failure to provide necessary information.** A utilization review  
7.24 organization must have written procedures to address the failure of a provider or  
7.25 enrollee to provide the necessary information for review, and to address processes by  
7.26 which the utilization review organization must track and manage review requests and  
7.27 documentation submitted by providers or enrollees. If the enrollee or provider will not  
7.28 release the necessary information to the utilization review organization, the utilization  
7.29 review organization may deny certification in accordance with its own policy or the policy  
7.30 described in the health benefit plan. If a utilization review organization fails to meet the  
7.31 timelines in subdivision 3a or 3b for a completed review request, or fails to notify the  
7.32 provider that information needed to conduct the review is incomplete, or if a utilization  
7.33 review organization fails to properly maintain submitted records for which the provider or  
7.34 enrollee has documentation of submission, the service shall be deemed approved.

8.1 Sec. 17. Minnesota Statutes 2014, section 62M.06, subdivision 2, is amended to read:

8.2 Subd. 2. **Expedited appeal.** (a) When an initial determination not to certify a  
8.3 health care service is made prior to or during an ongoing service requiring review  
8.4 and the attending health care professional believes that the determination warrants an  
8.5 expedited appeal, the utilization review organization must ensure that the enrollee and the  
8.6 attending health care professional have an opportunity to appeal the determination over  
8.7 the telephone on an expedited basis. In such an appeal, the utilization review organization  
8.8 must ensure reasonable access to its consulting physician or health care provider.

8.9 (b) The utilization review organization shall notify the enrollee and attending  
8.10 health care professional by telephone of its determination on the expedited appeal as  
8.11 expeditiously as the enrollee's medical condition requires, but no later than ~~72~~ 36 hours  
8.12 after receiving the expedited appeal.

8.13 (c) If the determination not to certify is not reversed through the expedited appeal,  
8.14 the utilization review organization must include in its notification the right to submit the  
8.15 appeal to the external appeal process described in section 62Q.73 and the procedure for  
8.16 initiating the process. This information must be provided in writing to the enrollee and  
8.17 the attending health care professional as soon as practical.

8.18 Sec. 18. Minnesota Statutes 2014, section 62M.06, subdivision 3, is amended to read:

8.19 Subd. 3. **Standard appeal.** The utilization review organization must establish  
8.20 procedures for appeals to be made either in writing or by telephone.

8.21 (a) A utilization review organization shall notify in writing the enrollee, attending  
8.22 health care professional, and claims administrator of its determination on the appeal within  
8.23 ~~30~~ 15 days upon receipt of the notice of appeal. If the utilization review organization  
8.24 cannot make a determination within ~~30~~ 15 days due to circumstances outside the control  
8.25 of the utilization review organization, the utilization review organization may take up  
8.26 to ~~14~~ ten additional days to notify the enrollee, attending health care professional, and  
8.27 claims administrator of its determination. If the utilization review organization takes any  
8.28 additional days beyond the initial ~~30-day~~ 15-day period to make its determination, it  
8.29 must inform the enrollee, attending health care professional, and claims administrator, in  
8.30 advance, of the extension and the reasons for the extension.

8.31 (b) The documentation required by the utilization review organization may include  
8.32 copies of part or all of the medical record and a written statement from the attending  
8.33 health care professional.

9.1 (c) Prior to upholding the initial determination not to certify for clinical reasons, the  
9.2 utilization review organization shall conduct a review of the documentation by a physician  
9.3 who did not make the initial determination not to certify.

9.4 (d) The process established by a utilization review organization may include  
9.5 defining a period within which an appeal must be filed to be considered. The time period  
9.6 must be communicated to the enrollee and attending health care professional when the  
9.7 initial determination is made.

9.8 (e) An attending health care professional or enrollee who has been unsuccessful in  
9.9 an attempt to reverse a determination not to certify shall, consistent with section 72A.285,  
9.10 be provided the following:

9.11 (1) a complete summary of the review findings;

9.12 (2) qualifications of the reviewers, including any license, certification, or specialty  
9.13 designation; and

9.14 (3) the relationship between the enrollee's diagnosis and the review criteria used as  
9.15 the basis for the decision, including the specific rationale for the reviewer's decision.

9.16 (f) In cases of appeal to reverse a determination not to certify for clinical reasons,  
9.17 the utilization review organization must ensure that a physician of the utilization review  
9.18 organization's choice in the same or a similar specialty as typically manages the medical  
9.19 condition, procedure, or treatment under discussion is reasonably available to review  
9.20 the case.

9.21 (g) If the initial determination is not reversed on appeal, the utilization review  
9.22 organization must include in its notification the right to submit the appeal to the external  
9.23 review process described in section 62Q.73 and the procedure for initiating the external  
9.24 process.

9.25 Sec. 19. Minnesota Statutes 2014, section 62M.07, is amended to read:

9.26 **62M.07 PRIOR AUTHORIZATION OF SERVICES.**

9.27 (a) Utilization review organizations conducting prior authorization of services must  
9.28 have written standards that meet at a minimum the following requirements:

9.29 (1) written procedures and criteria used to determine whether care is appropriate,  
9.30 reasonable, or medically necessary;

9.31 (2) a system for providing prompt notification of its determinations to enrollees  
9.32 and providers and for notifying the provider, enrollee, or enrollee's designee of appeal  
9.33 procedures under clause (4);

9.34 (3) compliance with section 62M.05, subdivisions 3a and 3b, regarding time frames  
9.35 for approving and disapproving prior authorization requests;

10.1 (4) written procedures for appeals of denials of prior authorization which specify the  
10.2 responsibilities of the enrollee and provider, and which meet the requirements of sections  
10.3 62M.06 and 72A.285, regarding release of summary review findings; and

10.4 (5) procedures to ensure confidentiality of patient-specific information, consistent  
10.5 with applicable law.

10.6 (b) No utilization review organization, health plan company, or claims administrator  
10.7 may conduct or require prior authorization of emergency confinement or emergency  
10.8 treatment. The enrollee or the enrollee's authorized representative may be required to  
10.9 notify the health plan company, claims administrator, or utilization review organization  
10.10 as soon after the beginning of the emergency confinement or emergency treatment as  
10.11 reasonably possible.

10.12 (c) If prior authorization for a health care service is required, the utilization review  
10.13 organization, health plan company, or claim administrator must allow providers to submit  
10.14 requests for prior authorization of the health care services without unreasonable delay  
10.15 by telephone, facsimile, or voice mail or through an electronic mechanism 24 hours a  
10.16 day, seven days a week. This paragraph does not apply to dental service covered under  
10.17 MinnesotaCare, general assistance medical care, or medical assistance.

10.18 (d) Any authorization for a prescription drug must remain valid for the duration of  
10.19 an enrollee's contract term, provided the drug continues to be prescribed for a patient with  
10.20 a condition that requires ongoing medication therapy, provided the drug has not otherwise  
10.21 been deemed unsafe by the Food and Drug Administration, has not been withdrawn by the  
10.22 manufacturer or the Food and Drug Administration, or provided no independent source  
10.23 of research, clinical guidelines, or evidence-based standards has issued drug-specific  
10.24 warnings or recommended changes in drug usage.

10.25 (e) No utilization review organization, health plan company, or claims administrator  
10.26 may impose step therapy requirements for enrollees currently taking a prescription drug,  
10.27 as substantiated from available claims data or provider documentation, in one of the  
10.28 following classes: (1) immunosuppressants; (2) antidepressants; (3) antipsychotics; (4)  
10.29 anticonvulsants; (5) antiretrovirals; or (6) antineoplastics.

10.30 Sec. 20. Minnesota Statutes 2014, section 62M.09, subdivision 3, is amended to read:

10.31 Subd. 3. **Physician reviewer involvement.** (a) A physician must review all cases  
10.32 in which the utilization review organization has concluded that a determination not to  
10.33 certify for clinical reasons is appropriate.

10.34 (b) The physician conducting the review must be licensed in this state. ~~This~~  
10.35 ~~paragraph does not apply to reviews conducted in connection with policies issued by a~~

11.1 ~~health plan company that is assessed less than three percent of the total amount assessed~~  
 11.2 ~~by the Minnesota Comprehensive Health Association.~~

11.3 (c) The physician should be reasonably available by telephone to discuss the  
 11.4 determination with the attending health care professional.

11.5 (d) This subdivision does not apply to outpatient mental health or substance abuse  
 11.6 services governed by subdivision 3a.

11.7 Sec. 21. Minnesota Statutes 2014, section 62M.09, subdivision 6, is amended to read:

11.8 Subd. 6. **Physician consultants.** A utilization review organization must use  
 11.9 physician consultants in the appeal process described in section 62M.06, subdivision 3.  
 11.10 The physician consultants must be licensed in this state and must be board certified by the  
 11.11 American Board of Medical Specialists or the American Board of Osteopathy.

11.12 Sec. 22. Minnesota Statutes 2014, section 62M.10, subdivision 7, is amended to read:

11.13 Subd. 7. **Availability of criteria.** Upon request, a utilization review organization  
 11.14 shall provide to an enrollee, a provider, and the commissioner of commerce the written  
 11.15 clinical criteria used to determine the medical necessity, appropriateness, and efficacy of  
 11.16 a procedure or service and identify the database, professional treatment guideline, or  
 11.17 other basis for the criteria.

11.18 Sec. 23. Minnesota Statutes 2014, section 62M.11, is amended to read:

11.19 **62M.11 COMPLAINTS TO COMMERCE OR HEALTH.**

11.20 Notwithstanding the provisions of sections 62M.01 to 62M.16, an enrollee or  
 11.21 provider may file a complaint regarding compliance with the requirements of this chapter  
 11.22 or regarding a determination not to certify directly to the commissioner responsible for  
 11.23 regulating the utilization review organization.

11.24 Sec. 24. **[62M.17] REPORTING.**

11.25 Utilization review organizations must annually report to the commissioner of health,  
 11.26 on the forms and in the manner specified by the commissioner, the following information:

11.27 (1) for medical exception requests, the 25 most frequently requested drugs by  
 11.28 exception type, including lack of available clinical alternative, ineffective formulary  
 11.29 drug, and dosage limits; and

11.30 (2) for prescription drug prior authorization requests:

11.31 (i) the number and rate of initial approvals by commercial product and by prepaid  
 11.32 medical assistance product types;

12.1 (ii) the number and rate of standard appeal approvals by commercial product and by  
 12.2 prepaid medical assistance product types;

12.3 (iii) the number and rate of expedited appeal approvals by commercial product and  
 12.4 by prepaid medical assistance product types;

12.5 (iv) for standard reviews, the range and average time from receipt of completed  
 12.6 request to notification of decision;

12.7 (v) for expedited reviews, the range and average time from receipt of completed  
 12.8 request to notification of decision;

12.9 (vi) for standard appeals, the range and average time from receipt of completed  
 12.10 request to notification of decision; and

12.11 (vii) for expedited appeals, the range and average time from receipt of completed  
 12.12 request to notification of decision.

12.13 **Sec. 25. [62Q.83] PRESCRIPTION DRUG BENEFIT TRANSPARENCY AND**  
 12.14 **MANAGEMENT.**

12.15 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms  
 12.16 have the meaning given them.

12.17 (b) "Drug" has the meaning given in section 151.01, subdivision 5.

12.18 (c) "Formulary" means a list of prescription drugs that have been developed by  
 12.19 clinical and pharmacy experts and represents the health plan company's medically  
 12.20 appropriate and cost-effective prescription drugs approved for use.

12.21 (d) "Health plan company" has the meaning given in section 62Q.01, subdivision 4,  
 12.22 and includes an entity that performs pharmacy benefits management for the health plan  
 12.23 company. For purposes of this definition, "pharmacy benefits management" means the  
 12.24 administration or management of prescription drug benefits provided by the health plan  
 12.25 company for the benefit of its enrollees and may include, but is not limited to, procurement  
 12.26 of prescription drugs, clinical formulary development and management services, claims  
 12.27 processing, and rebate contracting and administration.

12.28 (e) "Prescription" has the meaning given in section 151.01, subdivision 16a.

12.29 Subd. 2. **Prescription drug benefit disclosure.** (a) A health plan company that  
 12.30 provides prescription drug benefit coverage and uses a formulary must make its formulary  
 12.31 and related benefit information available by electronic means and, upon request, in  
 12.32 writing, at least 30 days prior to annual renewal dates.

12.33 (b) Formularies must be organized and disclosed consistent with the most recent  
 12.34 version of the United States Pharmacopeia's (USP) Model Guidelines.

13.1 (c) For each item or category of items on the formulary, the specific enrollee benefit  
13.2 terms must be identified, including enrollee cost-sharing and expected out-of-pocket costs.

13.3 Subd. 3. **Formulary changes.** (a) Once a formulary has been established, a health  
13.4 plan company may, at any time during the enrollee's contract year:

13.5 (1) expand its formulary by adding drugs to the formulary;

13.6 (2) reduce co-payments or co-insurance; or

13.7 (3) move a drug to a benefit category that reduces an enrollee's cost.

13.8 (b) A health plan company may remove a brand name drug from its formulary  
13.9 or place a brand name drug in a benefit category that increases an enrollee's cost only  
13.10 upon the addition to the formulary of an A-rated generic or multisource brand name  
13.11 equivalent at a lower cost to the enrollee, and upon at least a 60-day notice to prescribers,  
13.12 pharmacists, and affected enrollees.

13.13 (c) A health plan company is prohibited from removing drugs from its formulary or  
13.14 moving drugs to a benefit category that increases an enrollee's cost during the enrollee's  
13.15 contract year. This paragraph does not apply to any changes associated with drugs that  
13.16 have been deemed unsafe by the Food and Drug Administration, that have been withdrawn  
13.17 by either the Food and Drug Administration or the product manufacturer, or where an  
13.18 independent source of research, clinical guidelines, or evidence-based standards has issued  
13.19 drug-specific warnings or recommended changes in drug usage.

13.20 Subd. 4. **Transition process.** (a) A health plan company must establish and  
13.21 maintain a transition process to prevent gaps in prescription drug coverage for both  
13.22 new and continuing enrollees with ongoing prescription drug needs who are affected  
13.23 by changes in formulary drug availability.

13.24 (b) The transition process must provide coverage for at least 60 days.

13.25 (c) Any enrollee cost-sharing applied must be based on the defined prescription drug  
13.26 benefit terms and must be consistent with any cost-sharing that the health plan company  
13.27 would charge for nonformulary drugs approved under a medication exceptions process.

13.28 (d) A health plan company must ensure that written notice is provided to each  
13.29 affected enrollee and prescriber within three business days after adjudication of the  
13.30 transition coverage.

13.31 Subd. 5. **Medical exceptions process.** (a) Each health plan company must  
13.32 establish and maintain a medical exceptions process that allows enrollees, providers,  
13.33 or an enrollee's authorized representative to request and obtain coverage approval in  
13.34 the following situations:

13.35 (1) there is no acceptable clinical alternative listed on the formulary to treat the  
13.36 enrollee's disease or medical condition;

14.1 (2) the prescription listed on the formulary has been ineffective in the treatment of  
 14.2 an enrollee's disease or medical condition or, based on clinical and scientific evidence and  
 14.3 the relevant physical or mental characteristics of the enrollee, is likely to be ineffective or  
 14.4 adversely affect the drug's effectiveness or the enrollee's medication compliance; or

14.5 (3) the number of doses that are available under a dose restriction has been  
 14.6 ineffective in the treatment of the enrollee's disease or medical condition or, based on  
 14.7 clinical and scientific evidence and the relevant physical or mental characteristics of  
 14.8 the enrollee, is likely to be ineffective or adversely affect the drug's effectiveness or the  
 14.9 enrollee's medication compliance.

14.10 (b) An approved medical exception request must remain valid for the duration of  
 14.11 an enrollee's contract term, provided the medication continues to be prescribed for the  
 14.12 same condition, and provided the medication has not otherwise been withdrawn by the  
 14.13 manufacturer or the Food and Drug Administration.

14.14 (c) The medical exceptions process must comply with the requirements of chapter  
 14.15 62M.

14.16 **Subd. 6. Prescription Drug Advisory Council.** (a) A Prescription Drug Advisory  
 14.17 Council has 11 members appointed by the commissioner of health with representation  
 14.18 as follows:

14.19 (1) three patients;

14.20 (2) one physician licensed to practice medicine in Minnesota;

14.21 (3) two nonphysicians who are licensed in Minnesota to prescribe prescription drugs;

14.22 (4) one pharmacist licensed in Minnesota;

14.23 (5) one person representing a health plan company;

14.24 (6) one person representing a pharmacy benefit manager;

14.25 (7) one person representing pharmaceutical manufacturers; and

14.26 (8) one person who purchases health benefits for a group or an employer.

14.27 (b) Terms and removal of public members are as provided in section 15.0575, except  
 14.28 that members will serve without compensation or expense reimbursement. A vacancy on  
 14.29 the council may be filled by the appointing authority for the remainder of the unexpired  
 14.30 term. Vacancies will be filled as provided in section 15.0597.

14.31 (c) The council shall select a chair from among its members. The chair may convene  
 14.32 meetings as necessary to conduct the duties prescribed by this section.

14.33 (d) The duty of the council is to provide guidance to the commissioner of health  
 14.34 in monitoring changes and trends in prescription drug coverage and formulary design.  
 14.35 The council must consult with the commissioner to assist the commissioner in preparing  
 14.36 the report required under paragraph (g).

15.1 (e) The commissioner of health will provide administrative support and meeting  
15.2 space for the council to perform its duties.

15.3 (f) The Prescription Drug Advisory Council expires on January 30, 2021.

15.4 (g) Beginning January 15, 2017, and on at least a biennial basis thereafter, the  
15.5 commissioner, in consultation with the advisory group, shall submit a report to the  
15.6 chairs and lead minority members of the legislative committees with jurisdiction over  
15.7 health care coverage describing trends in prescription drug coverage, formulary design,  
15.8 medication exception requests, and benefit design. Health plan companies must cooperate  
15.9 in providing information necessary for the advisory group to carry out its responsibilities.

15.10 Sec. 26. Minnesota Statutes 2014, section 256B.0625, subdivision 13f, is amended to  
15.11 read:

15.12 Subd. 13f. **Prior authorization.** (a) The Formulary Committee shall review and  
15.13 recommend drugs which require prior authorization. The Formulary Committee shall  
15.14 establish general criteria to be used for the prior authorization of brand-name drugs for  
15.15 which generically equivalent drugs are available, but the committee is not required to  
15.16 review each brand-name drug for which a generically equivalent drug is available.

15.17 (b) Prior authorization may be required by the commissioner before certain  
15.18 formulary drugs are eligible for payment. The Formulary Committee may recommend  
15.19 drugs for prior authorization directly to the commissioner. The commissioner may also  
15.20 request that the Formulary Committee review a drug for prior authorization. Before the  
15.21 commissioner may require prior authorization for a drug:

15.22 (1) the commissioner must provide information to the Formulary Committee on the  
15.23 impact that placing the drug on prior authorization may have on the quality of patient care  
15.24 and on program costs, information regarding whether the drug is subject to clinical abuse  
15.25 or misuse, and relevant data from the state Medicaid program if such data is available;

15.26 (2) the Formulary Committee must review the drug, taking into account medical and  
15.27 clinical data and the information provided by the commissioner; and

15.28 (3) the Formulary Committee must hold a public forum and receive public comment  
15.29 for an additional 15 days.

15.30 The commissioner must provide a 15-day notice period before implementing the prior  
15.31 authorization and may only update prior authorization requirements on an annual  
15.32 basis unless a drug has been deemed unsafe by the Food and Drug Administration,  
15.33 has been withdrawn by the manufacturer or the Food and Drug Administration, or an  
15.34 independent source of research, clinical guidelines, or evidence-based standards has issued  
15.35 drug-specific warnings or recommended changes in drug usage.

16.1 (c) Except as provided in subdivision 13j, prior authorization shall not be required or  
16.2 utilized for any atypical antipsychotic drug prescribed for the treatment of mental illness if:

16.3 (1) there is no generically equivalent drug available; and

16.4 (2) the drug was initially prescribed for the recipient prior to July 1, 2003; or

16.5 (3) the drug is part of the recipient's current course of treatment.

16.6 This paragraph applies to any multistate preferred drug list or supplemental drug rebate  
16.7 program established or administered by the commissioner. Prior authorization shall  
16.8 automatically be granted for 60 days for brand name drugs prescribed for treatment of  
16.9 mental illness within 60 days of when a generically equivalent drug becomes available,  
16.10 provided that the brand name drug was part of the recipient's course of treatment at the  
16.11 time the generically equivalent drug became available.

16.12 (d) Prior authorization shall not be required or utilized for any antihemophilic factor  
16.13 drug prescribed for the treatment of hemophilia and blood disorders where there is no  
16.14 generically equivalent drug available if the prior authorization is used in conjunction with  
16.15 any supplemental drug rebate program or multistate preferred drug list established or  
16.16 administered by the commissioner.

16.17 (e) The commissioner may require prior authorization for brand name drugs  
16.18 whenever a generically equivalent product is available, even if the prescriber specifically  
16.19 indicates "dispense as written-brand necessary" on the prescription as required by section  
16.20 151.21, subdivision 2.

16.21 (f) Notwithstanding this subdivision, the commissioner may automatically require  
16.22 prior authorization, for a period not to exceed 180 days, for any drug that is approved by  
16.23 the United States Food and Drug Administration on or after July 1, 2005. The 180-day  
16.24 period begins no later than the first day that a drug is available for shipment to pharmacies  
16.25 within the state. The Formulary Committee shall recommend to the commissioner general  
16.26 criteria to be used for the prior authorization of the drugs, but the committee is not  
16.27 required to review each individual drug. In order to continue prior authorizations for a  
16.28 drug after the 180-day period has expired, the commissioner must follow the provisions  
16.29 of this subdivision.

16.30 Sec. 27. Minnesota Statutes 2014, section 256B.69, subdivision 6, is amended to read:

16.31 Subd. 6. **Service delivery.** (a) Each demonstration provider shall be responsible for  
16.32 the health care coordination for eligible individuals. Demonstration providers:

16.33 (1) shall authorize and arrange for the provision of all needed health services  
16.34 including but not limited to the full range of services listed in sections 256B.02,  
16.35 subdivision 8, and 256B.0625 in order to ensure appropriate health care is delivered to

17.1 enrollees. Notwithstanding section 256B.0621, demonstration providers that provide  
17.2 nursing home and community-based services under this section shall provide relocation  
17.3 service coordination to enrolled persons age 65 and over;

17.4 (2) shall accept the prospective, per capita payment from the commissioner in return  
17.5 for the provision of comprehensive and coordinated health care services for eligible  
17.6 individuals enrolled in the program;

17.7 (3) may contract with other health care and social service practitioners to provide  
17.8 services to enrollees; and

17.9 (4) shall institute recipient grievance procedures according to the method established  
17.10 by the project, utilizing applicable requirements of chapter 62D. Disputes not resolved  
17.11 through this process shall be appealable to the commissioner as provided in subdivision 11.

17.12 (b) Demonstration providers must comply with the standards for claims settlement  
17.13 under section 72A.201, subdivisions 4, 5, 7, and 8, when contracting with other health  
17.14 care and social service practitioners to provide services to enrollees. A demonstration  
17.15 provider must pay a clean claim, as defined in Code of Federal Regulations, title 42,  
17.16 section 447.45(b), within 30 business days of the date of acceptance of the claim.

17.17 (c) Managed care plans and county-based purchasing plans must comply with  
17.18 chapter 62M and section 62Q.83.

17.19 Sec. 28. **PRESCRIPTION DRUG ADVISORY COUNCIL.**

17.20 The commissioner of health shall make the first appointments to the Prescription  
17.21 Drug Advisory Council established in Minnesota Statutes, section 62Q.83, subdivision 6,  
17.22 by October 2, 2015, and convene the first meeting by November 1, 2015. The council will  
17.23 select a chair from among its members at the first meeting of the council.

17.24 Sec. 29. **REVISOR INSTRUCTION.**

17.25 The revisor of statutes shall change "sections 62M.01 to 62M.16" to "sections  
17.26 62M.01 to 62M.17" wherever the term appears in Minnesota Statutes, chapter 62M.