

# ASSEMBLY, No. 3968

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 9, 2011

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**SYNOPSIS**

Restricts health insurers from limiting access to pain medication.

**CURRENT VERSION OF TEXT**

As introduced.



1    **AN ACT** concerning health benefits coverage for the treatment of  
2       pain and supplementing various parts of the statutory law.

3  
4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6  
7       1.   a.   Notwithstanding any other provision of law to the  
8       contrary, every hospital service corporation contract that provides  
9       benefits for expenses incurred in the purchase of outpatient  
10      prescription drugs and is delivered, issued, executed, or renewed in  
11      this State pursuant to P.L.1938, c.366 (C.17:48-1 et seq.), or  
12      approved for issuance or renewal in this State by the Commissioner  
13      of Banking and Insurance, on or after the effective date of this act,  
14      shall be subject to the provisions of this section if the contract  
15      restricts coverage for medications for the treatment of pain pursuant  
16      to a step therapy or fail-first protocol.

17      (1) The duration of the step therapy or fail-first protocol shall be  
18      determined by the prescriber.

19      (2) The hospital service corporation shall not require a covered  
20      person to try and fail on more than two pain medications before  
21      providing coverage to the covered person for the pain medication,  
22      including a generic drug product, which has been prescribed.

23      (3) Once a covered person has tried and failed on two pain  
24      medications, the hospital service corporation shall no longer require  
25      prior authorization for coverage of pain medication for the covered  
26      person, and the prescriber may write the prescription for the  
27      appropriate pain medication. The prescriber shall note in the  
28      covered person's medical record that the person tried and failed on  
29      the step therapy or fail-first protocol, and this shall suffice as prior  
30      authorization from the hospital service corporation.

31      (4) When the prescriber notes on the prescription that the step  
32      therapy or fail-first protocols have been met, a pharmacist may  
33      process the prescription without additional communication with the  
34      hospital service corporation.

35      b. As used in this section:

36      “Generic drug product” means a drug product that is approved  
37      and designated by the federal Food and Drug Administration as a  
38      therapeutic equivalent for a reference listed drug product, including  
39      a drug product listed in the New Jersey Generic Formulary by the  
40      Drug Utilization Review Council pursuant to P.L.1977, c.240  
41      (C.24:6E-1 et al.).

42      “Prescriber” means a licensed health care professional who is  
43      authorized to prescribe the medication pursuant to State law.

44      c. Nothing in this section shall be construed to prohibit a  
45      hospital service corporation from charging a covered person a  
46      copayment or deductible for prescription drug benefits or from  
47      setting forth, in the contract, limitations on maximum coverage of  
48      prescription drug benefits as permitted under law or regulation.

1 d. Nothing in this section shall be construed to require coverage  
2 of prescription drugs that are not in the drug formulary of the  
3 hospital service corporation or to prohibit generic drug substitutions  
4 pursuant to law.

5 e. The provisions of this section shall apply to all contracts in  
6 which the hospital service corporation has reserved the right to  
7 change the premium.

8  
9 2. a. Notwithstanding any other provision of law to the  
10 contrary, every medical service corporation contract that provides  
11 benefits for expenses incurred in the purchase of outpatient  
12 prescription drugs and is delivered, issued, executed, or renewed in  
13 this State pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.), or  
14 approved for issuance or renewal in this State by the Commissioner  
15 of Banking and Insurance, on or after the effective date of this act,  
16 shall be subject to the provisions of this section if the contract  
17 restricts coverage for medications for the treatment of pain pursuant  
18 to a step therapy or fail-first protocol.

19 (1) The duration of the step therapy or fail-first protocol shall be  
20 determined by the prescriber.

21 (2) The medical service corporation shall not require a covered  
22 person to try and fail on more than two pain medications before  
23 providing coverage to the covered person for the pain medication,  
24 including a generic drug product, which has been prescribed.

25 (3) Once a covered person has tried and failed on two pain  
26 medications, the medical service corporation shall no longer require  
27 prior authorization for coverage of pain medication for the covered  
28 person, and the prescriber may write the prescription for the  
29 appropriate pain medication. The prescriber shall note in the  
30 covered person's medical record that the person tried and failed on  
31 the step therapy or fail-first protocol, and this shall suffice as prior  
32 authorization from the medical service corporation.

33 (4) When the prescriber notes on the prescription that the step  
34 therapy or fail-first protocols have been met, a pharmacist may  
35 process the prescription without additional communication with the  
36 medical service corporation.

37 b. As used in this section:

38 "Generic drug product" means a drug product that is approved  
39 and designated by the federal Food and Drug Administration as a  
40 therapeutic equivalent for a reference listed drug product, including  
41 a drug product listed in the New Jersey Generic Formulary by the  
42 Drug Utilization Review Council pursuant to P.L.1977, c.240  
43 (C.24:6E-1 et al.).

44 "Prescriber" means a licensed health care professional who is  
45 authorized to prescribe the medication pursuant to State law.

46 c. Nothing in this section shall be construed to prohibit a  
47 medical service corporation from charging a covered person a  
48 copayment or deductible for prescription drug benefits or from

1 setting forth, in the contract, limitations on maximum coverage of  
2 prescription drug benefits as permitted under law or regulation.

3 d. Nothing in this section shall be construed to require coverage  
4 of prescription drugs that are not in the drug formulary of the  
5 medical service corporation or to prohibit generic drug substitutions  
6 pursuant to law.

7 e. The provisions of this section shall apply to all contracts in  
8 which the medical service corporation has reserved the right to  
9 change the premium.

10

11 3. a. Notwithstanding any other provision of law to the  
12 contrary, every health service corporation contract that provides  
13 benefits for expenses incurred in the purchase of outpatient  
14 prescription drugs and is delivered, issued, executed, or renewed in  
15 this State pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.), or  
16 approved for issuance or renewal in this State by the Commissioner  
17 of Banking and Insurance, on or after the effective date of this act,  
18 shall be subject to the provisions of this section if the contract  
19 restricts coverage for medications for the treatment of pain pursuant  
20 to a step therapy or fail-first protocol.

21 (1) The duration of the step therapy or fail-first protocol shall be  
22 determined by the prescriber.

23 (2) The health service corporation shall not require a covered  
24 person to try and fail on more than two pain medications before  
25 providing coverage to the covered person for the pain medication,  
26 including a generic drug product, which has been prescribed.

27 (3) Once a covered person has tried and failed on two pain  
28 medications, the health service corporation shall no longer require  
29 prior authorization for coverage of pain medication for the covered  
30 person, and the prescriber may write the prescription for the  
31 appropriate pain medication. The prescriber shall note in the  
32 covered person's medical record that the person tried and failed on  
33 the step therapy or fail-first protocol, and this shall suffice as prior  
34 authorization from the health service corporation.

35 (4) When the prescriber notes on the prescription that the step  
36 therapy or fail-first protocols have been met, a pharmacist may  
37 process the prescription without additional communication with the  
38 health service corporation.

39 b. As used in this section:

40 "Generic drug product" means a drug product that is approved  
41 and designated by the federal Food and Drug Administration as a  
42 therapeutic equivalent for a reference listed drug product, including  
43 a drug product listed in the New Jersey Generic Formulary by the  
44 Drug Utilization Review Council pursuant to P.L.1977, c.240  
45 (C.24:6E-1 et al.).

46 "Prescriber" means a licensed health care professional who is  
47 authorized to prescribe the medication pursuant to State law.

48 c. Nothing in this section shall be construed to prohibit a health

1 service corporation from charging a covered person a copayment or  
2 deductible for prescription drug benefits or from setting forth, in the  
3 contract, limitations on maximum coverage of prescription drug  
4 benefits as permitted under law or regulation.

5 d. Nothing in this section shall be construed to require coverage  
6 of prescription drugs that are not in the drug formulary of the health  
7 service corporation or to prohibit generic drug substitutions  
8 pursuant to law.

9 e. The provisions of this section shall apply to all contracts in  
10 which the health service corporation has reserved the right to  
11 change the premium.

12  
13 4. a. Notwithstanding any other provision of law to the  
14 contrary, every individual health insurance policy that provides  
15 benefits for expenses incurred in the purchase of outpatient  
16 prescription drugs and is delivered, issued, executed, or renewed in  
17 this State pursuant to chapter 26 of Title 17B of the New Jersey  
18 Statutes, or approved for issuance or renewal in this State by the  
19 Commissioner of Banking and Insurance, on or after the effective  
20 date of this act, shall be subject to the provisions of this section if  
21 the policy restricts coverage for medications for the treatment of  
22 pain pursuant to a step therapy or fail-first protocol.

23 (1) The duration of the step therapy or fail-first protocol shall be  
24 determined by the prescriber.

25 (2) The insurer shall not require a covered person to try and fail  
26 on more than two pain medications before providing coverage to the  
27 covered person for the pain medication, including a generic drug  
28 product, which has been prescribed.

29 (3) Once a covered person has tried and failed on two pain  
30 medications, the insurer shall no longer require prior authorization  
31 for coverage of pain medication for the covered person, and the  
32 prescriber may write the prescription for the appropriate pain  
33 medication. The prescriber shall note in the covered person's  
34 medical record that the person tried and failed on the step therapy or  
35 fail-first protocol, and this shall suffice as prior authorization from  
36 the insurer.

37 (4) When the prescriber notes on the prescription that the step  
38 therapy or fail-first protocols have been met, a pharmacist may  
39 process the prescription without additional communication with the  
40 insurer.

41 b. As used in this section:

42 "Generic drug product" means a drug product that is approved  
43 and designated by the federal Food and Drug Administration as a  
44 therapeutic equivalent for a reference listed drug product, including  
45 a drug product listed in the New Jersey Generic Formulary by the  
46 Drug Utilization Review Council pursuant to P.L.1977, c.240  
47 (C.24:6E-1 et al.).

1       “Prescriber” means a licensed health care professional who is  
2 authorized to prescribe the medication pursuant to State law.

3       c. Nothing in this section shall be construed to prohibit an  
4 insurer from charging a covered person a copayment or deductible  
5 for prescription drug benefits or from setting forth, in the policy,  
6 limitations on maximum coverage of prescription drug benefits as  
7 permitted under law or regulation.

8       d. Nothing in this section shall be construed to require coverage  
9 of prescription drugs that are not in the drug formulary of the  
10 insurer or to prohibit generic drug substitutions pursuant to law.

11       e. The provisions of this section shall apply to all policies in  
12 which the insurer has reserved the right to change the premium.

13

14       5. a. Notwithstanding any other provision of law to the  
15 contrary, every group health insurance policy that provides benefits  
16 for expenses incurred in the purchase of outpatient prescription  
17 drugs and is delivered, issued, executed, or renewed in this State  
18 pursuant to chapter 27 of Title 17B of the New Jersey Statutes, or  
19 approved for issuance or renewal in this State by the Commissioner  
20 of Banking and Insurance, on or after the effective date of this act,  
21 shall be subject to the provisions of this section if the policy  
22 restricts coverage for medications for the treatment of pain pursuant  
23 to a step therapy or fail-first protocol.

24       (1) The duration of the step therapy or fail-first protocol shall be  
25 determined by the prescriber.

26       (2) The insurer shall not require a covered person to try and fail  
27 on more than two pain medications before providing coverage to the  
28 covered person for the pain medication, including a generic drug  
29 product, which has been prescribed.

30       (3) Once a covered person has tried and failed on two pain  
31 medications, the insurer shall no longer require prior authorization  
32 for coverage of pain medication for the covered person, and the  
33 prescriber may write the prescription for the appropriate pain  
34 medication. The prescriber shall note in the covered person’s  
35 medical record that the person tried and failed on the step therapy or  
36 fail-first protocol, and this shall suffice as prior authorization from  
37 the insurer.

38       (4) When the prescriber notes on the prescription that the step  
39 therapy or fail-first protocols have been met, a pharmacist may  
40 process the prescription without additional communication with the  
41 insurer.

42       b. As used in this section:

43       “Generic drug product” means a drug product that is approved  
44 and designated by the federal Food and Drug Administration as a  
45 therapeutic equivalent for a reference listed drug product, including  
46 a drug product listed in the New Jersey Generic Formulary by the  
47 Drug Utilization Review Council pursuant to P.L.1977, c.240  
48 (C.24:6E-1 et al.).

1       “Prescriber” means a licensed health care professional who is  
2 authorized to prescribe the medication pursuant to State law.

3       c. Nothing in this section shall be construed to prohibit an  
4 insurer from charging a covered person a copayment or deductible  
5 for prescription drug benefits or from setting forth, in the policy,  
6 limitations on maximum coverage of prescription drug benefits as  
7 permitted under law or regulation.

8       d. Nothing in this section shall be construed to require coverage  
9 of prescription drugs that are not in the drug formulary of the  
10 insurer or to prohibit generic drug substitutions pursuant to law.

11       e. The provisions of this section shall apply to all policies in  
12 which the insurer has reserved the right to change the premium.

13

14       6. a. Notwithstanding any other provision of law to the  
15 contrary, an individual health benefits plan that provides benefits  
16 for expenses incurred in the purchase of outpatient prescription  
17 drugs and is delivered, issued, executed, renewed, or approved for  
18 issuance or renewal in this State pursuant to P.L.1992, c.161  
19 (C.17B:27A-2 et seq.), or approved for issuance or renewal in this  
20 State by the Commissioner of Banking and Insurance, on or after  
21 the effective date of this act, shall be subject to the provisions of  
22 this section if the health benefits plan restricts coverage for  
23 medications for the treatment of pain pursuant to a step therapy or  
24 fail-first protocol.

25       (1) The duration of the step therapy or fail-first protocol shall be  
26 determined by the prescriber.

27       (2) The carrier shall not require a covered person to try and fail  
28 on more than two pain medications before providing coverage to the  
29 covered person for the pain medication, including a generic drug  
30 product, which has been prescribed.

31       (3) Once a covered person has tried and failed on two pain  
32 medications, the carrier shall no longer require prior authorization  
33 for coverage of pain medication for the covered person, and the  
34 prescriber may write the prescription for the appropriate pain  
35 medication. The prescriber shall note in the covered person’s  
36 medical record that the person tried and failed on the step therapy or  
37 fail-first protocol, and this shall suffice as prior authorization from  
38 the carrier.

39       (4) When the prescriber notes on the prescription that the step  
40 therapy or fail-first protocols have been met, a pharmacist may  
41 process the prescription without additional communication with the  
42 carrier.

43       b. As used in this section:

44       “Generic drug product” means a drug product that is approved  
45 and designated by the federal Food and Drug Administration as a  
46 therapeutic equivalent for a reference listed drug product, including  
47 a drug product listed in the New Jersey Generic Formulary by the

1 Drug Utilization Review Council pursuant to P.L.1977, c.240  
2 (C.24:6E-1 et al.).

3 “Prescriber” means a licensed health care professional who is  
4 authorized to prescribe the medication pursuant to State law.

5 c. Nothing in this section shall be construed to prohibit a carrier  
6 from charging a covered person a copayment or deductible for  
7 prescription drug benefits or from setting forth, in the health  
8 benefits plan, limitations on maximum coverage of prescription  
9 drug benefits as permitted under law or regulation.

10 d. Nothing in this section shall be construed to require coverage  
11 of prescription drugs that are not in the drug formulary of the  
12 carrier or to prohibit generic drug substitutions pursuant to law.

13 e. The provisions of this section shall apply to those health  
14 benefits plans in which the carrier has reserved the right to change  
15 the premium.

16

17 7. a. Notwithstanding any other provision of law to the  
18 contrary, a small employer health benefits plan that provides  
19 benefits for expenses incurred in the purchase of outpatient  
20 prescription drugs and is delivered, issued, executed, renewed, or  
21 approved for issuance or renewal in this State pursuant to P.L.1992,  
22 c.162 (C.17B:27A-17 et seq.), or approved for issuance or renewal  
23 in this State by the Commissioner of Banking and Insurance, on or  
24 after the effective date of this act, shall be subject to the provisions  
25 of this section if the health benefits plan restricts coverage for  
26 medications for the treatment of pain pursuant to a step therapy or  
27 fail-first protocol.

28 (1) The duration of the step therapy or fail-first protocol shall be  
29 determined by the prescriber.

30 (2) The carrier shall not require a covered person to try and fail  
31 on more than two pain medications before providing coverage to the  
32 covered person for the pain medication, including a generic drug  
33 product, which has been prescribed.

34 (3) Once a covered person has tried and failed on two pain  
35 medications, the carrier shall no longer require prior authorization  
36 for coverage of pain medication for the covered person, and the  
37 prescriber may write the prescription for the appropriate pain  
38 medication. The prescriber shall note in the covered person’s  
39 medical record that the person tried and failed on the step therapy or  
40 fail-first protocol, and this shall suffice as prior authorization from  
41 the carrier.

42 (4) When the prescriber notes on the prescription that the step  
43 therapy or fail-first protocols have been met, a pharmacist may  
44 process the prescription without additional communication with the  
45 carrier.

46 b. As used in this section:

47 “Generic drug product” means a drug product that is approved  
48 and designated by the federal Food and Drug Administration as a



1 therapeutic equivalent for a reference listed drug product, including  
2 a drug product listed in the New Jersey Generic Formulary by the  
3 Drug Utilization Review Council pursuant to P.L.1977, c.240  
4 (C.24:6E-1 et al.).

5 “Prescriber” means a licensed health care professional who is  
6 authorized to prescribe the medication pursuant to State law.

7 c. Nothing in this section shall be construed to prohibit a carrier  
8 from charging a covered person a copayment or deductible for  
9 prescription drug benefits or from setting forth, in the health  
10 benefits plan, limitations on maximum coverage of prescription  
11 drug benefits as permitted under law or regulation.

12 d. Nothing in this section shall be construed to require coverage  
13 of prescription drugs that are not in the drug formulary of the  
14 carrier or to prohibit generic drug substitutions pursuant to law.

15 e. The provisions of this section shall apply to those health  
16 benefits plans in which the carrier has reserved the right to change  
17 the premium.

18  
19 8. a. Notwithstanding any other provision of law to the  
20 contrary, a health maintenance organization enrollee agreement that  
21 provides coverage for the purchase of outpatient prescription drugs  
22 and is delivered, issued, executed, or renewed in this State pursuant  
23 to P.L.1973, c.337 (C.26:2J-1 et seq.), or approved for issuance or  
24 renewal in this State by the Commissioner of Banking and  
25 Insurance, on or after the effective date of this act, shall be subject  
26 to the provisions of this section if the enrollee agreement restricts  
27 coverage for medications for the treatment of pain pursuant to a  
28 step therapy or fail-first protocol.

29 (1) The duration of the step therapy or fail-first protocol shall be  
30 determined by the prescriber.

31 (2) The health maintenance organization shall not require a  
32 covered person to try and fail on more than two pain medications  
33 before providing coverage to the covered person for the pain  
34 medication, including a generic drug product, which has been  
35 prescribed.

36 (3) Once a covered person has tried and failed on two pain  
37 medications, the health maintenance organization shall no longer  
38 require prior authorization for coverage of pain medication for the  
39 covered person, and the prescriber may write the prescription for  
40 the appropriate pain medication. The prescriber shall note in the  
41 covered person’s medical record that the person tried and failed on  
42 the step therapy or fail-first protocol, and this shall suffice as prior  
43 authorization from the health maintenance organization.

44 (4) When the prescriber notes on the prescription that the step  
45 therapy or fail-first protocols have been met, a pharmacist may  
46 process the prescription without additional communication with the  
47 health maintenance organization.

48 b. As used in this section:

1       “Generic drug product” means a drug product that is approved  
2 and designated by the federal Food and Drug Administration as a  
3 therapeutic equivalent for a reference listed drug product, including  
4 a drug product listed in the New Jersey Generic Formulary by the  
5 Drug Utilization Review Council pursuant to P.L.1977, c.240  
6 (C.24:6E-1 et al.).

7       “Prescriber” means a licensed health care professional who is  
8 authorized to prescribe the medication pursuant to State law.

9       c. Nothing in this section shall be construed to prohibit a health  
10 maintenance organization from charging a covered person a  
11 copayment or deductible for prescription drug coverage or from  
12 setting forth, in the enrollee agreement, limitations on maximum  
13 coverage of prescription drugs as permitted under law or regulation.

14       d. Nothing in this section shall be construed to require coverage  
15 of prescription drugs that are not in the drug formulary of the health  
16 maintenance organization or to prohibit generic drug substitutions  
17 pursuant to law.

18       e. The provisions of this section shall apply to those enrollee  
19 agreements in which the health maintenance organization has  
20 reserved the right to change the premium.

21

22       9. a. Notwithstanding any other provision of law to the  
23 contrary, the State Health Benefits Commission shall ensure that  
24 every contract that provides benefits for expenses incurred in the  
25 purchase of outpatient prescription drugs, which is purchased by the  
26 commission on or after the effective date of this act, shall provide  
27 coverage pursuant to the provisions of this section if the contract  
28 restricts coverage for medications for the treatment of pain pursuant  
29 to a step therapy or fail-first protocol.

30       (1) The duration of the step therapy or fail-first protocol shall be  
31 determined by the prescriber.

32       (2) The contract shall not require a covered person to try and fail  
33 on more than two pain medications before providing coverage to the  
34 covered person for the pain medication, including a generic drug  
35 product, which has been prescribed.

36       (3) Once a covered person has tried and failed on two pain  
37 medications, the contract shall no longer require prior authorization  
38 for coverage of pain medication for the covered person, and the  
39 prescriber may write the prescription for the appropriate pain  
40 medication. The prescriber shall note in the covered person’s  
41 medical record that the person tried and failed on the step therapy or  
42 fail-first protocol, and this shall suffice as prior authorization from  
43 the commission or its agent.

44       (4) When the prescriber notes on the prescription that the step  
45 therapy or fail-first protocols have been met, a pharmacist may  
46 process the prescription without additional communication with the  
47 commission or its agent.

48       b. As used in this section:

1       “Generic drug product” means a drug product that is approved  
2 and designated by the federal Food and Drug Administration as a  
3 therapeutic equivalent for a reference listed drug product, including  
4 a drug product listed in the New Jersey Generic Formulary by the  
5 Drug Utilization Review Council pursuant to P.L.1977, c.240  
6 (C.24:6E-1 et al.).

7       “Prescriber” means a licensed health care professional who is  
8 authorized to prescribe the medication pursuant to State law.

9       c. Nothing in this section shall be construed to prohibit the  
10 contract from charging a covered person a copayment or deductible  
11 for prescription drug benefits or from setting forth limitations on  
12 maximum coverage of prescription drug benefits as permitted under  
13 law or regulation.

14       d. Nothing in this section shall be construed to require coverage  
15 of prescription drugs that are not in the drug formulary of the  
16 commission or its agent or to prohibit generic drug substitutions  
17 pursuant to law.

18  
19       10. a. Notwithstanding any other provision of law to the  
20 contrary, the School Employees’ Health Benefits Commission shall  
21 ensure that every contract that provides benefits for expenses  
22 incurred in the purchase of outpatient prescription drugs, which is  
23 purchased by the commission on or after the effective date of this  
24 act, shall provide coverage pursuant to the provisions of this section  
25 if the contract restricts coverage for medications for the treatment  
26 of pain pursuant to a step therapy or fail-first protocol.

27       (1) The duration of the step therapy or fail-first protocol shall be  
28 determined by the prescriber.

29       (2) The contract shall not require a covered person to try and fail  
30 on more than two pain medications before providing coverage to the  
31 covered person for the pain medication, including a generic drug  
32 product, which has been prescribed.

33       (3) Once a covered person has tried and failed on two pain  
34 medications, the contract shall no longer require prior authorization  
35 for coverage of pain medication for the covered person, and the  
36 prescriber may write the prescription for the appropriate pain  
37 medication. The prescriber shall note in the covered person’s  
38 medical record that the person tried and failed on the step therapy or  
39 fail-first protocol, and this shall suffice as prior authorization from  
40 the commission or its agent.

41       (4) When the prescriber notes on the prescription that the step  
42 therapy or fail-first protocols have been met, a pharmacist may  
43 process the prescription without additional communication with the  
44 commission or its agent.

45       b. As used in this section:

46       “Generic drug product” means a drug product that is approved  
47 and designated by the federal Food and Drug Administration as a  
48 therapeutic equivalent for a reference listed drug product, including

1 a drug product listed in the New Jersey Generic Formulary by the  
2 Drug Utilization Review Council pursuant to P.L.1977, c.240  
3 (C.24:6E-1 et al.).

4 “Prescriber” means a licensed health care professional who is  
5 authorized to prescribe the medication pursuant to State law.

6 c. Nothing in this section shall be construed to prohibit the  
7 contract from charging a covered person a copayment or deductible  
8 for prescription drug benefits or from setting forth limitations on  
9 maximum coverage of prescription drug benefits as permitted under  
10 law or regulation.

11 d. Nothing in this section shall be construed to require coverage  
12 of prescription drugs that are not in the drug formulary of the  
13 commission or its agent or to prohibit generic drug substitutions  
14 pursuant to law.

15  
16 11. This act shall take effect on the 90th day after enactment and  
17 shall apply to policies or contracts issued or renewed on or after the  
18 effective date.

#### 21 STATEMENT

22  
23 This bill requires health insurers and the State Health Benefits  
24 Program (SHBP) and School Employees’ Health Benefits Program  
25 (SEHBP), under every policy or contract that provides coverage for  
26 outpatient prescription drugs, to provide coverage for prescription  
27 drugs that are used to treat pain in accordance with its provisions.

28 The bill provides specifically as follows:

- 29 • Its provisions apply to the following insurers and programs that  
30 provide coverage for outpatient prescription drugs under a policy  
31 or contract: health, hospital and medical service corporations;  
32 commercial individual and group health insurers; health  
33 maintenance organizations; health benefits plans issued pursuant  
34 to the New Jersey Individual Health Coverage and Small  
35 Employer Health Benefits Programs; SHBP; and SEHBP.
- 36 • If the insurer or program, in its policy or contract, restricts  
37 coverage for medications for the treatment of pain pursuant to a  
38 step therapy or fail-first protocol:

39 -- The duration of the step therapy or fail-first protocol is to be  
40 determined by the prescriber.

41 -- The insurer or program will not require a covered person to try  
42 and fail on more than two pain medications before providing  
43 coverage to the covered person for the pain medication, including a  
44 generic drug product, which has been prescribed.

45 -- Once a covered person has tried and failed on two pain  
46 medications, the insurer or program will no longer require prior  
47 authorization for coverage of pain medication for the covered  
48 person, and the prescriber may write the prescription for the

- 1 appropriate pain medication. The prescriber is to note in the  
2 covered person's medical record that the person tried and failed on  
3 the step therapy or fail-first protocol, and this is to suffice as prior  
4 authorization from the insurer or program.
- 5 -- When the prescriber notes on the prescription that the step  
6 therapy or fail-first protocols have been met, a pharmacist may  
7 process the prescription without additional communication with the  
8 insurer or program.
- 9 • The bill defines:
- 10 "generic drug product" to mean a drug product that is approved  
11 and designated by the federal Food and Drug Administration as a  
12 therapeutic equivalent for a reference listed drug product, including  
13 a drug product listed in the New Jersey Generic Formulary by the  
14 Drug Utilization Review Council pursuant to P.L.1977, c.240  
15 (C.24:6E-1 et al.); and
- 16 "prescriber" to mean a licensed health care professional who is  
17 authorized to prescribe the medication pursuant to State law.
- 18 • Nothing in the bill is to be construed to prohibit an insurer or  
19 program from charging a covered person a copayment or  
20 deductible for prescription drug benefits or from setting forth, in  
21 the policy or contract, limitations on maximum coverage of  
22 prescription drug benefits as permitted under law or regulation.
- 23 • Nothing in the bill is to be construed to require coverage of  
24 prescription drugs that are not in the drug formulary of the insurer  
25 or program or to prohibit generic drug substitutions pursuant to  
26 law.
- 27 • The bill takes effect on the 90th day after enactment and applies  
28 to policies or contracts issued or renewed on or after the effective  
29 date.