

**PUBLIC HEALTH CODE (EXCERPT)**  
**Act 368 of 1978**

**333.9709 Prior authorization for drugs not on preferred drug list.**

Sec. 9709.

(1) Except as otherwise provided by law or in this part, a prescriber shall obtain prior authorization for drugs that are being provided to medicaid beneficiaries directly through the department on a fee for service basis or pursuant to a contract for such pharmaceutical services and that are not included on the department's preferred drug list. If the prescriber's prior authorization request is denied, the department or the department's agent shall inform the requesting prescriber of his or her option to speak to the agent's physician on duty regarding his or her request. If immediate contact with the agent's physician on duty cannot be arranged, the department or the department's agent shall inform the requesting prescriber of his or her right to request a 72-hour supply of the nonauthorized drug. If contact with the agent's physician on duty cannot be arranged within 72 hours due to a legal holiday, the requesting prescriber may request a longer supply of the nonauthorized drug.

(2) The department or the department's agent shall provide authorization for prescribed drugs that are not on its preferred drug list if any of the following are satisfied:

(a) The prescribing physician telephones the department's agent or certifies in writing on a form as provided by the department that the drugs are being prescribed consistent with its licensed indications, that no other drugs included on the preferred drug list, in the physician's professional opinion, would offer a comparable benefit to the patient, and that the drugs are necessary for the continued stabilization of the patient's medical condition.

(b) The prescribing physician telephones the department's agent or certifies in writing on a form as provided by the department that following documented failures on earlier prescription regimens, in the physician's professional opinion, no other drug or drugs included on the preferred drug list can provide a comparable benefit.

(c) The prescribing physician telephones the department's agent or certifies in writing on a form as provided by the department that no other drugs included on the preferred drug list, in the physician's professional opinion, would offer a comparable benefit to the patient and that the drugs are being prescribed to a patient for the treatment of any symptoms or side effects that are a direct result of treatment received for any of the following:

(i) Human immunodeficiency virus infections or the complications of the human immunodeficiency virus or acquired immunodeficiency syndrome.

(ii) Cancer.

(iii) Organ replacement therapy.

(iv) Epilepsy or seizure disorder.

(3) The department or the department's agent shall provide authorization for a prescribed drug that is not on its preferred drug list if each of the following is met:

(a) The prescribing physician has achieved advanced specialization training and is certified as a specialist by a specialty board that is recognized by the American osteopathic association and the council on graduate medical education or their successor organizations and provides documentation of his or her certification.

(b) The prescribing physician described in subdivision (a) telephones the department or certifies in writing each of the following:

(i) The prescribed drug is being prescribed consistent with its licensed indications or with generally accepted medical practice as documented in a standard medical reference.

(ii) The prescribed drug is being used to treat a condition that is normally treated within the prescribing physician's specialty field.

(iii) In the physician's professional opinion, no other drug or drugs included on the preferred drug list can provide a comparable benefit.

(4) Documentation of necessity or failures under subsection (2) or (3) may be provided by telephone, facsimile, or electronic transmission.

(5) A patient who is under a court order for a particular prescription drug before becoming a recipient of medicaid is exempt from the prior authorization process and may continue on that medication for the duration of the order.

(6) Except as otherwise provided under this subsection, a patient who is currently under medical treatment and whose condition has been stabilized under a given prescription regimen before becoming a recipient of medicaid is exempt from the prior authorization process and may continue on that medication for the current course of treatment if without that prescription regimen the patient would suffer serious health consequences. Unless a controlled substance is currently being prescribed under a patient's hospice plan of care, a continuing prescription for a controlled substance under this subsection requires prior authorization. The department or the department's agent shall not deny a request for prior authorization of a controlled substance under this subsection unless the department or the department's agent determines that the controlled substance or the dosage of the controlled

substance being prescribed is not consistent with its licensed indications or with generally accepted medical practice as documented in a standard medical reference.

(7) This section does not apply to drugs being provided under a contract between the department and a health maintenance organization.

**History:** Add. 2004, Act 250, Imd. Eff. July 23, 2004

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