

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Eighty-second Session
March 10, 2023**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:03 a.m. on Friday, March 10, 2023, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Melanie Scheible
Senator Skip Daly
Senator Julie Pazina
Senator Scott Hammond
Senator Carrie A. Buck
Senator Jeff Stone

COMMITTEE MEMBERS ABSENT:

Senator Robert Lange, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Senator Marilyn Dondero Loop, Senatorial District No. 8

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Kelly K. Clark, Committee Secretary

OTHERS PRESENT:

Abbey Bernhartt, National Alliance on Mental Illness
Erica Fredenburgh

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Robin Reedy, Executive Director, National Alliance on Mental Illness,
Nevada Chapter

Barry Cole

Vanessa Dunn, Nevada Psychiatric Association

Donna Laffey, Dignity Health – St. Rose Dominican Hospital

Sarah Watkins, Nevada State Medical Association

Paul Young, Pharmaceutical Care Management Association

Stacie Sasso, Executive Director, Health Services Coalition

Nik Proper, Operations Officer, Nevada Public Employees' Benefits Program

CHAIR SPEARMAN:

We will open the hearing with Senate Bill (S.B.) 167.

SENATE BILL 167: Prohibits the imposition of step therapy under certain circumstances. (BDR 57-81)

SENATOR MARILYN DONDERO LOOP (Senatorial District No. 8):

I am pleased to present S.B. 167 which seeks to prohibit using step therapy protocols for prescription drugs to treat psychiatric conditions. Step therapy protocols, also known as "fail-first" policies, are a cost-saving strategy used by private and public insurance companies to manage prescription drug costs of patients.

The basic idea behind step therapy is that patients must try less expensive, generic or older drugs, before moving on to more appropriate treatments. While this may seem like a reasonable and effective approach to control healthcare costs, it can also hinder the delivery of quality personalized health care for certain psychiatric conditions.

Step therapy can delay access to necessary and effective treatments, which can endanger the health and well-being of the patient. Patients may have to try several medications before they find one that works for them. That can take weeks or even months. Often these patients may discontinue their treatment altogether.

For example, a recent study of Maine's Medicaid prior authorization and step therapy policy for second-generation antipsychotics indicated that this policy was associated with a 29 percent greater risk of treatment discontinuity but no associated cost savings for patients with schizophrenia.

Research also shows that step therapy protocols can impede patients' overall health and increase long-term costs. That is particularly true for patients who require inpatient care after being required to use alternative drugs, per the protocol.

Step therapy protocols can be particularly burdensome for patients with complex and severe psychiatric conditions who require specialized and personalized treatment plans. This is because the standard treatment pathways outlined in step therapy protocols may not adequately address the specific needs of these patients.

Finally, step therapy protocols can negatively impact the doctor-patient relationship by limiting a practitioner's ability to provide the most appropriate and effective treatments for their patients having certain psychiatric conditions.

Healthcare providers feel frustrated when they are unable to prescribe the most effective treatments for their patients. And patients may feel that their medical care is being dictated by the insurance company rather than by their practitioner.

Patients or their families may be forced to advocate for needed and appropriately prescribed care to remove these insurance barriers. Nevada is 1 of 15 states that does not have protections for patients around step therapy protocols.

Senate Bill 167 prohibits health insurers from imposing a step therapy protocol for an appropriately prescribed drug to treat a psychiatric condition if the prescribing healthcare practitioner reasonably expects each drug in the step therapy protocol will be ineffective.

This would apply to private health insurers, voluntary purchasing groups and Medicaid as well as health insurance plans for State, local and private employees.

A health insurance policy issued or renewed on or after July 1, 2023, must include the coverage required by this bill. Any policy provisions that conflict are void.

In addition, the Commissioner of Insurance is authorized to suspend or revoke the Certificate of Authority of certain health insurance providers that fail to comply with the prohibition against imposing a step therapy protocol for a drug prescribed to treat a psychiatric condition.

This is the basic outline of S.B. 167. This important legislation has the support of many medical professionals, but I would like you to hear from my two guests.

ABBEY BERNHARTT (National Alliance on Mental Illness):

At three years old, I was diagnosed with bipolar disorder. I experienced manic episodes and rapid cycling. I had so much anxiety, sadness and anger all at once.

By middle school, the mania turned to depression, and I found myself in crisis. My doctor put me on medications hoping one would work for me. When they did not, he added another until I was on ten medications and still in crisis.

Now, all the medications are affecting me. My anxiety and depression increased. I suffered hallucinations I had never had before and have not had since. Perhaps one of the scariest memories was sleep paralysis. At this point, I was hospitalized and received a new doctor. He started decreasing all my medications to start over.

I then started to experience withdrawal from the medications, adding extreme symptoms. When I first became depressed, I could deal with the pain to a certain degree. Eventually, it became harder until I could not get through the day, and I started to disassociate.

I became convinced that life was not real. Maybe I was drowning underwater, or maybe I was in a coma, dying. It was like a dream in which you are in and out of reality. I could not see a way out of my pain. It was beyond what I could handle. I felt the weight of the world.

The loneliness and sadness consumed me. At ten years old, suicide seemed like the only answer to my problem. Doctors fought insurance companies trying to manage my medications but lacked control over what medications were approved.

I know the importance of medication. It gave me a way to get my life back and a way to manage my mental health symptoms.

If doctors had chosen my medications based on my need, I would not have suffered so much trauma for so long. The memories of my suicide attempt left me with recurring nightmares. I repeatedly relived that horrible day.

When I get depressed now, I fear the nightmare I once lived. I stand with those who are struggling. There can be better days ahead. I support a doctor's control over medication.

ERICA FREDENBURGH:

My daughter Abbey was diagnosed with bipolar disorder when she was three years old. Medications have always been a huge part of our life.

Insurance companies have lists and formularies that are approved for prescribing treatment. Medicaid and all the insurance companies are the same. They have control over your treatment. The doctor does not. They are choosing from the lists.

The problem is, the medications on that list do not always address the patient's need. As you saw in Abbey's situation, because the doctor is left choosing medications that are available on the plan, they may not address the specific need.

It is difficult to find the right medication. She tried a lot of medications to reach the one she needed in the first place. As Abbey mentioned, she was on ten medications because they kept adding new ones. If one did not work, they would then add another one.

Pretty soon, we were caught in a situation where she was on too many medications. We did not know what the medication was doing. We did not know what the disorder itself was doing. When we took her off a medication, we did not know what that was doing. It was a dangerous situation because it caused different things to occur in her body.

With all that—not knowing how her body was responding, what the medication was doing, or the impact of new medications—her body was put into crisis.

It was terrible to experience. I saw meltdowns. I saw suicidal behavior. As the parent, I was given a list, they would say "Look for these symptoms." But as a parent, I felt helpless; there was nothing we could really do to help her.

I tried hospitalizing her to get the situation under control. I had her hospitalized 13 times. Nothing helped because the right medications were not in place to help her.

Some of the medications were crazily expensive. A medication called Abilify costs \$1,000 just to get coverage. You cannot even pay for the right medications yourself to try and get her where she needed to be. I tried that too.

I wrote letters. I tried everything. I even sent her out of State. I drove from one state to another, 16 hours altogether. As a desperate parent, I was just trying to get appropriate care in place, to change the situation.

It is frustrating because you do not have control over it. This went on for more than a year. They gave me a list and said, check what is happening, see if she matches the criteria. They said she did not have the capability to commit suicide. I kept telling them, yes, she matches these criteria and has the capability. One night, she absolutely did have the capability, and it was the most terrifying night of my life.

It was that lack of medications that caused it. I want to see the system change so that the medications are controlled by the doctor, not the insurance company. The insurance companies are not doctors. They do not know what the child needs; the doctor knows and should be prescribing the medications she should be on, and they should be selected based on her need, and not the cost.

CHAIR SPEARMAN:

Your story saddens me, but I am encouraged by your perseverance and resilience. Thank you and thank you to mom. Are there any questions?

SENATOR STONE:

Your story is very compelling. I am happy you are here advocating for this bill. I applaud my colleague for bringing it forward.

It comes down to the fundamental debate. Who should control the medications that a doctor orders—the doctor or the insurance company?

I understand the cost constraints. There are not as many drugs to treat psychiatric disorders as there are for other conditions.

We support generic substitution when possible. Sometimes with psychiatric cases, there is a particular drug that is the only one that works. I am especially concerned about people who are stabilized on a particular drug, but then there is a switch of insurance, and their drugs are not in the new formulary.

Now the patient must go through the prior approval process, which can be denied, then they must appeal. Meanwhile, without medication, they can have a breakthrough problem and end up in the hospital or, worst case, attempt suicide.

The contention that psychiatric drugs are unique has been studied. Numerous studies have shown that step therapy not only delays treatment but increases medical costs in the end.

I agree with the description of step therapy as "fail first." I think it should be "succeed first." We must trust our psychiatrists. Treatment should not be governed by cost but by what is in the patient's best interest to prevent hospitalizations, and certainly, suicidal behavior.

There are cases where people who get brand-name drugs say, "Hey, the brand name worked a lot better than the generic. The doctor says we need to get back on the brand now." That should be a prior authorization.

My main concern is that people who are on existing medications should not have to change those because of new insurance. Senator, could you please address generic substitution provisions?

SENATOR DONDERO LOOP:

The idea with prohibiting step therapy is to leave this decision to the doctor and the patient. If the doctor thinks a generic drug is appropriate, even necessarily as a substitution, that is their decision. They might think that is the right prescription for that person.

SENATOR STONE:

If that were the case, the doctor would have to write on the prescription, "Do not substitute." Then they would have to get prior authorization for that particular drug. You talk about the challenges for doctors who must get prior authorization for the medication.

Just imagine, as a pharmacist, when you go to a patient, especially a psychiatric patient, and say, "Listen, Jane Doe, I know you have been taking this drug for five years, but your insurance is not going to cover it anymore."

The pharmacist is subjected to the wrath of a frustrated customer who demands the prescription. You might be surprised at how many hours pharmacies spend on prior authorizations, for which they do not get paid, just to avoid that situation.

You have to pay your taxes. You have to pay your staff to debate with the doctor and the insurance company. The insurance company has somebody on the phone, not even a physician, arguing with you that they will not provide the drug. We all know the reason. It comes down to cost. But cost should not inhibit a physician from prescribing the appropriate medication for a psychiatric case. Believe me I have felt the frustrations that my colleagues have felt, as well.

SENATOR DONDERO LOOP:

We know some drugs have fillers. That is why it is so important this is left in the hands of doctors—they know the drugs. You, as a pharmacist, know that. I appreciate your input.

CHAIR SPEARMAN:

As a Veteran, I have access to U.S. Department of Veterans Affairs (VA) health care. Have you considered how step therapy may affect Veterans discharged under the U.S. military's "Don't Ask, Don't Tell" policy? They would not have access to VA health care. Whatever diagnosis they get, they will not have enough money for treatment.

SENATOR DONDERO LOOP:

I will ask my colleague to assist with that question.

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ROBIN REEDY (Executive Director, National Alliance on Mental Illness, Nevada Chapter):

This bill, S.B. 167, is going to help everyone. The bill is designed for that decision to be between the patient and the doctor, especially for the people who have to change insurance every year. When the family gets that letter saying this does not match our preferred drug list, it is like a bomb going off for them, trying to get the help they need.

For Veterans, especially those with post-traumatic stress disorder, it is stressful to deal with so many unaware insurance people. At some point, the Veteran may give up. That is part of the problem. When you finally get someone ready to get help and start medication, you want it to work for them.

This bill will help lower-income people. It saves money in the long run for insurance companies. That is why the VA is now so much better at prescribing medicines. They recognize they save money in the long run.

SENATOR DONDERO LOOP:

There are many people in the room in support. We have provided statistics from the National Alliance on Mental Illness, ([Exhibit C](#)).

CHAIR SPEARMAN:

We will begin public testimony with those in support of S.B. 167.

MS. REEDY:

How many years of your life are you willing to give up being ill and not getting the right treatment? Would we do that with cancer? Would we do that when we cannot breathe? Why do we do that with mental health? Why is that allowable when someone is finally ready to get help?

We need to make sure we get the help that works, not a pencil pusher on the phone deciding it does not. If you had a child who needed medicine, how much time would you give them? What if that child was sitting in a closet, depressed and anxious, and not wanting to come to Thanksgiving dinner? How long are you going to wait then?

I can tell you my granddaughter waited almost two years and did not finish high school because she could not get the right medicine at the right time. She is very fortunate, and on a medication that is working, but there is permanent

damage. She does not have a high school degree because she could not attend high school.

Decision-makers who choose not to include an exemption for psychiatric drugs in their medical plan are choosing money over people. It is that simple.

BARRY COLE:

I am a retired psychiatrist. *The Diagnostic and Statistical Manual of Mental Disorders, DSM 5*, from the American Psychiatric Association is 1,000 pages. When I became a psychiatrist, it was 350 pages. The other 700 pages were added because we became capable of slicing the pie into smaller pieces.

We now have precision diagnoses with precision-matched medications from the U.S. Food and Drug Administration. One example: bipolar depression is now treated with two specific medications that do not treat the manic side.

Here is a fact for you. With the first episode of psychosis, if you are treated rapidly, you have a 100 percent probability of recovery. For every subsequent time you become psychotic, 10 percent is lost. We get to the point of no return.

I have treated Veterans all over the U.S., in Alabama, Arkansas, Arizona and Nevada. Sometimes Veterans wind up in the civil system because there is no VA Hospital near them, or there is no VA benefit for them.

Today's medications are very expensive. There is an injection I can give twice a year that runs about \$18,000 annually. The cost in a psychiatric hospital is \$800–\$2,000 a day. The cost of an intensive care unit (ICU) after an overdose is \$5,000–\$10,000 a day. In the 1990s, Kaiser Permanente concluded that a \$1.98 Prozac capsule was less expensive for their members than a one-cent-a-day Amitriptyline, once they took into account overdoses and unnecessary ICU visits. We do much better today than in my grandfather's era as a psychiatrist.

VANESSA DUNN (Nevada Psychiatric Association):

The Nevada Psychiatric Association is in strong support of S.B. 167. I echo the comments made by Dr. Cole and Robin Reedy. We have submitted a support statement from six psychiatric resident physicians ([Exhibit D](#)).

DONNA LAFFEY (Dignity Health – St. Rose Dominican Hospital):

We want to register our support for S.B. 167 with a quick "me too" and thank the sponsor for bringing it forward.

SARAH WATKINS (Nevada State Medical Association):

We are in full support of this bill as a patient and physician advocacy organization. It ensures the continuity between the patient and the physician.

PAUL YOUNG (Pharmaceutical Care Management Association):

Unfortunately, we are opposed to this bill in its current form. We are not opposed to what is trying to be accomplished here. We want to continue to work with stakeholders. We believe we can provide some language to put the patient first and create some oversight.

STACIE SASSO (Executive Director, Health Services Coalition):

Our coalition represents 25 union and employer-sponsored health plans in southern Nevada, including Culinary Union, Metro Police, Clark County and various others. We are opposed to S.B. 167 in its current form. We would like to work with the sponsor to address our concerns.

NIK PROPER (Operations Officer, Public Employees' Benefits Program):

The Public Employees' Benefits Program Board has taken a neutral position on S.B. 167.

Our fiscal note shows this proposed legislation has a small but measurable projected impact on the Public Employees' Benefits Program of about \$20,000 per plan year, based on the current utilization of the 29 impacted drugs.

Currently, about 6,800 members take at least one of the impacted drugs. The Board recognizes that step therapy is a crucial cost-containment measure that ensures our members try less expensive but equally effective alternatives.

In almost 40 percent of our cases patients find that a less expensive alternative works. Those cost savings help keep premiums low. However, the Board also recognizes that potential delays in receiving the originally prescribed drug can have a negative impact on the patient.

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SENATOR DONDERO LOOP:

Thank you all for allowing me to present this bill today. Most importantly, I would like to thank Abbey for telling her story and having the courage to stand up for the cause. To all those out there who may be in a crisis today, please remember we are here to help. Reach out to a helpline.

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CHAIR SPEARMAN:

We will close the hearing on S.B. 167. Hearing no public comment, this meeting is adjourned at 8:38 a.m.

RESPECTFULLY SUBMITTED:

Kelly K. Clark,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 167	C	9	Senator Marilyn Dondero Loop	National Alliance on Mental Illness
S.B. 167	D	10	Vanessa Dunn / Nevada Psychiatric Association	Support Statement