

**MEDICAL SOCIETY**  
of the  
**STATE OF NEW YORK**

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*Division of Governmental Affairs*  
**MEMORANDUM IN SUPPORT**

**ON SENATE INSURANCE  
COMMITTEE AGENDA**

**S.5909 (KAMINSKY)**

**IN ASSEMBLY INSURANCE  
COMMITTEE**

**A.3276 (GUNTHER)**

**AN ACT to amend the insurance law, in relation to prohibiting the application of fail-first or step therapy protocols to coverage for the diagnosis and treatment of mental health conditions**

This legislation would amend the Insurance law to prohibit the application of “fail-first”, also known as “step therapy”, protocols to coverage for the diagnosis and treatment of mental health conditions. **The Medical Society of the State of New York supports this legislation.**

"Fail-first", also known as "step therapy", are rules imposed by insurers that require patients to try a medication, other than the one originally prescribed by their physician, to determine if it can successfully treat the condition. While New York state has enacted measures that set forth statutory criteria for when a health plan is required to override its step therapy protocol, in practice it sets up a significant administrative burden for physicians in order to meet these criteria when the patient's medical condition warrants that an override request be made. These administrative roadblocks do not just take time away from delivering the needed patient care, they often have significant adverse consequences for patients, as well. For those struggling with mental health conditions, the results can be catastrophic, often leading to a higher risk of non-compliance with treatment plans, and an increased likelihood of homelessness and incarcerations.

A Kaiser Family Foundation survey from August 2020 showed the average share of adults reporting depression or anxiety rose to 40% in July 2020. Further, a study in the Journal of the American Medical Association (JAMA), showed 15% of U.S. adults reported symptoms of "serious psychological distress," in April 2020, compared to just 4% who reported similar symptoms in April 2018. Symptoms of psychological distress were highest among young adults, people with low incomes and people of color. As the COVID-19 pandemic moves to the next stage, the health care system may also face a sort of "fourth wave" of behavioral health problems, with mental health experts warning that mental health issues, and substance use disorders, could become even more challenging for people who already have these conditions, and may lead to new mental health and substance use issues in the general population. As we confront these challenges, it is critically important to ensure that patients receive the medications they need in a timely manner.

**For all of the reasons stated above, the Medical Society of the State of New York supports this legislation and urges that it be enacted.**

5/14/21  
ZDC - Support

**Respectfully Submitted,**

**MSSNY DIVISION OF GOVERNMENTAL AFFAIRS**