

# S. 464, SAFE STEP ACT OF 2021

*Senator Murkowski (R-AK), Senator Hassan (D-NH), Senator Cassidy (R-LA), Senator Rosen (D-NV)*

**Purpose:** Improve step therapy protocols and ensure patients are able to safely and efficiently access the best treatment for them.

**Background:** Step therapy is a tool used by health plans to control spending on patient's medications. While step therapy can be an important tool to contain the costs of prescription drugs, in some circumstances, it has negative impacts on patients, including delayed access to the most effective treatment, severe side effects, and irreversible disease progression. Currently, when a physician prescribes a particular drug treatment for a patient, the patient's insurance company may require them to try different medications and treatments before they can access the drug originally prescribed by their physician. This protocol is known as "step therapy" or "fail first." Step therapy protocols may ignore a patient's unique circumstances and medical history. That means patients may have to use medications that previously failed to address their medical issue, or – due to their unique medical conditions – could have dangerous side effects.

**The Safe Step Act of 2021:** The Safe Step Act amends the Employee Retirement Income Security Act (ERISA) to require a group health plan provide an exception process for any medication step therapy protocol. The bill:

- **Establishes a clear exemption process:** The Safe Step Act requires insurers implement a clear and transparent process for a patient or physician to request an exception to a step therapy protocol.
- **Outlines 5 exceptions to fail first protocols.** Requires that a group health plan grant an exemption if an application clearly demonstrates any of the following situations:
  1. Patient already tried and failed on the required drug. A patient has already tried the medicine and failed before.
  2. Delayed treatment will cause irreversible consequences. The drug is reasonably expected to be ineffective, and a delay of effective treatment would leave to severe or irreversible consequences.
  3. Required drug will cause harm to the patient. The treatment is contraindicated or has caused/is likely to cause an adverse reaction.
  4. Required drug will prevent a patient from working or fulfilling Activities of Daily Living The treatment has or will prevent a participant from fulfilling their occupational responsibilities at work or performing Activities of Daily Living. Activities of daily living (ADLs) mean basic personal everyday activities such as eating, toileting, grooming, dressing, bathing, and transferring (42 CFR § 441.505).
  5. Patient is stable on their current medication. The patient is already stable on the prescription drug selected by his or her provider, and that drug has been covered by their previous or current insurance plan.
- **Requires a group health plan respond to an exemption request within 72 hours in all circumstances, and 24 hours if the patient's life is at risk.**

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### Exception Examples

1. Patient already tried and failed on the required drug. Michael was eight years old when his parents noticed his foot turning in when he walked, prompting a series of doctor's appointments. Following numerous misdiagnoses, Michael was finally diagnosed with Psoriatic Arthritis at the age of 12. The search to find an effective treatment for Michael's disease proved to be a long, frustrating process. In Michael's case, the first two drugs failed, and the "fail first" process he endured took nearly ten months during which he received no treatment. The first drug he tried did nothing to abate his pain; the second caused him to develop lupus-like symptoms, resulting in more appointments and tests. The insurance company then wanted Michael to *try another remedy that was the same type he had already failed twice before covering his physician's recommended medication.* Finally, Michael's doctor was able get coverage approved for the medication he had initially prescribed. Despite the eventual success, this period of over a year without treatment caused Michael's disease to progress rapidly, resulting in Michael developing an additional chronic illness.
2. Delayed treatment will cause severe or irreversible consequences. Jake, from Alaska, was diagnosed with Crohn's disease as a young child. A year later, he experienced a severe flare and the doctors insisted he immediately be put on an anti-TNF biologic. Jake was a primary non-responder to the anti-TNF, which meant that he would not respond to any anti-TNF. His doctors then tried to put him on an alternative biologic, however, his insurance company required him to prove failure on an additional anti-TNF biologic even though it was against the clinical evidence and guidelines. This process delayed Jake's access to appropriate treatment for several weeks. By the time Jake was granted coverage for the new biologic, his disease had progressed so much that the treatment was not as effective as it would have been if prescribed earlier. As a result, Jake lost his colon. Jake turned 13 this year.
3. Required drug will cause harm to the patient. Jenn, from California, was diagnosed with psoriasis and psoriatic arthritis, her doctor prescribed a treatment that would ease her arthritis pain and slow down joint degeneration. Unfortunately, Jenn's doctor-prescribed treatment was denied by the insurance company and required her to take an alternate medication, which would have led to life-threatening side-effects on the patient's liver. After three months of back-and-forth between the provider, patient, and the insurance company, and explaining that the insurance preferred medication would result in a "death sentence" – Jenn was asked to try a third medication which exasperated her condition. Finally after nearly a year, Jenn was approved for her original doctor-prescribed treatment and began seeing improvements within three weeks.
4. Required drug will prevent a patient from working. Elliot, nicknamed Duffy, from Alaska, is an epilepsy patient and works as a ski instructor and heavy machine operator. The first medication he tried controlled his seizures, however the side-effects made him feel like he was inebriated and dizzy, making it unsafe and even dangerous to perform the tasks necessary for his jobs. Despite his inability to work on the treatment, his insurer would not cover alternative treatments, and he was faced with the option of losing his job or paying out right for a different treatment, which would cost him \$700 a month. Duffy opted to pay for the new treatment with no coverage. The new medication controlled his seizures with less side effects so that he could perform his occupational duties.
5. Patient is stable on their current medication. Katie, a psoriatic arthritis patient, has been stable on her treatment for years. Her treatment was covered by her employer's private insurance until, in the middle of the plan year, her insurer sent her a letter stating that her current treatment would no longer be covered until she went through step therapy protocols. Within four weeks, Katie, who had been an active adult, was back in a wheelchair. Her step therapy journey lasted for ten months, leading to 14 surgeries, countless doctors' visits, missed time from work, and ultimately health care costs that far exceeded the price of her treatment.

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## Endorsing Organizations

This bill has been endorsed by 85 organizations:

Aimed Alliance  
Allergy & Asthma Network  
Alliance for Patient Access  
American Academy of Dermatology Association  
American Academy of Neurology  
American Autoimmune Related Diseases Association  
American Cancer Society Cancer Action Network  
American College of Gastroenterology  
American College of Rheumatology  
American Gastroenterological Association  
American Heart Association  
American Liver Foundation  
American Partnership for Eosinophilic Disorders  
Arthritis Foundation  
Association for Clinical Oncology  
Association of Gastrointestinal Motility Disorders (AGMD)  
Asthma and Allergy Foundation of America  
Beyond Celiac  
Cancer Support Community  
Caregiver Action Network  
Celiac Disease Foundation  
Child Neurology Foundation  
Color of Crohn's & Chronic Illness  
Crazy Creole Mommy Life  
Crohn's & Colitis Foundation  
CURE Epilepsy  
CURED Nfp  
Danny Did Foundation  
Depression and Bipolar Support Alliance  
Digestive Disease National Coalition  
Dup15q Alliance  
Dystonia Advocacy Network  
Dystonia Medical Research Foundation  
Epilepsy Foundation  
Fabry Support & Information Group  
Gastroparesis: Fighting for Change  
GBS|CIDP Foundation International  
Global Healthy Living Foundation  
Global Liver Institute  
Hawai'i Parkinson Association  
Hemophilia Federation of America  
Hope Charities  
IBDMoms  
Infusion Access Foundation (IAF)  
International Essential Tremor Foundation  
International Foundation for Autoimmune & Autoinflammatory Arthritis (AiArthritis)  
International Foundation for Gastrointestinal Disorders (IFFGD)  
International Myeloma Foundation  
Lupus and Allied Diseases Association, Inc.  
Mental Health America  
METAvivor  
Metro Maryland Ostomy Association  
Movement Disorders Policy Coalition  
Multiple Sclerosis Association of America  
National Alliance on Mental Illness  
National Alopecia Areata Foundation  
National Ataxia Foundation  
National Eczema Association  
National Infusion Center Association (NICA)  
National Organization for Rare Disorders  
National Organization for Tardive Dyskinesia  
National Pancreas Foundation  
National Patient Advocate Foundation  
National Psoriasis Foundation  
Patient Services, Inc.  
Pennsylvania Society of Gastroenterology  
Project Sleep  
Pulmonary Hypertension Association  
Scleroderma Foundation  
Society of Gastroenterology Nurses and Associates, Inc.  
Spondylitis Association of America  
Susan G. Komen  
The American Liver Foundation  
The American Society for Parenteral and Enteral Nutrition  
The Life Raft Group  
The Michael J. Fox Foundation for Parkinson's Research  
The National Council for Behavioral Health  
The Sturge-Weber Foundation  
Tourette Association of America  
Tuberous Sclerosis Alliance  
U.S. Hereditary Angioedema Association  
U.S. Pain Foundation  
United for Charitable Assistance  
United Ostomy Associations of America  
VHL Alliance