LFC Requester:	Eric Chenier

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to **billanalysis@dfa.nm.gov**
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: *2/10/2025*
Bill Number: *SB39*

Check all that apply:
Original *X* Correction __
Amendment __ Substitute __

Sponsor: Elizabeth Stefanic, Reena Szczepanski, Mimi Stewart and Carrie Hamblen
Short Title: Prior Authorizations for Rare Diseases

Agency Name and Code Number: Office of Superintendent of Insurance - 440
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY
Senate Bill 39 (SB39) amends the Prior Authorization Act, NMSA 1978, Section 59A-22B-8 to prohibit prior authorization &/or step therapy for medications that are prescribed, for on-label or off-label use, for the treatment of a rare disease. Rare disease is defined in SB39 as a disease or medical condition that affects fewer than two hundred thousand people in the United States. Off-label use is defined as a medication or medication dosage not approved by the FDA for treatment of a specific condition or disease but has sufficient evidence to consider the medication/dosage medically necessary for treatment. Medical necessity determination requirements have been updated such that they must be completed by a health care professional from the same or similar practice specialty that typically manages the disease or condition in question. Lastly, medical necessity determinations are required to be completed within 7 days, or 24 hours in cases where the condition or disease may seriously jeopardize a person's life/health, affect a person's ability to regain maximum function, or subject a person to severe and intolerable pain. Medical necessity determinations not completed within the specified time limits will be deemed automatically approved.

FISCAL IMPLICATIONS
None

SIGNIFICANT ISSUES
None.

PERFORMANCE IMPLICATIONS
OSI may receive an increased number of grievances related to medically necessary treatment of rare diseases, if carriers fail to comply.

ADMINISTRATIVE IMPLICATIONS
If the bill is enacted, OSI will be required to update its existing Prior Authorization Rule, 13.10.31 NMAC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP
Duplication and possible conflict: SB207 Add Classes to Prior Authorization Drugs.

TECHNICAL ISSUES
None.

OTHER SUBSTANTIVE ISSUES
The term “off-label” is unclear as currently defined in SB39. As currently written, it reads: “a medication or a dosage of a medication that is not approved by the federal food and drug administration for a specific condition or disease”. It is important to indicate that the drug must be approved by the FDA, but the indication or dosage to treat a specific condition or disease may not be approved. As currently written, the bill may be construed to require coverage of non-FDA approved medications which may be contrary to federal law.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Residents of New Mexico suffering from rare diseases may not be able to receive timely care covered by their insurance plan since most rare disease treatments are considered off-label use by the FDA.

AMENDMENTS

Page 4, Lines 1-7:

"off-label" means an FDA approved medication ~~or a dosage of a medication~~ that does not have an FDA approved indication ~~is not approved by the federal food and drug administration as a treatment~~ for a specific condition or disease but is prescribed to a covered person because there is sufficient clinical evidence for a prescribing clinician to reasonably consider the medication to be medically necessary to treat the covered person's condition or disease.