

# STATE OF NEW YORK

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3276

2021-2022 Regular Sessions

## IN ASSEMBLY

January 22, 2021

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Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Insurance

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraphs (A), (C) and (E) of paragraph 35 of  
2 subsection (i) of section 3216 of the insurance law, as added by section  
3 8 of subpart A of part BB of chapter 57 of the laws of 2019, are amended  
4 to read as follows:

5 (A) Every policy delivered or issued for delivery in this state that  
6 provides coverage for inpatient hospital care or coverage for physician  
7 services shall provide coverage for the diagnosis and treatment of  
8 mental health conditions as follows:

9 (i) where the policy provides coverage for inpatient hospital care,  
10 benefits for inpatient care in a hospital as defined by subdivision ten  
11 of section 1.03 of the mental hygiene law and benefits for outpatient  
12 care provided in a facility issued an operating certificate by the  
13 commissioner of mental health pursuant to the provisions of article  
14 thirty-one of the mental hygiene law, or in a facility operated by the  
15 office of mental health, or, for care provided in other states, to simi-  
16 larly licensed or certified hospitals or facilities; and

17 (ii) where the policy provides coverage for physician services, bene-  
18 fits for outpatient care provided by a psychiatrist or psychologist  
19 licensed to practice in this state, a licensed clinical social worker  
20 who meets the requirements of subparagraph (D) of paragraph four of  
21 subsection (1) of section three thousand two hundred twenty-one of this  
22 article, a nurse practitioner licensed to practice in this state, or a  
23 professional corporation or university faculty practice corporation  
24 thereof, including outpatient drug coverage.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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(C) Coverage under this paragraph shall not apply financial requirements or treatment limitations to mental health benefits, including drug coverage, that are more restrictive than the predominant financial requirements and treatment limitations applied to substantially all medical and surgical benefits covered by the policy. Coverage under this paragraph, including drug coverage, shall not apply any fail-first or step therapy protocol, as defined by section four thousand nine hundred of this chapter.

(E) For purposes of this paragraph:

(i) "financial requirement" means deductible, copayments, coinsurance and out-of-pocket expenses;

(ii) "predominant" means that a financial requirement or treatment limitation is the most common or frequent of such type of limit or requirement;

(iii) "treatment limitation" means limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment and includes nonquantitative treatment limitations such as: medical management standards limiting or excluding benefits based on medical necessity, or based on whether the treatment is experimental or investigational; formulary design for prescription drugs; network tier design; standards for provider admission to participate in a network, including reimbursement rates; methods for determining usual, customary, and reasonable charges; ~~[fail-first or step therapy protocols,]~~ exclusions based on failure to complete a course of treatment; and restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the policy; and

(iv) "mental health condition" means any mental health disorder as defined in the most recent edition of the diagnostic and statistical manual of mental disorders or the most recent edition of another generally recognized independent standard of current medical practice such as the international classification of diseases.

§ 2. Subparagraphs (A), (C) and (E) of paragraph 5 of subsection (1) of section 3221 of the insurance law, subparagraph (A) as amended by section 13 of subpart A of part BB of chapter 57 of the laws of 2019 and subparagraphs (C) and (E) as added by section 14 of subpart A of part BB of chapter 57 of the laws of 2019, are amended to read as follows:

(A) Every insurer delivering a group or school blanket policy or issuing a group or school blanket policy for delivery, in this state, which provides coverage for inpatient hospital care or coverage for physician services shall provide coverage for the diagnosis and treatment of mental health conditions and:

(i) where the policy provides coverage for inpatient hospital care, benefits for inpatient care in a hospital as defined by subdivision ten of section 1.03 of the mental hygiene law and benefits for outpatient care provided in a facility issued an operating certificate by the commissioner of mental health pursuant to the provisions of article thirty-one of the mental hygiene law, or in a facility operated by the office of mental health or, for care provided in other states, to similarly licensed or certified hospitals or facilities; and

(ii) where the policy provides coverage for physician services, it shall include benefits for outpatient care provided by a psychiatrist or psychologist licensed to practice in this state, a licensed clinical social worker who meets the requirements of subparagraph (D) of paragraph four of this subsection, a nurse practitioner licensed to practice

1 in this state, or a professional corporation or university faculty prac-  
2 tice corporation thereof, including outpatient drug coverage.

3 (C) Coverage under this paragraph shall not apply financial require-  
4 ments or treatment limitations to mental health benefits, including drug  
5 coverage, that are more restrictive than the predominant financial  
6 requirements and treatment limitations applied to substantially all  
7 medical and surgical benefits covered by the policy. Coverage under this  
8 paragraph, including drug coverage, shall not apply any fail-first or  
9 step therapy protocol, as defined by section four thousand nine hundred  
10 of this chapter.

11 (E) For purposes of this paragraph:

12 (i) "financial requirement" means deductible, copayments, coinsurance  
13 and out-of-pocket expenses;

14 (ii) "predominant" means that a financial requirement or treatment  
15 limitation is the most common or frequent of such type of limit or  
16 requirement;

17 (iii) "treatment limitation" means limits on the frequency of treat-  
18 ment, number of visits, days of coverage, or other similar limits on the  
19 scope or duration of treatment and includes nonquantitative treatment  
20 limitations such as: medical management standards limiting or excluding  
21 benefits based on medical necessity, or based on whether the treatment  
22 is experimental or investigational; formulary design for prescription  
23 drugs; network tier design; standards for provider admission to partic-  
24 ipate in a network, including reimbursement rates; methods for determin-  
25 ing usual, customary, and reasonable charges; ~~[fail-first or step thera-~~  
26 ~~py protocols,]~~ exclusions based on failure to complete a course of  
27 treatment; and restrictions based on geographic location, facility type,  
28 provider specialty, and other criteria that limit the scope or duration  
29 of benefits for services provided under the policy; and

30 (iv) "mental health condition" means any mental health disorder as  
31 defined in the most recent edition of the diagnostic and statistical  
32 manual of mental disorders or the most recent edition of another gener-  
33 ally recognized independent standard of current medical practice such as  
34 the international classification of diseases.

35 § 3. Paragraphs 2 and 4, and subparagraph (C) of paragraph 6 of  
36 subsection (g) of section 4303 of the insurance law, paragraph 2 as  
37 added by section 22 of subpart A of part BB of chapter 57 of the laws of  
38 2019, and paragraph 4 and subparagraph (C) of paragraph 6 as added by  
39 section 23 of subpart A of part BB of chapter 57 of the laws of 2019,  
40 are amended the read as follows:

41 (2) where the contract provides coverage for physician services bene-  
42 fits for outpatient care provided by a psychiatrist or psychologist  
43 licensed to practice in this state, a licensed clinical social worker  
44 who meets the requirements of subsection (n) of this section, a nurse  
45 practitioner licensed to practice on this state, or professional corpo-  
46 ration or university faculty practice corporation thereof, including  
47 outpatient drug coverage.

48 (4) Coverage under this subsection shall not apply financial require-  
49 ments or treatment limitations to mental health benefits, including drug  
50 coverage, that are more restrictive than the predominant financial  
51 requirements and treatment limitations applied to substantially all  
52 medical and surgical benefits covered by the contract. Coverage under  
53 this paragraph, including drug coverage, shall not apply any fail-first  
54 or step therapy protocol, as defined by section four thousand nine  
55 hundred of this chapter.

(C) "treatment limitation" means limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment and includes nonquantitative treatment limitations such as: medical management standards limiting or excluding benefits based on medical necessity, or based on whether the treatment is experimental or investigational; formulary design for prescription drugs; network tier design; standards for provider admission to participate in a network, including reimbursement rates; methods for determining usual, customary, and reasonable charges; ~~[fail-first-or-stop-therapy-protocols,]~~ exclusions based on failure to complete a course of treatment; and restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the contract; and

§ 4. This act shall take effect immediately and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date.