STATE OF NEW YORK

7522

2025-2026 Regular Sessions

IN ASSEMBLY

April 1, 2025

Introduced by M. of A. LAVINE, EACHUS, STERN, LUNSFORD, WEPRIN, SANTABARBARA -- 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 serious mental health conditions

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

Section 1. Item (ii) of subparagraph (A) and subparagraphs (C) and (E) of paragraph 35 of subsection (i) of section 3216 of the insurance law, item (ii) of subparagraph (A) as amended by chapter 62 of the laws of 2023 and subparagraphs (C) and (E) as added by section 8 of subpart A of part BB of chapter 57 of the laws of 2019, are amended to read as follows:

(ii) where the policy provides coverage for physician services, such policy shall include benefits for outpatient care provided by a psychiatrist or psychologist licensed to practice in this state, a licensed clinical social worker within the lawful scope of [~~his or her~~] **their** practice, who is licensed pursuant to article one hundred fifty-four of the education law, a mental health counselor, marriage and family therapist, or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law, a nurse practitioner licensed to practice in this state, or a professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**. Nothing herein shall be construed to modify or expand the scope of practice of a mental health counselor, marriage and family therapist, or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Further, nothing herein shall be construed to create a new mandated health benefit.

(C) Coverage under this paragraph shall not apply financial requirements or treatment limitations to mental health benefits**, including outpatient drug coverage,** that are more restrictive than the predominant

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

LBD09475-01-5

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 of the following to a drug or drugs prescribed for a serious mental health condition:**

(i) a fail-first or step therapy protocol, as defined by section four thousand nine hundred of this chapter; or

(ii) a prior authorization requirement, as established pursuant to subsection (h) of section four thousand nine hundred three 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[~~.~~]**; and**

(v) "serious mental health condition" means the following mental health disorders as defined in the most recent edition of the diagnostic and statistical manual of mental disorders:

(I) bipolar disorders (hypomanic, manic, depressive, and mixed);

(II) depression in childhood and adolescence;

(III) major depressive disorders (single episode or recurrent);

(IV) obsessive-compulsive disorders;

(V) paranoid and other psychotic disorders;

(VI) schizoaffective disorders (bipolar or depressive); and

(VII) schizophrenia.

§ 1-a. Items (vi) and (vii) of subparagraph (E) of paragraph 35 of subsection (i) of section 3216 of the insurance law, as added by section 2 of subpart A of part II of chapter 57 of the laws of 2023, are amended and a new item (viii) is added to read as follows:

(vi) "critical time intervention services" means services rendered by a provider licensed under article thirty-one of the mental hygiene law that provides evidence-based, therapeutic interventions that include intensive outreach, engagement, and care coordination services that are provided to an insured before the insured is discharged from inpatient care in a hospital as defined by subdivision ten of section 1.03 of the mental hygiene law or the emergency department of a hospital licensed pursuant to article twenty-eight of the public health law and continue after discharge until the insured is stabilized; [~~and~~]

(vii) "residential facility" means crisis residence facilities and community residences for eating disorder integrated treatment programs licensed pursuant to article thirty-one of the mental hygiene law[~~.~~]**; and**

(viii) "serious mental health condition" means the following mental health disorders as defined in the most recent edition of the diagnostic and statistical manual of mental disorders:

(I) bipolar disorders (hypomanic, manic, depressive, and mixed);

(II) depression in childhood and adolescence;

(III) major depressive disorders (single episode or recurrent);

(IV) obsessive-compulsive disorders;

(V) paranoid and other psychotic disorders;

(VI) schizoaffective disorders (bipolar or depressive); and

(VII) schizophrenia.

§ 2. Item (ii) of subparagraph (A) and subparagraphs (C) and (E) of paragraph 5 of subsection (l) of section 3221 of the insurance law, item (ii) of subparagraph (A) as amended by chapter 62 of the laws of 2023 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:

(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, or a mental health counselor, marriage and family therapist, or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law, or a licensed clinical social worker within the lawful scope of [~~his or her~~] **their** practice, who is licensed pursuant to article one hundred fifty-four of the education law, a nurse practitioner licensed to practice in this state, or a professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**. Nothing herein shall be construed to modify or expand the scope of practice of a mental health counselor, marriage and family therapist, or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Further, nothing herein shall be construed to create a new mandated health benefit.

(C) Coverage under this paragraph shall not apply financial requirements or treatment limitations to mental health benefits**, including outpatient 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 of the following to a drug or drugs prescribed for a serious mental health condition:**

(i) a fail-first or step therapy protocol, as defined by section four thousand nine hundred of this chapter; or

(ii) a prior authorization requirement, as established pursuant to subsection (h) of section four thousand nine hundred three 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[~~.~~]; and

(v) "serious mental health condition" means the following mental health disorders as defined in the most recent edition of the diagnostic and statistical manual of mental disorders:

(I) bipolar disorders (hypomanic, manic, depressive, and mixed);

(II) depression in childhood and adolescence;

(III) major depressive disorders (single episode or recurrent);

(IV) obsessive-compulsive disorders;

(V) paranoid and other psychotic disorders;

(VI) schizoaffective disorders (bipolar or depressive); and

(VII) schizophrenia.

§ 2-a. Items (vi) and (vii) of subparagraph (E) of paragraph 5 of subsection (l) of section 3221 of the insurance law, as added by section 6 of subpart A of part II of chapter 57 of the laws of 2023, are amended and a new item (viii) is added to read as follows:

(vi) "critical time intervention services" means services rendered by a provider licensed under article thirty-one of the mental hygiene law that provides evidence-based, therapeutic interventions that include intensive outreach, engagement, and care coordination services that are provided to an insured before the insured is discharged from inpatient care in a hospital as defined by subdivision ten of section 1.03 of the mental hygiene law or the emergency department of a hospital licensed pursuant to article twenty-eight of the public health law and continue after discharge until the insured is stabilized; [~~and~~]

(vii) "residential facility" means crisis residence facilities and community residences for eating disorder integrated treatment programs licensed pursuant to article thirty-one of the mental hygiene law[~~.~~]; and

(viii) "serious mental health condition" means the following mental health disorders as defined in the most recent edition of the diagnostic and statistical manual of mental disorders:

(I) bipolar disorders (hypomanic, manic, depressive, and mixed);

(II) depression in childhood and adolescence;

(III) major depressive disorders (single episode or recurrent);

(IV) obsessive-compulsive disorders;

(V) paranoid and other psychotic disorders;

(VI) schizoaffective disorders (bipolar or depressive); and

(VII) schizophrenia.

§ 3. Paragraphs 2, 4 and 6 of subsection (g) of section 4303 of the insurance law, paragraph 2 as amended by chapter 62 of the laws of 2023, and paragraphs 4 and 6 as added by section 23 of subpart A of part BB of chapter 57 of the laws of 2019, are amended to read as follows:

(2) where the contract provides coverage for physician services such contract shall provide benefits for outpatient care provided by a psychiatrist or psychologist licensed to practice in this state, or a mental health counselor, marriage and family therapist, or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law, or a licensed clinical social worker within the lawful scope of [~~his or her~~] **their** practice, who is licensed pursuant to article one hundred fifty-four of the education law, a nurse practitioner licensed to practice in this state, or professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**. Nothing herein shall be construed to modify or expand the scope of practice of a mental health counselor, marriage and family therapist, or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Further, nothing herein shall be construed to create a new mandated health benefit.

(4) Coverage under this subsection shall not apply financial requirements or treatment limitations to mental health benefits**, including outpatient 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 contract**. Coverage under this paragraph, including drug coverage, shall not apply any of the following to a drug or drugs prescribed for a serious mental health condition:**

(i) a fail-first or step therapy protocol, as defined by section four thousand nine hundred of this chapter; or

(ii) a prior authorization requirement, as established pursuant to subsection (h) of section four thousand nine hundred three of this chapter.

(6) For purposes of this subsection:

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

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

(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 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 contract; [~~and~~]

(D) "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[~~.~~]**; and**

(E) "serious mental health condition" means the following mental health disorders as defined in the most recent edition of the diagnostic and statistical manual of mental disorders:

(i) bipolar disorders (hypomanic, manic, depressive, and mixed);

(ii) depression in childhood and adolescence;

(iii) major depressive disorders (single episode or recurrent);

(iv) obsessive-compulsive disorders;

(v) paranoid and other psychotic disorders;

(vi) schizoaffective disorders (bipolar or depressive); and

(vii) schizophrenia.

§ 3-a. Subparagraphs (F) and (G) of paragraph 6 of subsection (g) of section 4303 of the insurance law, as added by section 10 of subpart A of part II of chapter 57 of the laws of 2023, are amended and a new subparagraph (H) is added to read as follows:

(F) "critical time intervention services" means services rendered by a provider licensed under article thirty-one of the mental hygiene law that provides evidence-based, therapeutic interventions that include intensive outreach, engagement, and care coordination services that are provided to an insured before the insured is discharged from inpatient care in a hospital as defined by subdivision ten of section 1.03 of the mental hygiene law or the emergency department of a hospital licensed pursuant to article twenty-eight of the public health law and continue after discharge until the insured is stabilized; [~~and~~]

(G) "residential facility" means crisis residence facilities and community residences for eating disorder integrated treatment programs licensed pursuant to article thirty-one of the mental hygiene law[~~.~~]**; and**

(H) "serious mental health condition" means the following mental health disorders as defined in the most recent edition of the diagnostic and statistical manual of mental disorders:

(i) bipolar disorders (hypomanic, manic, depressive, and mixed);

(ii) depression in childhood and adolescence;

(iii) major depressive disorders (single episode or recurrent);

(iv) obsessive-compulsive disorders;

(v) paranoid and other psychotic disorders;

(vi) schizoaffective disorders (bipolar or depressive); and

(vii) schizophrenia.

§ 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date; provided however, that if subpart A of part II of chapter 57 of the laws of 2023 shall not have taken effect on or before such date then sections one-a, two-a and three-a of this act shall take effect on the same date and in the same manner as such subpart of such part of such chapter of the laws of 2023 takes effect.