STATE OF NEW YORK

8604

2025-2026 Regular Sessions

IN ASSEMBLY

May 22, 2025

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to supporting medically fragile children who require community-based and home health services

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

Section 1. Section 4406-i of the public health law, as added by chapter 170 of the laws of 2023, is amended to read as follows:

§ 4406-i. Utilization review determinations for medically fragile children. 1. Notwithstanding any inconsistent provision of the health maintenance organization's clinical standards, the health maintenance organization, and any utilization review agent under contract with such health maintenance organization, shall administer and apply the clinical standards (and make determinations of medical necessity) **for inpatient, outpatient and community-based services** regarding medically fragile children in accordance with the requirements of this section and any regulations with special considerations and processes for utilization review related to medically fragile children.

2. Health maintenance organizations shall undertake the following with respect to medically fragile children, and as applicable, shall ensure that their contracted utilization review agents undertake the following with respect to medically fragile children:

(a) Consider as medically necessary all covered services that assist medically fragile children in reaching their maximum functional capacity, taking into account the appropriate functional capacities of children of the same age. **In the case of community-based long-term services and supports, those shall include but not be limited to skilled nursing, home-based private duty nursing, personal care services, consumer directed personal assistance program services, home health aide, physical therapy, occupational therapy, speech therapy, and feeding therapy.**

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

LBD13172-01-5

In the case of Medicaid managed care, health maintenance organizations shall continue to cover services until that child achieves age-appropriate functional capacity.

(b) Shall not base determinations solely upon review standards applicable to (or designed for) adults to medically fragile children. Determinations shall take into consideration the specific needs of the child and the circumstances pertaining to their growth and development. **The determinations shall consider the level of care required for a medically fragile child, including twenty-four hour, seven-day per week and/or institutional level of care and determinations shall be made on a case-by-case basis taking into account the particular needs of the child and family.**

(c) Accommodate unusual stabilization and prolonged discharge plans for medically fragile children, as appropriate. Health maintenance organizations, and as applicable their contracted utilization review agents, shall consider when developing and approving discharge plans issues including sudden reversals of condition or progress which may make discharge decisions uncertain or more prolonged than for other children or adults.

(c-1) In the case of community-based long term care services for medically fragile children, the health maintenance organization's determination additionally shall specify the level of care and supports that shall be in place in order to safely and adequately provide care for a medically fragile child in the home, and consider the child's long term care needs, not just what is required to address the immediate situation.

(d) It is the health maintenance organization's network management responsibility to identify an available provider of needed covered services, as determined through a person centered care plan, to effect safe discharge from a hospital or other facility. In the case of Medicaid managed care, payments shall not be denied to a discharging hospital or other facility due to lack of an available post-discharge provider as long as they have worked with the utilization review agent to identify an appropriate provider.

(e) This section does not limit any other rights the medically fragile child may have, including the right to appeal the denial of out of network coverage at in-network cost sharing levels where an appropriate in-network provider is not available pursuant to subdivision one-b of section forty-nine hundred four of this chapter.

(f) Health maintenance organizations shall contract with providers with demonstrated expertise in caring for the medically fragile children. Network providers shall refer to appropriate network community and facility providers for covered services to meet the needs of the child or seek authorization from the health maintenance organization for out-of-network providers when participating providers cannot meet the child's needs.

3. In the case of Medicaid managed care, when rendering or arranging for care or payment, both the provider and the health maintenance organization shall inquire of, and shall consider the desires of the family of a medically fragile child including, but not limited to, the availability and capacity of the family, the need for the family to simultaneously care for the family's other children, and the need for parents to continue employment.

4. In the case of Medicaid managed care, the health maintenance organization shall pay for all days of inpatient hospital care at a participating specialty care center for medically fragile children when the

health maintenance organization and the specialty care facility mutually agree the patient is ready for discharge from the specialty care center to the patient's home but requires specialized home services that are not available or in place, or the patient is awaiting discharge to a residential health care facility when no residential health care facility bed is available given the specialized needs of the medically fragile child. In the case of Medicaid managed care, the health maintenance organization shall pay, for all days of residential health care facility care at a participating specialty care center for medically fragile children when the health maintenance organization and the specialty care facility mutually agree the patient is ready for discharge from the specialty care center to the patient's home but requires specialized home services that are not available or in place. In the case of Medicaid managed care, such requirements shall apply until the health plan can identify and secure admission to an alternate provider rendering the necessary level of services. The specialty care center shall facilitate placement efforts to effectuate the discharge.

5. In the event a health maintenance organization enters into a participation agreement with a specialty care center for medically fragile children in this state, the requirements of this section shall apply to such participation agreement and to all claims submitted to, or payments made by, any other health maintenance organizations, insurers or payors making payment to the specialty care center pursuant to the provisions of that participation agreement.

§ 2. The public health law is amended by adding a new section 4406-j to read as follows:

§ 4406-j. Home and community-based services for medically fragile children. 1. Private duty nursing. (a) Notwithstanding any other provision in this article, medical necessity reviews shall be prohibited for private duty nursing hours prescribed for private duty nursing services that includes: tracheostomy, respiratory support, suctioning, a nasogastric feeding tube, gastrostomy feeding tube, central lines, or total parenteral nutrition.

(b) Private duty nursing authorization shall be determined by considering an institutional level of care that would otherwise be needed and shall be individualized based on the assessment of the particular child, consistent with section forty-four hundred six-i of this article, reviewed on a case by case basis with consideration to skilled care needs, inclusive of tracheostomy, respiratory support, nasogastric feeding tube, gastrostomy feeding tube, central lines, or total parenteral nutrition.

(c) Informal care by family members shall be voluntary and cannot be assumed or required when determining authorization of private duty nursing services.

2. Home health services. (a) Medicaid managed care organizations shall reimburse registered nurses for completing processes to recertify services.

(b) If a child meets the level of care criteria based upon the medically fragile child subgroup of the children's home and community based services waiver and is approved under such subgroup for such waiver, provided the Medicaid managed care plans and fee for services, Medicaid shall not deny, reduce, suspend or discontinue home and community based waiver services, unless such services are subsequently deemed medically unnecessary by the prescribing physician, and dependent on continuing federal financial participation.

(c) Where a provider can demonstrate that appeals of denials for home health care services have been upheld by seventy percent or more over the past twelve months, the Medicaid managed care plan shall continue covering the services pending completion of the appeals process.

(d) In order to ensure appropriate transitions of care, home health services shall be continued for no less than ninety days where home health services are deemed to no longer be medically necessary or appropriate.

(e) Telehealth and remote patient monitoring for children who meet medically fragile criteria when prescribed by a physician shall be reimbursable services.

§ 3. The public health law is amended by adding a new section 4406-k to read as follows:

§ 4406-k. Fair hearings involving services for medically fragile children. Parents and caregivers of medically fragile children shall be given an option to appear virtually or telephonically for any fair hearing involving a medically fragile child.

§ 4. Section 3217-j of the insurance law, as added by chapter 170 of the laws of 2023, is amended to read as follows:

§ 3217-j. Utilization review determinations for medically fragile children. (a) Notwithstanding any inconsistent provision of the insurer's clinical standards, the insurer, and any utilization review agent under contract with such insurer, shall administer and apply the clinical standards (and make determinations of medical necessity) for inpatient, outpatient and community-based services regarding medically fragile children in accordance with the requirements of this section and any regulations with special considerations and processes for utilization review related to medically fragile children.

(b) Insurers shall undertake the following with respect to medically fragile children, and as applicable, shall ensure that their contracted utilization review agents undertake the following with respect to medically fragile children:

(1) Consider as medically necessary all covered services that assist medically fragile children in reaching their maximum functional capacity, taking into account the appropriate functional capacities of children of the same age. In the case of community-based long-term services and supports, those shall include but not be limited to home-based private duty nursing, personal care services, consumer directed personal assistance program services, home health aide, physical therapy, occupational therapy, speech therapy, and feeding therapy.

(2) Shall not base determinations solely upon review standards applicable to (or designed for) adults to medically fragile children. Determinations shall take into consideration the specific needs of the child and the circumstances pertaining to their growth and development. The determinations also shall consider the level of care required for a medically fragile child, including twenty-four hour, seven-day per week and/or institutional level of care and determinations shall be made on a case-by-case basis taking into account the particular needs of the child and family.

(3) Accommodate unusual stabilization and prolonged discharge plans for medically fragile children, as appropriate. Insurers, and as applicable their contracted utilization review agents, shall consider when developing and approving discharge plans issues including sudden reversals of condition or progress, which may make discharge decisions uncertain or more prolonged than for other children or adults.

(4) **In the case of community-based long-term care services for medically fragile children, the health maintenance organization's determination additionally shall specify the level of care and supports that shall be in place in order to safely and adequately provide care for a medically fragile child in the home, and consider the child's long term care needs, not just what is required to address the immediate situation.**

(5) It is the insurer's network management responsibility under a managed care health insurance contract as defined in subsection (c) of section four thousand eight hundred one of this chapter to identify an available provider of needed covered services, as determined through a person centered care plan, to effect safe discharge from a hospital or other facility.

[~~(5)~~] **(6)** This section does not limit any other rights a medically fragile child may have, including the right to appeal the denial of out of network coverage at in-network cost sharing levels where an appropriate in-network provider is not available pursuant to subsection [~~a-two~~] **(a-two)** of section four thousand nine hundred four of this chapter.

[~~(6)~~] **(7)** Insurers shall contract with providers with demonstrated expertise in caring for the medically fragile children. Network providers shall refer to appropriate network community and facility providers for covered services to meet the needs of the child or seek authorization from the insurer for out-of-network providers when participating providers cannot meet the child's needs.

(c) In the event an insurer enters into a participation agreement with a specialty care center for medically fragile children in this state, the requirements of this section shall apply to that participation agreement and to all claims submitted to, or payments made by, any other insurers, health maintenance organizations or payors making payment to the specialty care center **or provider of community-based long-term care for medically fragile children** pursuant to the provisions of that participation agreement.

§ 5. Sections one and four of this act shall not apply to any qualified health plans in the individual and small group market on and after the date, if any, when the federal department of health and human services determines in writing that such provisions constitute state-required benefits in addition to essential health benefits, pursuant to the federal Affordable Care Act and regulations promulgated thereunder.

§ 6. This act shall take effect on the first day of January after it shall have become a law.