STATE OF NEW YORK

11145

IN ASSEMBLY

November 6, 2020

Introduced by COMMITTEE ON RULES -- (at request of 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:

Section 1. Subparagraphs (A), (C) and (E) of paragraph 35 of subsection (i) of section 3216 of the insurance law, 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:

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

(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, 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 subsection (1) of section three thousand two hundred twenty-one of this article, a nurse practitioner licensed to practice in this state, or a professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**.

(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

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

LBD17540-01-0

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 (l) 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 in this state, or a professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**.

(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.

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

(2) where the contract provides coverage for physician services 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 subsection (n) of this section, a nurse practitioner licensed to practice on this state, or professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**.

(4) Coverage under this subsection 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 contract**. 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**.

(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

§ 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.