STATE OF NEW YORK

9098

IN ASSEMBLY

January 17, 2020

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

AN ACT to amend the public health law and the insurance law, in relation to enhancing coverage and care for medically fragile children

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

1 Section 1. Subparagraph (iv) of paragraph (a) of subdivision 2 of
2 section 4900 of the public health law, as added by section 42 of subpart
3 A of part BB of chapter 57 of the laws of 2019, is amended and a new
4 subparagraph (v) is added to read as follows:
5 (iv) for purposes of a determination involving treatment for a mental
6 health condition:
7 (A) a physician who possesses a current and valid non-restricted
8 license to practice medicine and who specializes in behavioral health
9 and has experience in the delivery of mental health courses of treat-
10 ment; or
11 (B) a health care professional other than a licensed physician who
12 specializes in behavioral health and has experience in the delivery of a
13 mental health courses of treatment and, where applicable, possesses a
14 current and valid non-restricted license, certificate, or registration
15 or, where no provision for a license, certificate or registration
16 exists, is credentialed by the national accrediting body appropriate to
17 the profession; [~~and~~] <u>or</u>
18 <u>(v) for purposes of a determination involving treatment of a medically</u>
19 <u>fragile child:</u>
20 <u>(A) a physician who possesses a current and valid non-restricted</u>
21 <u>license to practice medicine and who is board certified or board eligi-</u>
22 <u>ble in pediatric rehabilitation, pediatric critical care, or neonatolo-</u>
23 <u>gy; or</u>
24 <u>(B) a physician who possesses a current and valid non-restricted</u>
25 <u>license to practice medicine and is board certified in a pediatric</u>
26 <u>subspecialty directly relevant to the patient's medical condition; and</u>

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

LBD14313-03-0

1 § 2. Paragraph (b) of subdivision 2 of section 4900 of the public
2 health law, as amended by chapter 586 of the laws of 1998, is amended to
3 read as follows:
4 (b) for purposes of title two of this article:
5 (i) a physician who:
6 (A) possesses a current and valid non-restricted license to practice
7 medicine;
8 (B) where applicable, is board certified or board eligible in the same
9 or similar specialty as the health care provider who typically manages
10 the medical condition or disease or provides the health care service or
11 treatment under appeal;
12 (C) has been practicing in such area of specialty for a period of at
13 least five years; and
14 (D) is knowledgeable about the health care service or treatment under
15 appeal; or
16 (ii) a health care professional other than a licensed physician who:
17 (A) where applicable, possesses a current and valid non-restricted
18 license, certificate or registration;
19 (B) where applicable, is credentialed by the national accrediting body
20 appropriate to the profession in the same profession and same or similar
21 specialty as the health care provider who typically manages the medical
22 condition or disease or provides the health care service or treatment
23 under appeal;
24 (C) has been practicing in such area of specialty for a period of at
25 least five years;
26 (D) is knowledgeable about the health care service or treatment under
27 appeal; and
28 (E) where applicable to such health care professional's scope of prac-
29 tice, is clinically supported by a physician who possesses a current and
30 valid non-restricted license to practice medicine**; or**
31 **(iii) for purposes of a determination involving treatment of a**
32 **medically fragile child:**
33 **(A) a physician who possesses a current and valid non-restricted**
34 **license to practice medicine and who is board certified or board eligi-**
35 **ble in pediatric rehabilitation, pediatric critical care, or neonatolo-**
36 **gy, or**
37 **(B) a physician who possesses a current and valid non-restricted**
38 **license to practice medicine and is board certified in a pediatric**
39 **subspecialty directly relevant to the patient's medical condition**.
40 § 3. Subdivision 2-a of section 4900 of the public health law, as
41 added by chapter 586 of the laws of 1998, is amended to read as follows:
42 2-a. "Clinical standards" means those guidelines and standards set
43 forth in the utilization review plan by the utilization review agent
44 whose adverse determination is under appeal **or, in the case of medically**
45 **fragile children, those guidelines and standards as required by section**
46 **forty-nine hundred three-a of this article**.
47 § 4. Paragraph (c) of subdivision 10 of section 4900 of the public
48 health law, as added by chapter 705 of the laws of 1996, is amended to
49 read as follows:
50 (c) a description of practice guidelines and standards used by a
51 utilization review agent in carrying out a determination of medical
52 necessity**, which in the case of medically fragile children shall incor-**
53 **porate the standards required by section forty-nine hundred three-a of**
54 **this article**;
55 § 5. Section 4900 of the public health law is amended by adding a new
56 subdivision 11 to read as follows:

1 11. "Medically fragile child" means an individual who is under twen-
2 ty-one years of age and has a chronic debilitating condition or condi-
3 tions, who may or may not be hospitalized or institutionalized, and
4 meets one or more of the following criteria (a) is technologically
5 dependent for life or health sustaining functions, (b) requires a
6 complex medication regimen or medical interventions to maintain or to
7 improve their health status, or (c) is in need of ongoing assessment or
8 intervention to prevent serious deterioration of their health status or
9 medical complications that place their life, health or development at
10 risk. Chronic debilitating conditions include, but are not limited to,
11 bronchopulmonary dysplasia, cerebral palsy, congenital heart disease,
12 microcephaly, pulmonary hypertension, and muscular dystrophy. The term
13 "medically fragile child" shall also include severe conditions, includ-
14 ing but not limited to traumatic brain injury, which typically require
15 care in a specialty care center for medically fragile children, even
16 though the child does not have a chronic debilitating condition or also
17 meet one of the three conditions of this subdivision. In order to facil-
18 itate the prompt and convenient identification of particular patient
19 care situations meeting the definitions of this subdivision, the commis-
20 sioner may issue written guidance listing (by diagnosis codes, utiliza-
21 tion thresholds, or other available coding or commonly used medical
22 classifications) the types of patient care needs which are deemed to
23 meet this definition. Notwithstanding the definitions set forth in this
24 subdivision, any patient which has received prior approval from a utili-
25 zation review agent for admission to a specialty care facility for
26 medically fragile children shall be considered a medically fragile child
27 at least until discharge from that facility occurs.
28 § 6. The public health law is amended by adding a new section 4903-a
29 to read as follows:
30 § 4903-a. Utilization review determinations for medically fragile
31 children. 1. Notwithstanding any inconsistent provision of the utiliza-
32 tion review agent's clinical standards, the utilization review agent
33 shall administer and apply the clinical standards (and make determi-
34 nations of medical necessity) regarding medically fragile children in
35 accordance with the requirements of this section. If the utilization
36 review agent is a separate entity from the health maintenance organiza-
37 tion certified under article forty-four of this chapter, the health
38 maintenance organization shall make contractual or other arrangements in
39 order to facilitate the utilization review agent's compliance with this
40 section.
41 2. In the case of a medically fragile child, the term "medically
42 necessary" shall mean health care and services that are necessary to
43 promote normal growth and development and prevent, diagnose, treat,
44 ameliorate or palliate the effects of a physical, mental, behavioral,
45 genetic, or congenital condition, injury or disability. When applied to
46 the circumstances of any particular medically fragile child, the term
47 "medically necessary" shall include (a) the care or services that are
48 essential to prevent, diagnose, prevent the worsening of, alleviate or
49 ameliorate the effects of an illness, injury, disability, disorder or
50 condition, (b) the care or services that are essential to the overall
51 physical, cognitive and mental growth and developmental needs of the
52 child, and (c) the care or services that will assist the child to
53 achieve or maintain maximum functional capacity in performing daily
54 activities, taking into account both the functional capacity of the
55 child and those functional capacities that are appropriate for individ-
56 uals of the same age as the child. The utilization review agent shall

1 base its determination on medical and other relevant information
2 provided by the child's primary care provider, other health care provid-
3 ers, school, local social services, and/or local public health officials
4 that have evaluated the child, and the utilization review agent will
5 ensure the care and services are provided in sufficient amount, duration
6 and scope to reasonably be expected to produce the intended results and
7 to have the expected benefits that outweigh the potential harmful
8 effects.
9 3. Utilization review agents shall undertake the following with
10 respect to medically fragile children:
11 (a) Consider as medically necessary all covered services that assist
12 medically fragile children in reaching their maximum functional capaci-
13 ty, taking into account the appropriate functional capacities of chil-
14 dren of the same age. Health maintenance organizations must continue to
15 cover services until that child achieves age-appropriate functional
16 capacity. A managed care provider, authorized by section three hundred
17 sixty-four-j of the social services law, shall also be required to make
18 payment for covered services required to comply with federal Early Peri-
19 odic Screening, Diagnosis, and Treatment ("EPSDT") standards, as speci-
20 fied by the commissioner of health.
21 (b) Shall not base determinations solely upon review standards appli-
22 cable to (or designed for) adults to medically fragile children. Adult
23 standards include, but are not limited to, Medicare rehabilitation stan-
24 dards and the "Medicare 3 hour rule." Determinations have to take into
25 consideration the specific needs of the child and the circumstances
26 pertaining to their growth and development.
27 (c) Accommodate unusual stabilization and prolonged discharge plans
28 for medically fragile children, as appropriate. Issues utilization
29 review agents must consider when developing and approving discharge
30 plans include, but are not limited to: sudden reversals of condition or
31 progress, which may make discharge decisions uncertain or more prolonged
32 than for other children or adults; necessary training of parents or
33 other adults to care for medically fragile children at home; unusual
34 discharge delays encountered if parents or other responsible adults
35 decline or are slow to assume full responsibility for caring for
36 medically fragile children; the need to await an appropriate home or
37 home-like environment rather than discharge to a housing shelter or
38 other inappropriate setting for medically fragile children, the need to
39 await construction adaptations to the home (such as the installation of
40 generators or other equipment); and lack of available suitable special-
41 ized care (such as unavailability of pediatric nursing home beds, pedia-
42 tric ventilator units, pediatric private duty nursing in the home, or
43 specialized pediatric home care services). Utilization review agents
44 must develop a person centered discharge plan for the child taking the
45 above situations into consideration.
46 (d) It is the utilization review agent's network management responsi-
47 bility to identify an available provider of needed covered services, as
48 determined through a person centered care plan, to effect safe discharge
49 from a hospital or other facility; payments shall not be denied to a
50 discharging hospital or other facility due to lack of an available post-
51 discharge provider as long as they have worked with the utilization
52 review agent to identify an appropriate provider. Utilization review
53 agents are required to approve the use of out-of-network providers if
54 the health maintenance organization does not have a participating
55 provider to address the needs of the child.

(e) Utilization review agents must ensure that medically fragile children receive services from appropriate providers that have the expertise to effectively treat the child and must contract with providers with demonstrated expertise in caring for the medically fragile children. Network providers shall refer to appropriate network community and facility providers to meet the needs of the child or seek authorization from the utilization review agent for out-of-network providers when participating providers cannot meet the child's needs. The utilization review agent must authorize services as fast as the enrollee's condition requires and in accordance with established timeframes in the contracts or policy forms.

4. A health maintenance organization shall have a procedure by which an enrollee who is a medically fragile child who requires specialized medical care over a prolonged period of time, may receive a referral to a specialty care center for medically fragile children. If the health maintenance organization, or the primary care provider or the specialist treating the patient, in consultation with a medical director of the utilization review agent, determines that the enrollee's care would most appropriately be provided by such a specialty care center, the organization shall refer the enrollee to such center. In no event shall a health maintenance organization be required to permit an enrollee to elect to have a non-participating specialty care center, unless the organization does not have an appropriate specialty care center to treat the enrollee's disease or condition within its network. Such referral shall be pursuant to a treatment plan developed by the specialty care center and approved by the health maintenance organization, in consultation with the primary care provider, if any, or a specialist treating the patient, and the enrollee or the enrollee's designee. If an organization refers an enrollee to a specialty care center that does not participate in the organization's network, services provided pursuant to the approved treatment plan shall be provided at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received within the network. For purposes of this section, a specialty care center for medically fragile children shall mean a children's hospital as defined pursuant to subparagraph (iv) of paragraph (e-2) of subdivision four of section twenty-eight hundred seven-c of this chapter, a residential health care facility affiliated with such a children's hospital, any residential health care facility with a specialty pediatric bed average daily census during two thousand seventeen of fifty or more patients, or a facility which satisfies such other criteria as the commissioner may designate.

5. 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.

6. The health maintenance organization must pay at least eighty-five percent of the facility's acute care rate, unless a different rate has been mutually negotiated, for all days of inpatient hospital care at a 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. The health maintenance organization must pay at least the facility's Medicaid skilled nursing facility rate, unless a different rate has been mutually negotiated, for all days of residential health care facility care at a 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. 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 must cooperate with the health maintenance organization's placement efforts.

7. In the event a health maintenance organization enters into a participation agreement with a specialty care center for medically fragile children in this state, and the terms of that participation agreement extend to one or more other health maintenance organizations or insurers (including health maintenance organizations and insurers operating in other states) by virtue of affiliation with (or contracts with) the health maintenance organization, the requirements of this article regarding procedures for utilization review of medically fragile children shall apply to those other health maintenance organizations or insurers.

8. (a) The commissioner shall designate a single set of clinical standards applicable to all utilization review agents regarding pediatric extended acute care stays (defined for the purposes of this section as discharge from one acute care hospital followed by immediate admission to a second acute care hospital; not including transfers of case payment cases as defined in section twenty-eight hundred seven-c of this chapter). The standards shall be adapted from national long term acute care hospital standards for adults and shall be approved by the commissioner, after consultation with one or more specialty care centers for medically fragile children. The standards shall include, but not be limited to, specifications of the level of care supports in the patient's home, at a skilled nursing facility or other setting, that must be in place in order to safely and adequately care for a medically fragile child before medically complex acute care can be deemed no longer medically necessary. The standards designated by the commissioner shall pre-empt the clinical standards, if any, for pediatric extended acute care set forth in the utilization review plan by the utilization review agent.

(b) The commissioner shall designate a single set of supplemental clinical standards (in addition to the clinical standards selected by the utilization review agent) applicable to all utilization review agents regarding acute and sub-acute inpatient rehabilitation for medically fragile children. The supplemental standards shall specify the level of care supports in the patient's home, at a skilled nursing facility or other setting, that must be in place in order to safely and adequately care for a medically fragile child before acute or sub-acute inpatient rehabilitation can be deemed no longer medically necessary. The supplemental standards designated by the commissioner shall pre-empt the clinical standards, if any, regarding readiness for discharge of medically fragile children from acute or sub-acute inpatient rehabilitation, as set forth in the utilization review plan by the utilization review agent.

9. In all instances the utilization review agent shall defer to the recommendations of the referring physician to refer a medically fragile

1 child for care at a particular specialty provider of care to medically
2 fragile children, or the recommended treatment plan by the treating
3 physician at a specialty care center for medically fragile children,
4 except where the utilization review agent has determined, by clear and
5 convincing evidence, that: (a) the recommended provider or proposed
6 treatment plan is not in the best interest of the medically fragile
7 child, or (b) an alternative provider offering substantially the same
8 level of care in accordance with substantially the same treatment plan
9 is available from a lower cost provider.
10 § 7. Subparagraph (D) of paragraph 1 of subsection (b) of section 4900
11 of the insurance law, as added by section 36 of subpart A of part BB of
12 chapter 57 of the laws of 2019, is amended and a new subparagraph (E) is
13 added to read as follows:
14 (D) for purposes of a determination involving treatment for a mental
15 health condition:
16 (i) a physician who possesses a current and valid non-restricted
17 license to practice medicine and who specializes in behavioral health
18 and has experience in the delivery of mental health courses of treat-
19 ment; or
20 (ii) a health care professional other than a licensed physician who
21 specializes in behavioral health and has experience in the delivery of
22 mental health courses of treatment and, where applicable, possesses a
23 current and valid non-restricted license, certificate, or registration
24 or, where no provision for a license, certificate or registration
25 exists, is credentialed by the national accrediting body appropriate to
26 the profession; [and] or
27 (E) for purposes of a determination involving treatment of a medically
28 fragile child:
29 (i) a physician who possesses a current and valid non-restricted
30 license to practice medicine and who is board certified or board eligi-
31 ble in pediatric rehabilitation, pediatric critical care, or neonatolo-
32 gy; or
33 (ii) a physician who possesses a current and valid non-restricted
34 license to practice medicine and is board certified in a pediatric
35 subspecialty directly relevant to the patient's medical condition; and
36 § 8. Paragraph 2 of subsection (b) of section 4900 of the insurance
37 law, as amended by chapter 586 of the laws of 1998, is amended to read
38 as follows:
39 (2) for purposes of title two of this article:
40 (A) a physician who:
41 (i) possesses a current and valid non-restricted license to practice
42 medicine;
43 (ii) where applicable, is board certified or board eligible in the
44 same or similar specialty as the health care provider who typically
45 manages the medical condition or disease or provides the health care
46 service or treatment under appeal;
47 (iii) has been practicing in such area of specialty for a period of at
48 least five years; and
49 (iv) is knowledgeable about the health care service or treatment under
50 appeal; or
51 (B) a health care professional other than a licensed physician who:
52 (i) where applicable, possesses a current and valid non-restricted
53 license, certificate or registration;
54 (ii) where applicable, is credentialed by the national accrediting
55 body appropriate to the profession in the same profession and same or
56 similar specialty as the health care provider who typically manages the

1 medical condition or disease or provides the health care service or
2 treatment under appeal;
3 (iii) has been practicing in such area of specialty for a period of at
4 least five years;
5 (iv) is knowledgeable about the health care service or treatment under
6 appeal; and
7 (v) where applicable to such health care professional's scope of prac-
8 tice, is clinically supported by a physician who possesses a current and
9 valid non-restricted license to practice medicine**; or**
10 **(C) for purposes of a determination involving treatment of a medically**
11 **fragile child:**
12 **(i) a physician who possesses a current and valid non-restricted**
13 **license to practice medicine and who is board certified or board eligi-**
14 **ble in pediatric rehabilitation, pediatric critical care, or neonatolo-**
15 **gy; or**
16 **(ii) a physician who possesses a current and valid non-restricted**
17 **license to practice medicine and is board certified in a pediatric**
18 **subspecialty directly relevant to the patient's medical condition**.
19 § 9. Subsection (b-1) of section 4900 of the insurance law, as added
20 by chapter 586 of the laws of 1998, is amended to read as follows:
21 (b-1) "Clinical standards" means those guidelines and standards set
22 forth in the utilization review plan by the utilization review agent
23 whose adverse determination is under appeal **or, in the case of medically**
24 **fragile children those guidelines and standards as required by section**
25 **forty-nine hundred three-a of this article**.
26 § 10. Subsection (j) of section 4900 of the insurance law, as added by
27 chapter 705 of the laws of 1996, is amended to read as follows:
28 (j) "Utilization review plan" means: (1) a description of the process
29 for developing the written clinical review criteria; (2) a description
30 of the types of written clinical information which the plan might
31 consider in its clinical review, including but not limited to, a set of
32 specific written clinical review criteria; (3) a description of practice
33 guidelines and standards used by a utilization review agent in carrying
34 out a determination of medical necessity**, which, in the case of**
35 **medically fragile children, shall incorporate the standards required by**
36 **section forty-nine hundred three-a of this article**; (4) the procedures
37 for scheduled review and evaluation of the written clinical review
38 criteria; and (5) a description of the qualifications and experience of
39 the health care professionals who developed the criteria, who are
40 responsible for periodic evaluation of the criteria and of the health
41 care professionals or others who use the written clinical review crite-
42 ria in the process of utilization review.
43 § 11. Section 4900 of the insurance law is amended by adding a new
44 subsection (k) to read as follows:
45 **(k) "Medically fragile child" means an individual who is under twen-**
46 **ty-one years of age and has a chronic debilitating condition or condi-**
47 **tions, who may or may not be hospitalized or institutionalized, and**
48 **meets one or more of the following criteria: (1) is technologically**
49 **dependent for life or health sustaining functions; (2) requires a**
50 **complex medication regimen or medical interventions to maintain or to**
51 **improve their health status; or (3) is in need of ongoing assessment or**
52 **intervention to prevent serious deterioration of their health status or**
53 **medical complications that place their life, health or development at**
54 **risk. Chronic debilitating conditions include, but are not limited to,**
55 **bronchopulmonary dysplasia, cerebral palsy, congenital heart disease,**
56 **microcephaly, pulmonary hypertension, and muscular dystrophy. The term**

1 "medically fragile child" shall also include severe conditions, includ-
2 ing but not limited to traumatic brain injury, which typically require
3 care in a specialty care center for medically fragile children, even
4 though the child does not have a chronic debilitating condition or also
5 meet one of the three conditions of this subsection. In order to facili-
6 tate the prompt and convenient identification of particular patient care
7 situations meeting the definitions of this subsection, the superinten-
8 dent, after consulting with the commissioner of health, may issue writ-
9 ten guidance listing (by diagnosis codes, utilization thresholds, or
10 other available coding or commonly used medical classifications) the
11 types of patient care needs which are deemed to meet this definition.
12 Notwithstanding the definitions set forth in this subsection, any
13 patient which has received prior approval from a utilization review
14 agent for admission to a specialty care facility for medically fragile
15 children shall be considered a medically fragile child at least until
16 discharge from that facility occurs.
17 § 12. The insurance law is amended by adding a new section 4903-a to
18 read as follows:
19 § 4903-a. Utilization review determinations for medically fragile
20 children. (a) Notwithstanding any inconsistent provision of the utiliza-
21 tion review agent's clinical standards, the utilization review agent
22 shall administer and apply the clinical standards (and make determi-
23 nations of medical necessity) regarding medically fragile children in
24 accordance with the requirements of this section. If the utilization
25 review agent is a separate entity from the health care plan, the health
26 care plan shall make contractual or other arrangements in order to
27 facilitate the utilization review agent's compliance with this section.
28 (b) In the case of a medically fragile child, the term "medically
29 necessary" shall mean health care and services that are necessary to
30 promote normal growth and development and prevent, diagnose, treat,
31 ameliorate or palliate the effects of a physical, mental, behavioral,
32 genetic, or congenital condition, injury or disability. When applied to
33 the circumstances of any particular medically fragile child, the term
34 "medically necessary" shall include: (1) the care or services that are
35 essential to prevent, diagnose, prevent the worsening of, alleviate or
36 ameliorate the effects of an illness, injury, disability, disorder or
37 condition; (2) the care or services that are essential to the overall
38 physical, cognitive and mental growth and developmental needs of the
39 child; and (3) the care or services that will assist the child to
40 achieve or maintain maximum functional capacity in performing daily
41 activities, taking into account both the functional capacity of the
42 child and those functional capacities that are appropriate for individ-
43 uals of the same age as the child. The utilization review agent shall
44 base its determination on medical and other relevant information
45 provided by the child's primary care provider, other health care provid-
46 ers, school, local social services, and/or local public health officials
47 that have evaluated the child, and the utilization review agent will
48 ensure the care and services are provided in sufficient amount, duration
49 and scope to reasonably be expected to produce the intended results and
50 to have the expected benefits that outweigh the potential harmful
51 effects.
52 (c) Utilization review agents shall undertake the following with
53 respect to medically fragile children:
54 (1) Consider as medically necessary all covered services that assist
55 medically fragile children in reaching their maximum functional capaci-
56 ty, taking into account the appropriate functional capacities of chil-

1 dren of the same age. Utilization review agents must continue to cover
2 services until that child achieves age-appropriate functional capacity.
3 (2) Shall not base determinations solely upon review standards appli-
4 cable to (or designed for) adults to medically fragile children. Adult
5 standards include, but are not limited to, Medicare rehabilitation stan-
6 dards and the "Medicare 3 hour rule." Determinations have to take into
7 consideration the specific needs of the child and the circumstances
8 pertaining to their growth and development.
9 (3) Accommodate unusual stabilization and prolonged discharge plans
10 for medically fragile children, as appropriate. Area utilization review
11 agents must consider when developing and approving discharge plans
12 include, but are not limited to: sudden reversals of condition or
13 progress, which may make discharge decisions uncertain or more prolonged
14 than for other children or adults; necessary training of parents or
15 other adults to care for medically fragile children at home; unusual
16 discharge delays encountered if parents or other responsible adults
17 decline or are slow to assume full responsibility for caring for
18 medically fragile children; the need to await an appropriate home or
19 home-like environment rather than discharge to a housing shelter or
20 other inappropriate setting for medically fragile children, the need to
21 await construction adaptations to the home (such as the installation of
22 generators or other equipment); and lack of available suitable special-
23 ized care (such as unavailability of pediatric nursing home beds, pedia-
24 tric ventilator units, pediatric private duty nursing in the home, or
25 specialized pediatric home care services). Utilization review agents
26 must develop a person centered discharge plan for the child taking the
27 above situations into consideration.
28 (4) It is the utilization review agents network management responsi-
29 bility to identify an available provider of needed covered services, as
30 determined through a person centered care plan, to effect safe discharge
31 from a hospital or other facility; payments shall not be denied to a
32 discharging hospital or other facility due to lack of an available post-
33 discharge provider as long as they have worked with the utilization
34 review agent to identify an appropriate provider. Utilization review
35 agents are required to approve the use of out-of-network providers if
36 they do not have a participating provider to address the needs of the
37 child.
38 (5) Utilization review agents must ensure that medically fragile chil-
39 dren receive services from appropriate providers that have the expertise
40 to effectively treat the child and must contract with providers with
41 demonstrated expertise in caring for the medically fragile children.
42 Network providers shall refer to appropriate network community and
43 facility providers to meet the needs of the child or seek authorization
44 from the utilization review agent for out-of-network providers when
45 participating providers cannot meet the child's needs. The utilization
46 review agent must authorize services as fast as the insured's condition
47 requires and in accordance with established timeframes in the contracts
48 or policy forms.
49 (d) A utilization review agent shall have a procedure by which an
50 insured who is a medically fragile child who requires specialized
51 medical care over a prolonged period of time, may receive a referral to
52 a specialty care center for medically fragile children. If the utiliza-
53 tion review agent, or the primary care provider or the specialist treat-
54 ing the patient, in consultation with a medical director of the utiliza-
55 tion review agent, determines that the insured's care would most
56 appropriately be provided by such a specialty care center, the utiliza-

1 tion review agent shall refer the insured to such center. In no event
2 shall a utilization review agent be required to permit an insured to
3 elect to have a non-participating specialty care center, unless the
4 health care plan does not have an appropriate specialty care center to
5 treat the insured's disease or condition within its network. Such refer-
6 ral shall be pursuant to a treatment plan developed by the specialty
7 care center and approved by the utilization review agent, in consulta-
8 tion with the primary care provider, if any, or a specialist treating
9 the patient, and the insured or the insured's designee. If a utilization
10 review agent refers an insured to a specialty care center that does not
11 participate in the health care plan's network, services provided pursu-
12 ant to the approved treatment plan shall be provided at no additional
13 cost to the insured beyond what the insured would otherwise pay for
14 services received within the network. For purposes of this section, a
15 specialty care center for medically fragile children shall mean a chil-
16 dren's hospital as defined pursuant to subparagraph (iv) of paragraph
17 (e-2) of subdivision four of section two thousand eight hundred seven-c
18 of the public health law, a residential health care facility affiliated
19 with such a children's hospital, any residential health care facility
20 with a specialty pediatric bed average daily census during two thousand
21 seventeen of fifty or more patients, or a facility which satisfies such
22 other criteria as the commissioner of health may designate.
23 (e) When rendering or arranging for care or payment, both the provider
24 and the health care plan shall inquire of, and shall consider the
25 desires of, the family of a medically fragile child including, but not
26 limited to, the availability and capacity of the family, the need for
27 the family to simultaneously care for the family's other children, and
28 the need for parents to continue employment.
29 (f) The health care plan must pay at least eighty-five percent of the
30 facility's acute care rate, unless a different rate has been mutually
31 negotiated, for all days of inpatient hospital care at a specialty care
32 center for medically fragile children when the insurer and the specialty
33 care facility mutually agree the patient is ready for discharge from the
34 specialty care center to the patient's home but requires specialized
35 home services that are not available or in place, or the patient is
36 awaiting discharge to a residential health care facility when no resi-
37 dential health care facility bed is available given the specialized
38 needs of the medically fragile child. The health care plan must pay at
39 least the facility's skilled nursing Medicaid facility rate, unless a
40 different rate has been mutually negotiated, for all days of residential
41 health care facility care at a specialty care center for medically frag-
42 ile children when the insurer and the specialty care facility mutually
43 agree the patient is ready for discharge from the specialty care center
44 to the patient's home but requires specialized home services that are
45 not available or in place. Such requirements shall apply until the
46 health care plan can identify and secure admission to an alternate
47 provider rendering the necessary level of services. The specialty care
48 center must cooperate with the health care plan's placement efforts.
49 (g) In the event a health care plan enters into a participation agree-
50 ment with a specialty care center for medically fragile children in this
51 state, and the terms of that participation agreement extend to one or
52 more other health care plans or insurers (including health care plans
53 and insurers operating in other states) by virtue of affiliation with
54 (or contracts with) the health care plan, the requirements of this
55 section regarding procedures for utilization review of medically fragile
56 children shall apply to those other health care plans or insurers.

1 (h) (1) The superintendent, after consulting with the commissioner of
2 health, shall designate a single set of clinical standards applicable to
3 all utilization review agents regarding pediatric extended acute care
4 stays (defined for the purposes of this section as discharge from one
5 acute care hospital followed by immediate admission to a second acute
6 care hospital; not including transfers of case payment cases as defined
7 in section two thousand eight hundred seven-c of the public health law).
8 The standards shall be adapted from national long term acute care hospi-
9 tal standards for adults and shall be approved by the superintendent,
10 after consultation with one or more specialty care centers for medically
11 fragile children. The standards shall include, but not be limited to,
12 specifications of the level of care supports in the patient's home, at a
13 skilled nursing facility or other setting, that must be in place in
14 order to safely and adequately care for a medically fragile child before
15 medically complex acute care can be deemed no longer medically neces-
16 sary. The standards designated by the commissioner shall pre-empt the
17 clinical standards, if any, for pediatric extended acute care set forth
18 in the utilization review plan by the utilization review agent.
19 (2) The superintendent, after consulting with the commissioner of
20 health, shall designate a single set of supplemental clinical standards
21 (in addition to the clinical standards selected by the utilization
22 review agent) applicable to all utilization review agents regarding
23 acute and sub-acute inpatient rehabilitation for medically fragile chil-
24 dren. The standards shall specify the level of care supports in the
25 patient's home, at a skilled nursing facility or other setting, that
26 must be in place in order to safely and adequately care for a medically
27 fragile child before acute or sub-acute inpatient rehabilitation can be
28 deemed no longer medically necessary. The supplemental standards desig-
29 nated by the superintendent shall pre-empt the clinical standards, if
30 any, regarding readiness for discharge of medically fragile children
31 from acute or sub-acute inpatient rehabilitation, as set forth in the
32 utilization review plan by the utilization review agent.
33 (i) In all instances the utilization review agent shall defer to the
34 recommendations of the referring physician to refer a medically fragile
35 child for care at a particular specialty provider of care to medically
36 fragile children, or the recommended treatment plan by the treating
37 physician at a specialty care center for medically fragile children,
38 except where the utilization review agent has determined, by clear and
39 convincing evidence, that: (1) the recommended provider or proposed
40 treatment plan is not in the best interest of the medically fragile
41 child; or (2) an alternative provider offering substantially the same
42 level of care in accordance with substantially the same treatment plan
43 is available from a lower cost provider.
44 § 13. This act shall take effect January 1, 2021.