

# STATE OF NEW YORK

8844

## IN SENATE

July 29, 2020

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law and the insurance law, in relation to the definition of clinical peer reviewer

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

1 Section 1. Subdivision 2 of section 4900 of the public health law, as  
2 amended by chapter 586 of the laws of 1998, item (B) of subparagraph  
3 (ii) of paragraph (a) as amended by chapter 41 of the laws of 2014 and  
4 subparagraph (iii) as amended and subparagraph (iv) of paragraph (a) as  
5 added by section 42 of subpart A of part BB of chapter 57 of the laws of  
6 2019, is amended to read as follows:

7 2. "Clinical peer reviewer" means:

8 (a) [~~for purposes of title one of this article.~~

9 ~~(i) a physician who possesses a current and valid non-restricted  
10 license to practice medicine, or~~

11 ~~(ii) a health care professional other than a licensed physician who,~~

12 ~~(A) where applicable, possesses a current and valid non-restricted  
13 license, certificate or registration or, where no provision for a  
14 license, certificate or registration exists, is credentialed by the  
15 national accrediting body appropriate to the profession, and~~

16 ~~(B) is in the same profession and same or similar specialty as the  
17 health care provider who typically manages the medical condition or  
18 disease or provides the health care service or treatment under review,  
19 or~~

20 ~~(iii) for purposes of a determination involving substance use disorder  
21 treatment.~~

22 ~~(A) a physician who possesses a current and valid non-restricted  
23 license to practice medicine and who specializes in behavioral health  
24 and has experience in the delivery of substance use disorder courses of  
25 treatment, or~~

26 ~~(B) a health care professional other than a licensed physician who  
27 specializes in behavioral health and has experience in the delivery of  
28 substance use disorder courses of treatment and, where applicable,~~

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

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~~1 possesses a current and valid non-restricted license, certificate or  
2 registration or, where no provision for a license, certificate or regis-  
3 tration exists, is credentialed by the national accrediting body appro-  
4 priate to the profession; or~~

~~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~~

~~18 (b) for purposes of title two of this article;~~

~~(i)] a physician who:~~

[~~(A)~~] (i) possesses a current and valid non-restricted license to  
20 practice medicine under article one hundred thirty-one of the education  
21 law;

[~~(B)~~] (ii) where applicable, is board certified or board eligible in  
23 the same or similar specialty as the health care provider who typically  
24 manages the medical condition or disease or provides the health care  
25 service or treatment under review or appeal;

[~~(C)~~] (iii) has been practicing in such area of specialty for a period  
27 of at least five years; [~~and~~]

(iv) for purposes of a determination involving substance use disorder  
29 treatment, possesses a current and valid non-restricted license to prac-  
30 tice medicine and specializes in behavioral health and has experience in  
31 the delivery of substance use disorder courses of treatment;

(v) for purposes of a determination involving treatment for a mental  
33 health condition, possesses a current and valid non-restricted license  
34 to practice medicine and who specializes in behavioral health and has  
35 experience in the delivery of mental health courses of treatment; and

[~~(D)~~] (vi) is knowledgeable about the health care service or treatment  
37 under review or appeal; or

[~~(ii)~~] (b) a health care professional other than a licensed physician  
39 who possesses a current and valid non-restricted license or certif-  
40 ication under title eight of the education law:

[~~(A)~~] (i) where applicable, possesses a current and valid non-res-  
42 tricted license, certificate or registration;

[~~(B)~~] (ii) where applicable, is credentialed by the national accred-  
44 ing body appropriate to the profession in the same profession and same  
45 or similar specialty as the health care provider who typically manages  
46 the medical condition or disease or provides the health care service or  
47 treatment under review or appeal;

[~~(C)~~] (iii) has been practicing in such area of specialty for a period  
49 of at least five years;

[~~(D)~~] (iv) is knowledgeable about the health care service or treatment  
51 under review or appeal; [~~and~~]

(v) for purposes of a determination involving substance use disorder,  
53 specializes in behavioral health and has experience in the delivery of  
54 substance use disorder courses of treatment and, where applicable,  
55 possesses a current and valid non-restricted license, certificate or  
56

1 registration or, where no provision for a license, certificate or regis-  
2 tration exists, is credentialed by the national accrediting body appro-  
3 appropriate to the profession;

4 (vi) for purposes of a determination involving treatment for a mental  
5 health condition, specializes in behavioral health and has experience in  
6 the delivery of mental health courses of treatment and, where applica-  
7 ble, possesses a current and valid non-restricted license, certificate,  
8 or registration or, where no provision for a license, certificate or  
9 registration exists, is credentialed by the national accrediting body  
10 appropriate to the profession; and

11 ~~[(E)]~~ (vii) where applicable to such health care professional's scope  
12 of practice, is clinically supported by a physician who possesses a  
13 current and valid non-restricted license to practice medicine.

14 ~~[(a)]~~ Nothing ~~[herein]~~ in this subdivision shall be construed to  
15 change any statutorily-defined scope of practice.

16 § 2. Subsection (b) of section 4900 of the insurance law, as amended  
17 by chapter 586 of the laws of 1998, item (ii) of subparagraph (B) of  
18 paragraph 1 as amended by chapter 41 of the laws of 2014, subparagraph  
19 (C) as amended and subparagraph (D) of paragraph 1 as added by section  
20 36 of subpart A of part BB of chapter 57 of the laws of 2019, is amended  
21 to read as follows:

22 (b) "Clinical peer reviewer" means:

23 (1) ~~[for purposes of title one of this article.]~~

24 ~~(A) a physician who possesses a current and valid non-restricted~~  
25 ~~license to practice medicine; or~~

26 ~~(B) a health care professional other than a licensed physician who:~~

27 ~~(i) where applicable, possesses a current and valid non-restricted~~  
28 ~~license, certificate or registration or, where no provision for a~~  
29 ~~license, certificate or registration exists, is credentialed by the~~  
30 ~~national accrediting body appropriate to the profession; and~~

31 ~~(ii) is in the same profession and same or similar specialty as the~~  
32 ~~health care provider who typically manages the medical condition or~~  
33 ~~disease or provides the health care service or treatment under review;~~  
34 ~~or~~

35 ~~(C) for purposes of a determination involving substance use disorder~~  
36 ~~treatment;~~

37 ~~(i) a physician who possesses a current and valid non-restricted~~  
38 ~~license to practice medicine and who specializes in behavioral health~~  
39 ~~and has experience in the delivery of substance use disorder courses of~~  
40 ~~treatment; or~~

41 ~~(ii) a health care professional other than a licensed physician who~~  
42 ~~specializes in behavioral health and has experience in the delivery of~~  
43 ~~substance use disorder courses of treatment and, where applicable,~~  
44 ~~possesses a current and valid non-restricted license, certificate or~~  
45 ~~registration or, where no provision for a license, certificate or regis-~~  
46 ~~tration exists, is credentialed by the national accrediting body appro-~~  
47 ~~appropriate to the profession; or~~

48 ~~(D) for purposes of a determination involving treatment for a mental~~  
49 ~~health condition;~~

50 ~~(i) a physician who possesses a current and valid non-restricted~~  
51 ~~license to practice medicine and who specializes in behavioral health~~  
52 ~~and has experience in the delivery of mental health courses of treat-~~  
53 ~~ment; or~~

54 ~~(ii) a health care professional other than a licensed physician who~~  
55 ~~specializes in behavioral health and has experience in the delivery of~~  
56 ~~mental health courses of treatment and, where applicable, possesses a~~

~~current and valid non-restricted license, certificate, or registration or, where no provision for a license, certificate or registration exists, is credentialed by the national accrediting body appropriate to the profession; and~~

~~(2) for purposes of title two of this article;~~

~~(A)] a physician who:~~

~~[(i)] (A) possesses a current and valid non-restricted license to practice medicine under article one hundred thirty-one of the education law;~~

~~[(ii)] (B) where applicable, is board certified or board eligible in the same or similar specialty as the health care provider who typically manages the medical condition or disease or provides the health care service or treatment under review or appeal;~~

~~[(iii)] (C) has been practicing in such area of specialty for a period of at least five years; ~~and]~~~~

~~(D) for purposes of a determination involving substance use disorder treatment, possesses a current and valid non-restricted license to practice medicine and who specializes in behavioral health and has experience in the delivery of substance use disorder courses of treatment;~~

~~(E) for purposes of a determination involving treatment for a mental health condition, possesses a current and valid non-restricted license to practice medicine and who specializes in behavioral health and has experience in the delivery of mental health courses of treatment; and~~

~~[(iv)] (F) is knowledgeable about the health care service or treatment under review or appeal; or~~

~~[(B)] (2) a health care professional other than a licensed physician who possesses a current and valid non-restricted license or certification under title eight of the education law:~~

~~[(i)] (A) where applicable, possesses a current and valid non-restricted license, certificate or registration;~~

~~[(ii)] (B) where applicable, is credentialed by the national accrediting body appropriate to the profession in the same profession and same or similar specialty as the health care provider who typically manages the medical condition or disease or provides the health care service or treatment under review or appeal;~~

~~[(iii)] (C) has been practicing in such area of specialty for a period of at least five years;~~

~~[(iv)] (D) for purposes of a determination involving substance use disorder treatment, specializes in behavioral health and has experience in the delivery of substance use disorder courses of treatment and, where applicable, possesses a current and valid non-restricted license, certificate or registration or, where no provision for a license, certificate or registration exists, is credentialed by the national accrediting body appropriate to the profession;~~

~~(E) for purposes of a determination involving treatment for a mental health condition, specializes in behavioral health and has experience in the delivery of mental health courses of treatment and, where applicable, possesses a current and valid non-restricted license, certificate, or registration or, where no provision for a license, certificate or registration exists, is credentialed by the national accrediting body appropriate to the profession;~~

~~(F) is knowledgeable about the health care service or treatment under review or appeal; and~~

~~[(v)] (G) where applicable to such health care professional's scope of practice, is clinically supported by a physician who possesses a current and valid non-restricted license to practice medicine.~~

1    [~~3~~] Nothing [~~herein~~] in this subdivision shall be construed to  
2 change any statutorily-defined scope of practice.

3    § 3. This act shall take effect on the same date and in the same  
4 manner as subpart A of part BB of chapter 57 of the laws of 2019, or on  
5 the ninetieth day after it shall have become a law, whichever is later.