

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:

1 Section 1. Subparagraphs (A), (C) and (E) of paragraph 35 of
2 subsection (i) of section 3216 of the insurance law, as added by section
3 8 of subpart A of part BB of chapter 57 of the laws of 2019, are amended
4 to read as follows:

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

9 (i) where the policy provides coverage for inpatient hospital care,
10 benefits for inpatient care in a hospital as defined by subdivision ten
11 of section 1.03 of the mental hygiene law and benefits for outpatient
12 care provided in a facility issued an operating certificate by the
13 commissioner of mental health pursuant to the provisions of article
14 thirty-one of the mental hygiene law, or in a facility operated by the
15 office of mental health, or, for care provided in other states, to simi-
16 larly licensed or certified hospitals or facilities; and

17 (ii) where the policy provides coverage for physician services, bene-
18 fits for outpatient care provided by a psychiatrist or psychologist
19 licensed to practice in this state, a licensed clinical social worker
20 who meets the requirements of subparagraph (D) of paragraph four of
21 subsection (1) of section three thousand two hundred twenty-one of this
22 article, a nurse practitioner licensed to practice in this state, or a
23 professional corporation or university faculty practice corporation
24 thereof, including outpatient drug coverage.

25 (C) Coverage under this paragraph shall not apply financial require-
26 ments or treatment limitations to mental health benefits, including drug
27 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.

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1 requirements and treatment limitations applied to substantially all
2 medical and surgical benefits covered by the policy. Coverage under this
3 paragraph, including drug coverage, shall not apply any fail-first or
4 step therapy protocol, as defined by section four thousand nine hundred
5 of this chapter.

6 (E) For purposes of this paragraph:

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

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

12 (iii) "treatment limitation" means limits on the frequency of treat-
13 ment, number of visits, days of coverage, or other similar limits on the
14 scope or duration of treatment and includes nonquantitative treatment
15 limitations such as: medical management standards limiting or excluding
16 benefits based on medical necessity, or based on whether the treatment
17 is experimental or investigational; formulary design for prescription
18 drugs; network tier design; standards for provider admission to partic-
19 ipate in a network, including reimbursement rates; methods for determin-
20 ing usual, customary, and reasonable charges; [~~fail-first or step thera-~~
21 ~~py protocols;~~] exclusions based on failure to complete a course of
22 treatment; and restrictions based on geographic location, facility type,
23 provider specialty, and other criteria that limit the scope or duration
24 of benefits for services provided under the policy; and

25 (iv) "mental health condition" means any mental health disorder as
26 defined in the most recent edition of the diagnostic and statistical
27 manual of mental disorders or the most recent edition of another gener-
28 ally recognized independent standard of current medical practice such as
29 the international classification of diseases.

30 § 2. Subparagraphs (A), (C) and (E) of paragraph 5 of subsection (l)
31 of section 3221 of the insurance law, subparagraph (A) as amended by
32 section 13 of subpart A of part BB of chapter 57 of the laws of 2019 and
33 subparagraphs (C) and (E) as added by section 14 of subpart A of part BB
34 of chapter 57 of the laws of 2019, are amended to read as follows:

35 (A) Every insurer delivering a group or school blanket policy or issu-
36 ing a group or school blanket policy for delivery, in this state, which
37 provides coverage for inpatient hospital care or coverage for physician
38 services shall provide coverage for the diagnosis and treatment of
39 mental health conditions and:

40 (i) where the policy provides coverage for inpatient hospital care,
41 benefits for inpatient care in a hospital as defined by subdivision ten
42 of section 1.03 of the mental hygiene law and benefits for outpatient
43 care provided in a facility issued an operating certificate by the
44 commissioner of mental health pursuant to the provisions of article
45 thirty-one of the mental hygiene law, or in a facility operated by the
46 office of mental health or, for care provided in other states, to simi-
47 larly licensed or certified hospitals or facilities; and

48 (ii) where the policy provides coverage for physician services, it
49 shall include benefits for outpatient care provided by a psychiatrist or
50 psychologist licensed to practice in this state, a licensed clinical
51 social worker who meets the requirements of subparagraph (D) of para-
52 graph four of this subsection, a nurse practitioner licensed to practice
53 in this state, or a professional corporation or university faculty prac-
54 tice corporation thereof, including outpatient drug coverage.

55 (C) Coverage under this paragraph shall not apply financial require-
56 ments or treatment limitations to mental health benefits, including drug

1 coverage, that are more restrictive than the predominant financial
2 requirements and treatment limitations applied to substantially all
3 medical and surgical benefits covered by the policy. Coverage under this
4 paragraph, including drug coverage, shall not apply any fail-first or
5 step therapy protocol, as defined by section four thousand nine hundred
6 of this chapter.

7 (E) For purposes of this paragraph:

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

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

13 (iii) "treatment limitation" means limits on the frequency of treat-
14 ment, number of visits, days of coverage, or other similar limits on the
15 scope or duration of treatment and includes nonquantitative treatment
16 limitations such as: medical management standards limiting or excluding
17 benefits based on medical necessity, or based on whether the treatment
18 is experimental or investigational; formulary design for prescription
19 drugs; network tier design; standards for provider admission to partic-
20 ipate in a network, including reimbursement rates; methods for determin-
21 ing usual, customary, and reasonable charges; [~~fail-first or step thera-~~
22 ~~py protocols;~~] exclusions based on failure to complete a course of
23 treatment; and restrictions based on geographic location, facility type,
24 provider specialty, and other criteria that limit the scope or duration
25 of benefits for services provided under the policy; and

26 (iv) "mental health condition" means any mental health disorder as
27 defined in the most recent edition of the diagnostic and statistical
28 manual of mental disorders or the most recent edition of another gener-
29 ally recognized independent standard of current medical practice such as
30 the international classification of diseases.

31 § 3. Paragraphs 2 and 4, and subparagraph (C) of paragraph 6 of
32 subsection (g) of section 4303 of the insurance law, paragraph 2 as
33 added by section 22 of subpart A of part BB of chapter 57 of the laws of
34 2019, and paragraph 4 and subparagraph (C) of paragraph 6 as added by
35 section 23 of subpart A of part BB of chapter 57 of the laws of 2019,
36 are amended to read as follows:

37 (2) where the contract provides coverage for physician services bene-
38 fits for outpatient care provided by a psychiatrist or psychologist
39 licensed to practice in this state, a licensed clinical social worker
40 who meets the requirements of subsection (n) of this section, a nurse
41 practitioner licensed to practice on this state, or professional corpo-
42 ration or university faculty practice corporation thereof, including
43 outpatient drug coverage.

44 (4) Coverage under this subsection shall not apply financial require-
45 ments or treatment limitations to mental health benefits, including drug
46 coverage, that are more restrictive than the predominant financial
47 requirements and treatment limitations applied to substantially all
48 medical and surgical benefits covered by the contract. Coverage under
49 this paragraph, including drug coverage, shall not apply any fail-first
50 or step therapy protocol, as defined by section four thousand nine
51 hundred of this chapter.

52 (C) "treatment limitation" means limits on the frequency of treatment,
53 number of visits, days of coverage, or other similar limits on the scope
54 or duration of treatment and includes nonquantitative treatment limita-
55 tions such as: medical management standards limiting or excluding bene-
56 fits based on medical necessity, or based on whether the treatment is

1 experimental or investigational; formulary design for prescription
2 drugs; network tier design; standards for provider admission to partic-
3 ipate in a network, including reimbursement rates; methods for determin-
4 ing usual, customary, and reasonable charges; [~~fail-first or stop thera-~~
5 ~~py protocols;~~] exclusions based on failure to complete a course of
6 treatment; and restrictions based on geographic location, facility type,
7 provider specialty, and other criteria that limit the scope or duration
8 of benefits for services provided under the contract; and
9 § 4. This act shall take effect immediately and shall apply to all
10 policies and contracts issued, renewed, modified, altered or amended on
11 or after such date.