

# 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 Assem-  
bly, 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~~] or

18 (v) for purposes of a determination involving treatment of a medically  
19 fragile child:

20 (A) a physician who possesses a current and valid non-restricted  
21 license to practice medicine and who is board certified or board eligi-  
22 ble in pediatric rehabilitation, pediatric critical care, or neonatolo-  
23 gy; or

24 (B) a physician who possesses a current and valid non-restricted  
25 license to practice medicine and is board certified in a pediatric  
26 subspecialty directly relevant to the patient's medical condition; and

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

LBD14313-03-0

§ 2. Paragraph (b) of subdivision 2 of section 4900 of the public health law, as amended by chapter 586 of the laws of 1998, is amended to read as follows:

(b) for purposes of title two of this article:

(i) a physician who:

(A) possesses a current and valid non-restricted license to practice medicine;

(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 appeal;

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

(D) is knowledgeable about the health care service or treatment under appeal; or

(ii) a health care professional other than a licensed physician who:

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

(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 appeal;

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

(D) is knowledgeable about the health care service or treatment under appeal; and

(E) 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; or

(iii) for purposes of a determination involving treatment of a medically fragile child:

(A) a physician who possesses a current and valid non-restricted license to practice medicine and who is board certified or board eligible in pediatric rehabilitation, pediatric critical care, or neonatology, or

(B) a physician who possesses a current and valid non-restricted license to practice medicine and is board certified in a pediatric subspecialty directly relevant to the patient's medical condition.

§ 3. Subdivision 2-a of section 4900 of the public health law, as added by chapter 586 of the laws of 1998, is amended to read as follows:

2-a. "Clinical standards" means those guidelines and standards set forth in the utilization review plan by the utilization review agent whose adverse determination is under appeal or, in the case of medically fragile children, those guidelines and standards as required by section forty-nine hundred three-a of this article.

§ 4. Paragraph (c) of subdivision 10 of section 4900 of the public health law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

(c) a description of practice guidelines and standards used by a utilization review agent in carrying out a determination of medical necessity, which in the case of medically fragile children shall incorporate the standards required by section forty-nine hundred three-a of this article;

§ 5. Section 4900 of the public health law is amended by adding a new subdivision 11 to read as follows:

11. "Medically fragile child" means an individual who is under twenty-one years of age and has a chronic debilitating condition or conditions, who may or may not be hospitalized or institutionalized, and meets one or more of the following criteria (a) is technologically dependent for life or health sustaining functions, (b) requires a complex medication regimen or medical interventions to maintain or to improve their health status, or (c) is in need of ongoing assessment or intervention to prevent serious deterioration of their health status or medical complications that place their life, health or development at risk. Chronic debilitating conditions include, but are not limited to, bronchopulmonary dysplasia, cerebral palsy, congenital heart disease, microcephaly, pulmonary hypertension, and muscular dystrophy. The term "medically fragile child" shall also include severe conditions, including but not limited to traumatic brain injury, which typically require care in a specialty care center for medically fragile children, even though the child does not have a chronic debilitating condition or also meet one of the three conditions of this subdivision. In order to facilitate the prompt and convenient identification of particular patient care situations meeting the definitions of this subdivision, the commissioner may issue written guidance listing (by diagnosis codes, utilization thresholds, or other available coding or commonly used medical classifications) the types of patient care needs which are deemed to meet this definition. Notwithstanding the definitions set forth in this subdivision, any patient which has received prior approval from a utilization review agent for admission to a specialty care facility for medically fragile children shall be considered a medically fragile child at least until discharge from that facility occurs.

§ 6. The public health law is amended by adding a new section 4903-a to read as follows:

§ 4903-a. Utilization review determinations for medically fragile children. 1. Notwithstanding any inconsistent provision of the utilization review agent's clinical standards, the utilization review agent shall administer and apply the clinical standards (and make determinations of medical necessity) regarding medically fragile children in accordance with the requirements of this section. If the utilization review agent is a separate entity from the health maintenance organization certified under article forty-four of this chapter, the health maintenance organization shall make contractual or other arrangements in order to facilitate the utilization review agent's compliance with this section.

2. In the case of a medically fragile child, the term "medically necessary" shall mean health care and services that are necessary to promote normal growth and development and prevent, diagnose, treat, ameliorate or palliate the effects of a physical, mental, behavioral, genetic, or congenital condition, injury or disability. When applied to the circumstances of any particular medically fragile child, the term "medically necessary" shall include (a) the care or services that are essential to prevent, diagnose, prevent the worsening of, alleviate or ameliorate the effects of an illness, injury, disability, disorder or condition, (b) the care or services that are essential to the overall physical, cognitive and mental growth and developmental needs of the child, and (c) the care or services that will assist the child to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the child and those functional capacities that are appropriate for individuals 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.

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

12 4. A health maintenance organization shall have a procedure by which  
13 an enrollee who is a medically fragile child who requires specialized  
14 medical care over a prolonged period of time, may receive a referral to  
15 a specialty care center for medically fragile children. If the health  
16 maintenance organization, or the primary care provider or the specialist  
17 treating the patient, in consultation with a medical director of the  
18 utilization review agent, determines that the enrollee's care would most  
19 appropriately be provided by such a specialty care center, the organiza-  
20 tion shall refer the enrollee to such center. In no event shall a health  
21 maintenance organization be required to permit an enrollee to elect to  
22 have a non-participating specialty care center, unless the organization  
23 does not have an appropriate specialty care center to treat the  
24 enrollee's disease or condition within its network. Such referral shall  
25 be pursuant to a treatment plan developed by the specialty care center  
26 and approved by the health maintenance organization, in consultation  
27 with the primary care provider, if any, or a specialist treating the  
28 patient, and the enrollee or the enrollee's designee. If an organization  
29 refers an enrollee to a specialty care center that does not participate  
30 in the organization's network, services provided pursuant to the  
31 approved treatment plan shall be provided at no additional cost to the  
32 enrollee beyond what the enrollee would otherwise pay for services  
33 received within the network. For purposes of this section, a specialty  
34 care center for medically fragile children shall mean a children's  
35 hospital as defined pursuant to subparagraph (iv) of paragraph (e-2) of  
36 subdivision four of section twenty-eight hundred seven-c of this chap-  
37 ter, a residential health care facility affiliated with such a chil-  
38 dren's hospital, any residential health care facility with a specialty  
39 pediatric bed average daily census during two thousand seventeen of  
40 fifty or more patients, or a facility which satisfies such other crite-  
41 ria as the commissioner may designate.

42 5. When rendering or arranging for care or payment, both the provider  
43 and the health maintenance organization shall inquire of, and shall  
44 consider the desires of the family of a medically fragile child includ-  
45 ing, but not limited to, the availability and capacity of the family,  
46 the need for the family to simultaneously care for the family's other  
47 children, and the need for parents to continue employment.

48 6. The health maintenance organization must pay at least eighty-five  
49 percent of the facility's acute care rate, unless a different rate has  
50 been mutually negotiated, for all days of inpatient hospital care at a  
51 specialty care center for medically fragile children when the health  
52 maintenance organization and the specialty care facility mutually agree  
53 the patient is ready for discharge from the specialty care center to the  
54 patient's home but requires specialized home services that are not  
55 available or in place, or the patient is awaiting discharge to a resi-  
56 dential health care facility when no residential health care facility



1 bed is available given the specialized needs of the medically fragile  
2 child. The health maintenance organization must pay at least the facili-  
3 ty's Medicaid skilled nursing facility rate, unless a different rate has  
4 been mutually negotiated, for all days of residential health care facili-  
5 ty care at a specialty care center for medically fragile children when  
6 the health maintenance organization and the specialty care facility  
7 mutually agree the patient is ready for discharge from the specialty  
8 care center to the patient's home but requires specialized home services  
9 that are not available or in place. Such requirements shall apply until  
10 the health plan can identify and secure admission to an alternate  
11 provider rendering the necessary level of services. The specialty care  
12 center must cooperate with the health maintenance organization's place-  
13 ment efforts.

14 7. In the event a health maintenance organization enters into a  
15 participation agreement with a specialty care center for medically frag-  
16 ile children in this state, and the terms of that participation agree-  
17 ment extend to one or more other health maintenance organizations or  
18 insurers (including health maintenance organizations and insurers oper-  
19 ating in other states) by virtue of affiliation with (or contracts with)  
20 the health maintenance organization, the requirements of this article  
21 regarding procedures for utilization review of medically fragile chil-  
22 dren shall apply to those other health maintenance organizations or  
23 insurers.

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

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

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

child for care at a particular specialty provider of care to medically fragile children, or the recommended treatment plan by the treating physician at a specialty care center for medically fragile children, except where the utilization review agent has determined, by clear and convincing evidence, that: (a) the recommended provider or proposed treatment plan is not in the best interest of the medically fragile child, or (b) an alternative provider offering substantially the same level of care in accordance with substantially the same treatment plan is available from a lower cost provider.

§ 7. Subparagraph (D) of paragraph 1 of subsection (b) of section 4900 of the insurance law, as added by section 36 of subpart A of part BB of chapter 57 of the laws of 2019, is amended and a new subparagraph (E) is added to read as follows:

(D) for purposes of a determination involving treatment for a mental health condition:

(i) a physician who 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; or

(ii) a health care professional other than a licensed physician who 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; ~~and~~ or

(E) for purposes of a determination involving treatment of a medically fragile child:

(i) a physician who possesses a current and valid non-restricted license to practice medicine and who is board certified or board eligible in pediatric rehabilitation, pediatric critical care, or neonatology; or

(ii) a physician who possesses a current and valid non-restricted license to practice medicine and is board certified in a pediatric subspecialty directly relevant to the patient's medical condition; and

§ 8. Paragraph 2 of subsection (b) of section 4900 of the insurance law, as amended by chapter 586 of the laws of 1998, is amended to read as follows:

(2) for purposes of title two of this article:

(A) a physician who:

(i) possesses a current and valid non-restricted license to practice medicine;

(ii) 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 appeal;

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

(iv) is knowledgeable about the health care service or treatment under appeal; or

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

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

(ii) 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

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-

tion review agent shall refer the insured to such center. In no event shall a utilization review agent be required to permit an insured to elect to have a non-participating specialty care center, unless the health care plan does not have an appropriate specialty care center to treat the insured'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 utilization review agent, in consultation with the primary care provider, if any, or a specialist treating the patient, and the insured or the insured's designee. If a utilization review agent refers an insured to a specialty care center that does not participate in the health care plan's network, services provided pursuant to the approved treatment plan shall be provided at no additional cost to the insured beyond what the insured 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 two thousand eight hundred seven-c of the public health law, 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 of health may designate.

(e) When rendering or arranging for care or payment, both the provider and the health care plan 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.

(f) The health care plan 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 insurer 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 care plan must pay at least the facility's skilled nursing Medicaid 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 insurer 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 care 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 care plan's placement efforts.

(g) In the event a health care plan 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 care plans or insurers (including health care plans and insurers operating in other states) by virtue of affiliation with (or contracts with) the health care plan, the requirements of this section regarding procedures for utilization review of medically fragile 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.