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:

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

2. "Clinical peer reviewer" means:

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

~~(i) a physician who possesses a current and valid non-restricted license to practice medicine; 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 or, where no provision for a license, certificate or registration exists, is credentialed by the national accrediting body appropriate to the profession; and~~

~~(B) is 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~~

~~(iii) for purposes of a determination involving substance use disorder treatment:~~

~~(A) 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 substance use disorder courses of treatment; or~~

~~(B) a health care professional other than a licensed physician who specializes in behavioral health and has experience in the delivery of 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.

LBD03373-04-0

~~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; or~~

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

~~(A) 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~~

~~(B) a health care professional other than a licensed physician who specializes in behavioral health and has experience in the delivery of a 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~~

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

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

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

[~~(B)~~] (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 review or appeal;

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

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

(v) 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

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

[~~(ii)~~] (b) 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:

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

[~~(B)~~] (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 medical condition or disease or provides the health care service or treatment under review or appeal;

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

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

(v) for purposes of a determination involving substance use disorder, 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;

(vi) 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; and

[~~(E)~~] (vii) 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.

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

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

(b) "Clinical peer reviewer" means:

(1) [~~for purposes of title one of this article:~~

~~(A) a physician who possesses a current and valid non-restricted license to practice medicine; 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 or, where no provision for a license, certificate or registration exists, is credentialed by the national accrediting body appropriate to the profession; and~~

~~(ii) is 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~~

~~(C) for purposes of a determination involving substance use disorder treatment:~~

~~(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 substance use disorder 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 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; or~~

~~(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~~

~~(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.

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

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