

STATE OF NEW YORK

289--A

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GOTTFRIED, PAULIN, SOLAGES, WEPRIN, ABINANTI, COOK, GALLAGHER -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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~~ 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-

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

LBD00514-05-1

1 ble in pediatric rehabilitation, pediatric critical care, or neonatolo-
2 gy; or

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

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

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

10 (i) a physician who:

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

13 (B) where applicable, is board certified or board eligible in the same
14 or similar specialty as the health care provider who typically manages
15 the medical condition or disease or provides the health care service or
16 treatment under appeal;

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

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

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

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

24 (B) where applicable, is credentialed by the national accrediting body
25 appropriate to the profession in the same profession and same or similar
26 specialty as the health care provider who typically manages the medical
27 condition or disease or provides the health care service or treatment
28 under appeal;

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

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

33 (E) where applicable to such health care professional's scope of prac-
34 tice, is clinically supported by a physician who possesses a current and
35 valid non-restricted license to practice medicine; or

36 (iii) for purposes of a determination involving treatment of a
37 medically fragile child;

38 (A) a physician who possesses a current and valid non-restricted
39 license to practice medicine and who is board certified or board eligi-
40 ble in pediatric rehabilitation, pediatric critical care, or neonatolo-
41 gy, or

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

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

47 2-a. "Clinical standards" means those guidelines and standards set
48 forth in the utilization review plan by the utilization review agent
49 whose adverse determination is under appeal or, in the case of medically
50 fragile children, those guidelines and standards as required by section
51 forty-nine hundred three-a of this article.

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

55 (c) a description of practice guidelines and standards used by a
56 utilization review agent in carrying out a determination of medical

1 necessity, which in the case of medically fragile children shall incor-
2 porate the standards required by section forty-nine hundred three-a of
3 this article;

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

6 11. "Medically fragile child" means an individual who is under twenty-
7 one years of age and has a chronic debilitating condition or condi-
8 tions, who may or may not be hospitalized or institutionalized, and
9 meets one or more of the following criteria (a) is technologically
10 dependent for life or health sustaining functions, (b) requires a
11 complex medication regimen or medical interventions to maintain or to
12 improve their health status, or (c) is in need of ongoing assessment or
13 intervention to prevent serious deterioration of their health status or
14 medical complications that place their life, health or development at
15 risk. Chronic debilitating conditions include, but are not limited to,
16 bronchopulmonary dysplasia, cerebral palsy, congenital heart disease,
17 microcephaly, pulmonary hypertension, and muscular dystrophy. The term
18 "medically fragile child" shall also include severe conditions, includ-
19 ing but not limited to traumatic brain injury, which typically require
20 care in a specialty care center for medically fragile children, even
21 though the child does not have a chronic debilitating condition or also
22 meet one of the three conditions of this subdivision. In order to facil-
23 itate the prompt and convenient identification of particular patient
24 care situations meeting the definitions of this subdivision, the commis-
25 sioner may issue written guidance listing (by diagnosis codes, utiliza-
26 tion thresholds, or other available coding or commonly used medical
27 classifications) the types of patient care needs which are deemed to
28 meet this definition. Notwithstanding the definitions set forth in this
29 subdivision, any patient which has received prior approval from a utili-
30 zation review agent for admission to a specialty care facility for
31 medically fragile children shall be considered a medically fragile child
32 at least until discharge from that facility occurs.

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

35 § 4903-a. Utilization review determinations for medically fragile
36 children. 1. Notwithstanding any inconsistent provision of the utiliza-
37 tion review agent's clinical standards, the utilization review agent
38 shall administer and apply the clinical standards (and make determi-
39 nations of medical necessity) regarding medically fragile children in
40 accordance with the requirements of this section. If the utilization
41 review agent is a separate entity from the health maintenance organiza-
42 tion certified under article forty-four of this chapter, the health
43 maintenance organization shall make contractual or other arrangements in
44 order to facilitate the utilization review agent's compliance with this
45 section.

46 2. In the case of a medically fragile child, the term "medically
47 necessary" shall mean health care and services that are necessary to
48 promote normal growth and development and prevent, diagnose, treat,
49 ameliorate or palliate the effects of a physical, mental, behavioral,
50 genetic, or congenital condition, injury or disability. When applied to
51 the circumstances of any particular medically fragile child, the term
52 "medically necessary" shall include (a) the care or services that are
53 essential to prevent, diagnose, prevent the worsening of, alleviate or
54 ameliorate the effects of an illness, injury, disability, disorder or
55 condition, (b) the care or services that are essential to the overall
56 physical, cognitive and mental growth and developmental needs of the

1 child, and (c) the care or services that will assist the child to
2 achieve or maintain maximum functional capacity in performing daily
3 activities, taking into account both the functional capacity of the
4 child and those functional capacities that are appropriate for individ-
5 uals of the same age as the child. The utilization review agent shall
6 base its determination on medical and other relevant information
7 provided by the child's primary care provider, other health care provid-
8 ers, school, local social services, and/or local public health officials
9 that have evaluated the child, and the utilization review agent will
10 ensure the care and services are provided in sufficient amount, duration
11 and scope to reasonably be expected to produce the intended results and
12 to have the expected benefits that outweigh the potential harmful
13 effects.

14 3. Utilization review agents shall undertake the following with
15 respect to medically fragile children:

16 (a) Consider as medically necessary all covered services that assist
17 medically fragile children in reaching their maximum functional capaci-
18 ty, taking into account the appropriate functional capacities of chil-
19 dren of the same age. Health maintenance organizations must continue to
20 cover services until that child achieves age-appropriate functional
21 capacity. A managed care provider, authorized by section three hundred
22 sixty-four-j of the social services law, shall also be required to make
23 payment for covered services required to comply with federal Early Peri-
24 odic Screening, Diagnosis, and Treatment ("EPSDT") standards, as speci-
25 fied by the commissioner of health.

26 (b) Shall not base determinations solely upon review standards appli-
27 cable to (or designed for) adults to medically fragile children. Adult
28 standards include, but are not limited to, Medicare rehabilitation stan-
29 dards and the "Medicare 3 hour rule." Determinations have to take into
30 consideration the specific needs of the child and the circumstances
31 pertaining to their growth and development.

32 (c) Accommodate unusual stabilization and prolonged discharge plans
33 for medically fragile children, as appropriate. Issues utilization
34 review agents must consider when developing and approving discharge
35 plans include, but are not limited to: sudden reversals of condition or
36 progress, which may make discharge decisions uncertain or more prolonged
37 than for other children or adults; necessary training of parents or
38 other adults to care for medically fragile children at home; unusual
39 discharge delays encountered if parents or other responsible adults
40 decline or are slow to assume full responsibility for caring for
41 medically fragile children; the need to await an appropriate home or
42 home-like environment rather than discharge to a housing shelter or
43 other inappropriate setting for medically fragile children, the need to
44 await construction adaptations to the home (such as the installation of
45 generators or other equipment); and lack of available suitable special-
46 ized care (such as unavailability of pediatric nursing home beds, pedia-
47 tric ventilator units, pediatric private duty nursing in the home, or
48 specialized pediatric home care services). Utilization review agents
49 must develop a person centered discharge plan for the child taking the
50 above situations into consideration.

51 (d) It is the utilization review agent's network management responsi-
52 bility to identify an available provider of needed covered services, as
53 determined through a person centered care plan, to effect safe discharge
54 from a hospital or other facility; payments shall not be denied to a
55 discharging hospital or other facility due to lack of an available post-
56 discharge provider as long as they have worked with the utilization

1 review agent to identify an appropriate provider. Utilization review
2 agents are required to approve the use of out-of-network providers if
3 the health maintenance organization does not have a participating
4 provider to address the needs of the child.

5 (e) This section does not limit any other rights the medically fragile
6 child may have, including the right to appeal the denial of out of
7 network coverage at in-network cost sharing levels where an appropriate
8 in-network provider is not available pursuant to subdivision one-b of
9 section forty-nine hundred four of this title.

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

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

51 5. When rendering or arranging for care or payment, both the provider
52 and the health maintenance organization shall inquire of, and shall
53 consider the desires of the family of a medically fragile child includ-
54 ing, but not limited to, the availability and capacity of the family,
55 the need for the family to simultaneously care for the family's other
56 children, and the need for parents to continue employment.

6. The health maintenance organization must pay at least eighty-five percent (unless a different percentage or method has been mutually agreed to) of the facility's negotiated acute care rate 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, the requirements of this section shall apply to such participation agreement and to all claims submitted to, or payments made by, any other health maintenance organizations, insurers or payors making payment to the specialty care center pursuant to the provisions of that participation agreement.

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

1 the clinical standards, if any, regarding readiness for discharge of
2 medically fragile children from acute or sub-acute inpatient rehabili-
3 tation, as set forth in the utilization review plan by the utilization
4 review agent.

5 9. In all instances the utilization review agent shall defer to the
6 recommendations of the referring physician to refer a medically fragile
7 child for care at a particular specialty provider of care to medically
8 fragile children, or the recommended treatment plan by the treating
9 physician at a specialty care center for medically fragile children,
10 except where the utilization review agent has determined, by clear and
11 convincing evidence, that: (a) the recommended provider or proposed
12 treatment plan is not in the best interest of the medically fragile
13 child, or (b) an alternative provider offering substantially the same
14 level of care in accordance with substantially the same treatment plan
15 is available from a lower cost provider.

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

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

22 (i) 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 mental health courses of treat-
25 ment; or

26 (ii) a health care professional other than a licensed physician who
27 specializes in behavioral health and has experience in the delivery of
28 mental health courses of treatment and, where applicable, possesses a
29 current and valid non-restricted license, certificate, or registration
30 or, where no provision for a license, certificate or registration
31 exists, is credentialed by the national accrediting body appropriate to
32 the profession; ~~and~~ or

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

35 (i) a physician who possesses a current and valid non-restricted
36 license to practice medicine and who is board certified or board eligi-
37 ble in pediatric rehabilitation, pediatric critical care, or neonatolo-
38 gy; or

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

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

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

46 (A) a physician who:

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

49 (ii) where applicable, is board certified or board eligible in the
50 same or similar specialty as the health care provider who typically
51 manages the medical condition or disease or provides the health care
52 service or treatment under appeal;

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

55 (iv) is knowledgeable about the health care service or treatment under
56 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 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;

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

(v) 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

(C) 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.

§ 9. Subsection (b-1) of section 4900 of the insurance law, as added by chapter 586 of the laws of 1998, is amended to read as follows:

(b-1) "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.

§ 10. Subsection (j) of section 4900 of the insurance law, as added by chapter 705 of the laws of 1996, is amended to read as follows:

(j) "Utilization review plan" means: (1) a description of the process for developing the written clinical review criteria; (2) a description of the types of written clinical information which the plan might consider in its clinical review, including but not limited to, a set of specific written clinical review criteria; (3) 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; (4) the procedures for scheduled review and evaluation of the written clinical review criteria; and (5) a description of the qualifications and experience of the health care professionals who developed the criteria, who are responsible for periodic evaluation of the criteria and of the health care professionals or others who use the written clinical review criteria in the process of utilization review.

§ 11. Section 4900 of the insurance law is amended by adding a new subsection (k) to read as follows:

(k) "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: (1) is technologically dependent for life or health sustaining functions; (2) requires a complex medication regimen or medical interventions to maintain or to

1 improve their health status; or (3) is in need of ongoing assessment or
2 intervention to prevent serious deterioration of their health status or
3 medical complications that place their life, health or development at
4 risk. Chronic debilitating conditions include, but are not limited to,
5 bronchopulmonary dysplasia, cerebral palsy, congenital heart disease,
6 microcephaly, pulmonary hypertension, and muscular dystrophy. The term
7 "medically fragile child" shall also include severe conditions, includ-
8 ing but not limited to traumatic brain injury, which typically require
9 care in a specialty care center for medically fragile children, even
10 though the child does not have a chronic debilitating condition or also
11 meet one of the three conditions of this subsection. In order to facili-
12 tate the prompt and convenient identification of particular patient care
13 situations meeting the definitions of this subsection, the superinten-
14 dent, after consulting with the commissioner of health, may issue writ-
15 ten guidance listing (by diagnosis codes, utilization thresholds, or
16 other available coding or commonly used medical classifications) the
17 types of patient care needs which are deemed to meet this definition.
18 Notwithstanding the definitions set forth in this subsection, any
19 patient which has received prior approval from a utilization review
20 agent for admission to a specialty care facility for medically fragile
21 children shall be considered a medically fragile child at least until
22 discharge from that facility occurs.

23 § 12. The insurance law is amended by adding a new section 4903-a to
24 read as follows:

25 § 4903-a. Utilization review determinations for medically fragile
26 children. (a) Notwithstanding any inconsistent provision of the utiliza-
27 tion review agent's clinical standards, the utilization review agent
28 shall administer and apply the clinical standards (and make determi-
29 nations of medical necessity) regarding medically fragile children in
30 accordance with the requirements of this section. If the utilization
31 review agent is a separate entity from the health care plan, the health
32 care plan shall make contractual or other arrangements in order to
33 facilitate the utilization review agent's compliance with this section.

34 (b) In the case of a medically fragile child, the term "medically
35 necessary" shall mean health care and services that are necessary to
36 promote normal growth and development and prevent, diagnose, treat,
37 ameliorate or palliate the effects of a physical, mental, behavioral,
38 genetic, or congenital condition, injury or disability. When applied to
39 the circumstances of any particular medically fragile child, the term
40 "medically necessary" shall include: (1) the care or services that are
41 essential to prevent, diagnose, prevent the worsening of, alleviate or
42 ameliorate the effects of an illness, injury, disability, disorder or
43 condition; (2) the care or services that are essential to the overall
44 physical, cognitive and mental growth and developmental needs of the
45 child; and (3) the care or services that will assist the child to
46 achieve or maintain maximum functional capacity in performing daily
47 activities, taking into account both the functional capacity of the
48 child and those functional capacities that are appropriate for individ-
49 uals of the same age as the child. The utilization review agent shall
50 base its determination on medical and other relevant information
51 provided by the child's primary care provider, other health care provid-
52 ers, school, local social services, and/or local public health officials
53 that have evaluated the child, and the utilization review agent will
54 ensure the care and services are provided in sufficient amount, duration
55 and scope to reasonably be expected to produce the intended results and

1 to have the expected benefits that outweigh the potential harmful
2 effects.

3 (c) Utilization review agents shall undertake the following with
4 respect to medically fragile children:

5 (1) Consider as medically necessary all covered services that assist
6 medically fragile children in reaching their maximum functional capaci-
7 ty, taking into account the appropriate functional capacities of chil-
8 dren of the same age. Utilization review agents must continue to cover
9 services until that child achieves age-appropriate functional capacity.

10 (2) Shall not base determinations solely upon review standards appli-
11 cable to (or designed for) adults to medically fragile children. Adult
12 standards include, but are not limited to, Medicare rehabilitation stan-
13 dards and the "Medicare 3 hour rule." Determinations have to take into
14 consideration the specific needs of the child and the circumstances
15 pertaining to their growth and development.

16 (3) Accommodate unusual stabilization and prolonged discharge plans
17 for medically fragile children, as appropriate. Issues utilization
18 review agents must consider when developing and approving discharge
19 plans include, but are not limited to: sudden reversals of condition or
20 progress, which may make discharge decisions uncertain or more prolonged
21 than for other children or adults; necessary training of parents or
22 other adults to care for medically fragile children at home; unusual
23 discharge delays encountered if parents or other responsible adults
24 decline or are slow to assume full responsibility for caring for
25 medically fragile children; the need to await an appropriate home or
26 home-like environment rather than discharge to a housing shelter or
27 other inappropriate setting for medically fragile children, the need to
28 await construction adaptations to the home (such as the installation of
29 generators or other equipment); and lack of available suitable special-
30 ized care (such as unavailability of pediatric nursing home beds, pedia-
31 tric ventilator units, pediatric private duty nursing in the home, or
32 specialized pediatric home care services). Utilization review agents
33 must develop a person centered discharge plan for the child taking the
34 above situations into consideration.

35 (4) It is the utilization review agents network management responsi-
36 bility to identify an available provider of needed covered services, as
37 determined through a person centered care plan, to effect safe discharge
38 from a hospital or other facility; payments shall not be denied to a
39 discharging hospital or other facility due to lack of an available post-
40 discharge provider as long as they have worked with the utilization
41 review agent to identify an appropriate provider. Utilization review
42 agents are required to approve the use of out-of-network providers if
43 they do not have a participating provider to address the needs of the
44 child.

45 (5) This section does not limit any other rights a medically fragile
46 child may have, including the right to appeal the denial of out of
47 network coverage at in-network cost sharing levels where an appropriate
48 in-network provider is not available pursuant to subsection a-two of
49 section four thousand nine hundred four of this title.

50 (6) Utilization review agents must ensure that medically fragile chil-
51 dren receive services from appropriate providers that have the expertise
52 to effectively treat the child and must contract with providers with
53 demonstrated expertise in caring for the medically fragile children.
54 Network providers shall refer to appropriate network community and
55 facility providers to meet the needs of the child or seek authorization
56 from the utilization review agent for out-of-network providers when

1 participating providers cannot meet the child's needs. The utilization
2 review agent must authorize services as fast as the insured's condition
3 requires and in accordance with established timeframes in the contracts
4 or policy forms.

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

35 (e) When rendering or arranging for care or payment, both the provider
36 and the health care plan shall inquire of, and shall consider the
37 desires of, the family of a medically fragile child including, but not
38 limited to, the availability and capacity of the family, the need for
39 the family to simultaneously care for the family's other children, and
40 the need for parents to continue employment.

41 (f) The health care plan must pay at least eighty-five percent (unless
42 a different percentage or method has been mutually agreed to) of the
43 facility's negotiated acute care rate for all days of inpatient hospital
44 care at a specialty care center for medically fragile children when the
45 insurer and the specialty care facility mutually agree the patient is
46 ready for discharge from the specialty care center to the patient's home
47 but requires specialized home services that are not available or in
48 place, or the patient is awaiting discharge to a residential health care
49 facility when no residential health care facility bed is available given
50 the specialized needs of the medically fragile child. The health care
51 plan must pay at least the facility's skilled nursing Medicaid facility
52 rate, unless a different rate has been mutually negotiated, for all days
53 of residential health care facility care at a specialty care center for
54 medically fragile children when the insurer and the specialty care
55 facility mutually agree the patient is ready for discharge from the
56 specialty care center to the patient's home but requires specialized

1 home services that are not available or in place. Such requirements
2 shall apply until the health care plan can identify and secure admission
3 to an alternate provider rendering the necessary level of services. The
4 specialty care center must cooperate with the health care plan's place-
5 ment efforts.

6 (g) In the event a health care plan enters into a participation agree-
7 ment with a specialty care center for medically fragile children in this
8 state, the requirements of this section shall apply to that partici-
9 ipation agreement and to all claims submitted to, or payments made by,
10 any other insurers, health maintenance organizations or payors making
11 payment to the specialty care center pursuant to the provisions of that
12 participation agreement.

13 (h) (1) The superintendent, after consulting with the commissioner of
14 health, shall designate a single set of clinical standards applicable to
15 all utilization review agents regarding pediatric extended acute care
16 stays (defined for the purposes of this section as discharge from one
17 acute care hospital followed by immediate admission to a second acute
18 care hospital; not including transfers of case payment cases as defined
19 in section two thousand eight hundred seven-c of the public health law).
20 The standards shall be adapted from national long term acute care hospi-
21 tal standards for adults and shall be approved by the superintendent,
22 after consultation with one or more specialty care centers for medically
23 fragile children. The standards shall include, but not be limited to,
24 specifications of the level of care supports in the patient's home, at a
25 skilled nursing facility or other setting, that must be in place in
26 order to safely and adequately care for a medically fragile child before
27 medically complex acute care can be deemed no longer medically neces-
28 sary. The standards designated by the commissioner shall pre-empt the
29 clinical standards, if any, for pediatric extended acute care set forth
30 in the utilization review plan by the utilization review agent.

31 (2) The superintendent, after consulting with the commissioner of
32 health, shall designate a single set of supplemental clinical standards
33 (in addition to the clinical standards selected by the utilization
34 review agent) applicable to all utilization review agents regarding
35 acute and sub-acute inpatient rehabilitation for medically fragile chil-
36 dren. The standards shall specify the level of care supports in the
37 patient's home, at a skilled nursing facility or other setting, that
38 must be in place in order to safely and adequately care for a medically
39 fragile child before acute or sub-acute inpatient rehabilitation can be
40 deemed no longer medically necessary. The supplemental standards desig-
41 nated by the superintendent shall pre-empt the clinical standards, if
42 any, regarding readiness for discharge of medically fragile children
43 from acute or sub-acute inpatient rehabilitation, as set forth in the
44 utilization review plan by the utilization review agent.

45 (i) In all instances the utilization review agent shall defer to the
46 recommendations of the referring physician to refer a medically fragile
47 child for care at a particular specialty provider of care to medically
48 fragile children, or the recommended treatment plan by the treating
49 physician at a specialty care center for medically fragile children,
50 except where the utilization review agent has determined, by clear and
51 convincing evidence, that: (1) the recommended provider or proposed
52 treatment plan is not in the best interest of the medically fragile
53 child; or (2) an alternative provider offering substantially the same
54 level of care in accordance with substantially the same treatment plan
55 is available from a lower cost provider.

56 § 13. This act shall take effect January 1, 2022.