

# STATE OF NEW YORK

289--B

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

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

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

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

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

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

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

12 (i) a physician who:

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

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

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

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

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

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

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

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

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

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

38 (iii) for purposes of a determination involving treatment of a  
39 medically fragile child;

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

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

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

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

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

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

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

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

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

37 § 4903-a. Utilization review determinations for medically fragile  
38 children. 1. Notwithstanding any inconsistent provision of the utiliza-  
39 tion review agent's clinical standards, the utilization review agent  
40 shall administer and apply the clinical standards (and make determi-  
41 nations of medical necessity) regarding medically fragile children in  
42 accordance with the requirements of this section. To the extent any of  
43 the requirements of this section impose obligations which extend beyond  
44 the contracted role of any independent utilization review agent under  
45 contract with a health maintenance organization, it shall be the obli-  
46 gation of the health maintenance organization to comply with all  
47 portions of this section which are not administered by the independent  
48 utilization review agent.

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

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

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

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

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

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

54 (d) It is the utilization review agent's network management responsi-  
55 bility to identify an available provider of needed covered services, as  
56 determined through a person centered care plan, to effect safe discharge

1 from a hospital or other facility; payments shall not be denied to a  
2 discharging hospital or other facility due to lack of an available post-  
3 discharge provider as long as they have worked with the utilization  
4 review agent to identify an appropriate provider. Utilization review  
5 agents are required to approve the use of out-of-network providers if  
6 the health maintenance organization does not have a participating  
7 provider to address the needs of the child.

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

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

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

54 5. When rendering or arranging for care or payment, both the provider  
55 and the health maintenance organization shall inquire of, and shall  
56 consider the desires of the family of a medically fragile child includ-

1 ing, but not limited to, the availability and capacity of the family,  
2 the need for the family to simultaneously care for the family's other  
3 children, and the need for parents to continue employment.

4 6. Except in the case of Medicaid managed care, the health maintenance  
5 organization must pay at least eighty-five percent (unless a different  
6 percentage or method has been mutually agreed to) of the facility's  
7 negotiated acute care rate for all days of inpatient hospital care at a  
8 participating specialty care center for medically fragile children when  
9 the health maintenance organization and the specialty care facility  
10 mutually agree the patient is ready for discharge from the specialty  
11 care center to the patient's home but requires specialized home services  
12 that are not available or in place, or the patient is awaiting discharge  
13 to a residential health care facility when no residential health care  
14 facility bed is available given the specialized needs of the medically  
15 fragile child. Medicaid managed care plans shall pay for such additional  
16 days at a rate negotiated between the Medicaid managed care plan and the  
17 hospital. Except in the case of Medicaid managed care, the health main-  
18 tenance organization must pay at least the facility's Medicaid skilled  
19 nursing facility rate, unless a different rate has been mutually negoti-  
20 ated, for all days of residential health care facility care at a partic-  
21 ipating specialty care center for medically fragile children when the  
22 health maintenance organization and the specialty care facility mutually  
23 agree the patient is ready for discharge from the specialty care center  
24 to the patient's home but requires specialized home services that are  
25 not available or in place. Medicaid managed care plans shall pay for  
26 such additional days at a rate negotiated between the Medicaid managed  
27 care plan and the residential health care facility. Such requirements  
28 shall apply until the health plan can identify and secure admission to  
29 an alternate provider rendering the necessary level of services. The  
30 specialty care center must cooperate with the health maintenance organ-  
31 ization's placement efforts.

32 7. In the event a health maintenance organization enters into a  
33 participation agreement with a specialty care center for medically frag-  
34 ile children in this state, the requirements of this section shall apply  
35 to such participation agreement and to all claims submitted to, or  
36 payments made by, any other health maintenance organizations, insurers  
37 or payors making payment to the specialty care center pursuant to the  
38 provisions of that participation agreement.

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

1 (b) The commissioner shall designate a single set of supplemental  
2 clinical standards (in addition to the clinical standards selected by  
3 the utilization review agent) applicable to all utilization review  
4 agents regarding acute and sub-acute inpatient rehabilitation for  
5 medically fragile children. The supplemental standards shall specify the  
6 level of care supports in the patient's home, at a skilled nursing  
7 facility or other setting, that must be in place in order to safely and  
8 adequately care for a medically fragile child before acute or sub-acute  
9 inpatient rehabilitation can be deemed no longer medically necessary.  
10 The supplemental standards designated by the commissioner shall pre-empt  
11 the clinical standards, if any, regarding readiness for discharge of  
12 medically fragile children from acute or sub-acute inpatient rehabili-  
13 tation, as set forth in the utilization review plan by the utilization  
14 review agent.

15 9. In all instances the utilization review agent shall defer to the  
16 recommendations of the referring physician to refer a medically fragile  
17 child for care at a particular specialty provider of care to medically  
18 fragile children, or the recommended treatment plan by the treating  
19 physician at a specialty care center for medically fragile children,  
20 except where the utilization review agent has determined, by clear and  
21 convincing evidence, that: (a) the recommended provider or proposed  
22 treatment plan is not in the best interest of the medically fragile  
23 child, or (b) an alternative provider offering substantially the same  
24 level of care in accordance with substantially the same treatment plan  
25 is available from a lower cost provider.

26 § 7. Section 4403 of the public health law is amended by adding a new  
27 subdivision 9 to read as follows:

28 9. A health maintenance organization shall have procedures for cover-  
29 age of medically fragile children including, but not limited to, those  
30 necessary to implement section forty-nine hundred three-a of this arti-  
31 cle.

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

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

38 (i) a physician who possesses a current and valid non-restricted  
39 license to practice medicine and who specializes in behavioral health  
40 and has experience in the delivery of mental health courses of treat-  
41 ment; or

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

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

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

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

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

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

8 (A) a physician who:

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

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

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

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

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

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

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

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

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

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

34 (C) for purposes of a determination involving treatment of a medically  
 35 fragile child:

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

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

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

45 (b-1) "Clinical standards" means those guidelines and standards set  
 46 forth in the utilization review plan by the utilization review agent  
 47 whose adverse determination is under appeal or, in the case of medically  
 48 fragile children those guidelines and standards as required by section  
 49 forty-nine hundred three-a of this article.

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

52 (j) "Utilization review plan" means: (1) a description of the process  
 53 for developing the written clinical review criteria; (2) a description  
 54 of the types of written clinical information which the plan might  
 55 consider in its clinical review, including but not limited to, a set of  
 56 specific written clinical review criteria; (3) a description of practice



1 guidelines and standards used by a utilization review agent in carrying  
2 out a determination of medical necessity, which, in the case of  
3 medically fragile children, shall incorporate the standards required by  
4 section forty-nine hundred three-a of this article; (4) the procedures  
5 for scheduled review and evaluation of the written clinical review  
6 criteria; and (5) a description of the qualifications and experience of  
7 the health care professionals who developed the criteria, who are  
8 responsible for periodic evaluation of the criteria and of the health  
9 care professionals or others who use the written clinical review crite-  
10 ria in the process of utilization review.

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

13 (k) "Medically fragile child" means an individual who is under twenty-  
14 one years of age and has a chronic debilitating condition or condi-  
15 tions, who may or may not be hospitalized or institutionalized, and  
16 meets one or more of the following criteria: (1) is technologically  
17 dependent for life or health sustaining functions; (2) requires a  
18 complex medication regimen or medical interventions to maintain or to  
19 improve their health status; or (3) is in need of ongoing assessment or  
20 intervention to prevent serious deterioration of their health status or  
21 medical complications that place their life, health or development at  
22 risk. Chronic debilitating conditions include, but are not limited to,  
23 bronchopulmonary dysplasia, cerebral palsy, congenital heart disease,  
24 microcephaly, pulmonary hypertension, and muscular dystrophy. The term  
25 "medically fragile child" shall also include severe conditions, includ-  
26 ing but not limited to traumatic brain injury, which typically require  
27 care in a specialty care center for medically fragile children, even  
28 though the child does not have a chronic debilitating condition or also  
29 meet one of the three conditions of this subsection. In order to facili-  
30 tate the prompt and convenient identification of particular patient care  
31 situations meeting the definitions of this subsection, the superinten-  
32 dent, after consulting with the commissioner of health, may issue writ-  
33 ten guidance listing (by diagnosis codes, utilization thresholds, or  
34 other available coding or commonly used medical classifications) the  
35 types of patient care needs which are deemed to meet this definition.  
36 Notwithstanding the definitions set forth in this subsection, any  
37 patient which has received prior approval from a utilization review  
38 agent for admission to a specialty care facility for medically fragile  
39 children shall be considered a medically fragile child at least until  
40 discharge from that facility occurs.

41 § 13. The insurance law is amended by adding a new section 4903-a to  
42 read as follows:

43 § 4903-a. Utilization review determinations for medically fragile  
44 children. (a) Notwithstanding any inconsistent provision of the utiliza-  
45 tion review agent's clinical standards, the utilization review agent  
46 shall administer and apply the clinical standards (and make determi-  
47 nations of medical necessity) regarding medically fragile children in  
48 accordance with the requirements of this section. To the extent any of  
49 the requirements of this section impose obligations which extend beyond  
50 the contracted role of any independent utilization review agent under  
51 contract with a health care plan, it shall be the obligation of the  
52 health care plan to comply with all portions of this section which are  
53 not administered by the independent utilization review agent.

54 (b) In the case of a medically fragile child, the term "medically  
55 necessary" shall mean health care and services that are necessary to  
56 promote normal growth and development and prevent, diagnose, treat,

1 ameliorate or palliate the effects of a physical, mental, behavioral,  
2 genetic, or congenital condition, injury or disability. When applied to  
3 the circumstances of any particular medically fragile child, the term  
4 "medically necessary" shall include: (1) the care or services that are  
5 essential to prevent, diagnose, prevent the worsening of, alleviate or  
6 ameliorate the effects of an illness, injury, disability, disorder or  
7 condition; (2) the care or services that are essential to the overall  
8 physical, cognitive and mental growth and developmental needs of the  
9 child; and (3) the care or services that will assist the child to  
10 achieve or maintain maximum functional capacity in performing daily  
11 activities, taking into account both the functional capacity of the  
12 child and those functional capacities that are appropriate for individ-  
13 uals of the same age as the child. The utilization review agent shall  
14 base its determination on medical and other relevant information  
15 provided by the child's primary care provider, other health care provid-  
16 ers, school, local social services, and/or local public health officials  
17 that have evaluated the child, and the utilization review agent will  
18 ensure the care and services are provided in sufficient amount, duration  
19 and scope to reasonably be expected to produce the intended results and  
20 to have the expected benefits that outweigh the potential harmful  
21 effects.

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

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

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

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

54 (4) It is the utilization review agents network management responsi-  
55 bility to identify an available provider of needed covered services, as  
56 determined through a person centered care plan, to effect safe discharge

1 from a hospital or other facility; payments shall not be denied to a  
2 discharging hospital or other facility due to lack of an available post-  
3 discharge provider as long as they have worked with the utilization  
4 review agent to identify an appropriate provider. Utilization review  
5 agents are required to approve the use of out-of-network providers if  
6 they do not have a participating provider to address the needs of the  
7 child.

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

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

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

54 (e) When rendering or arranging for care or payment, both the provider  
55 and the health care plan shall inquire of, and shall consider the  
56 desires of, the family of a medically fragile child including, but not

1 limited to, the availability and capacity of the family, the need for  
2 the family to simultaneously care for the family's other children, and  
3 the need for parents to continue employment.

4 (f) The health care plan must pay at least eighty-five percent (unless  
5 a different percentage or method has been mutually agreed to) of the  
6 facility's negotiated acute care rate for all days of inpatient hospital  
7 care at a participating specialty care center for medically fragile  
8 children when the insurer and the specialty care facility mutually agree  
9 the patient is ready for discharge from the specialty care center to the  
10 patient's home but requires specialized home services that are not  
11 available or in place, or the patient is awaiting discharge to a resi-  
12 dential health care facility when no residential health care facility  
13 bed is available given the specialized needs of the medically fragile  
14 child. The health care plan must pay at least the facility's skilled  
15 nursing Medicaid facility rate, unless a different rate has been mutual-  
16 ly negotiated, for all days of residential health care facility care at  
17 a participating specialty care center for medically fragile children  
18 when the insurer and the specialty care facility mutually agree the  
19 patient is ready for discharge from the specialty care center to the  
20 patient's home but requires specialized home services that are not  
21 available or in place. Such requirements shall apply until the health  
22 care plan can identify and secure admission to an alternate provider  
23 rendering the necessary level of services. The specialty care center  
24 must cooperate with the health care plan's placement efforts.

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

32 (h) (1) The superintendent, after consulting with the commissioner of  
33 health, shall designate a single set of clinical standards applicable to  
34 all utilization review agents regarding pediatric extended acute care  
35 stays (defined for the purposes of this section as discharge from one  
36 acute care hospital followed by immediate admission to a second acute  
37 care hospital; not including transfers of case payment cases as defined  
38 in section two thousand eight hundred seven-c of the public health law).  
39 The standards shall be adapted from national long term acute care hospi-  
40 tal standards for adults and shall be approved by the superintendent,  
41 after consultation with one or more specialty care centers for medically  
42 fragile children. The standards shall include, but not be limited to,  
43 specifications of the level of care supports in the patient's home, at a  
44 skilled nursing facility or other setting, that must be in place in  
45 order to safely and adequately care for a medically fragile child before  
46 medically complex acute care can be deemed no longer medically neces-  
47 sary. The standards designated by the commissioner shall pre-empt the  
48 clinical standards, if any, for pediatric extended acute care set forth  
49 in the utilization review plan by the utilization review agent.

50 (2) The superintendent, after consulting with the commissioner of  
51 health, shall designate a single set of supplemental clinical standards  
52 (in addition to the clinical standards selected by the utilization  
53 review agent) applicable to all utilization review agents regarding  
54 acute and sub-acute inpatient rehabilitation for medically fragile chil-  
55 dren. The standards shall specify the level of care supports in the  
56 patient's home, at a skilled nursing facility or other setting, that

1 must be in place in order to safely and adequately care for a medically  
 2 fragile child before acute or sub-acute inpatient rehabilitation can be  
 3 deemed no longer medically necessary. The supplemental standards desig-  
 4 nated by the superintendent shall pre-empt the clinical standards, if  
 5 any, regarding readiness for discharge of medically fragile children  
 6 from acute or sub-acute inpatient rehabilitation, as set forth in the  
 7 utilization review plan by the utilization review agent.

8 (i) In all instances the utilization review agent shall defer to the  
 9 recommendations of the referring physician to refer a medically fragile  
 10 child for care at a particular specialty provider of care to medically  
 11 fragile children, or the recommended treatment plan by the treating  
 12 physician at a specialty care center for medically fragile children,  
 13 except where the utilization review agent has determined, by clear and  
 14 convincing evidence, that: (1) the recommended provider or proposed  
 15 treatment plan is not in the best interest of the medically fragile  
 16 child; or (2) an alternative provider offering substantially the same  
 17 level of care in accordance with substantially the same treatment plan  
 18 is available from a lower cost provider.

19 § 14. The insurance law is amended by adding a new section 3217-j to  
 20 read as follows:

21 § 3217-j. Coverage for medically fragile children. An insurer shall  
 22 have procedures for coverage of medically fragile children including,  
 23 but not limited to, those necessary to implement section four thousand  
 24 nine hundred three-a of this chapter.

25 § 15. The insurance law is amended by adding a new section 4306-i to  
 26 read as follows:

27 § 4306-i. Coverage for medically fragile children. A corporation that  
 28 is subject to the provisions of this article shall have procedures for  
 29 coverage of medically fragile children including, but not limited to,  
 30 those necessary to implement section four thousand nine hundred three-a  
 31 of this chapter.

32 § 16. Sections three, four, five, six, seven, ten, eleven, twelve,  
 33 thirteen, fourteen and fifteen of this act shall not apply to any quali-  
 34 fied health plans in the individual and small group market on and after  
 35 the date, if any, when the federal department of health and human  
 36 services determines in writing that such provisions constitute state-re-  
 37 quired benefits in addition to essential health benefits, pursuant to  
 38 the federal Affordable Care Act and regulations promulgated thereunder.

39 § 17. This act shall take effect January 1, 2022.