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Introduced by M. of A. GOTTFRIED, PAULIN, SOLAGES, WEPRIN, ABINANTI, COOK, GALLAGHER, GALEF, GUNTHER, JACOBSON, REYES, OTIS -- 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 -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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

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

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1 (v) for purposes of a determination involving treatment of a medically
2 fragile child:

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

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

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

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

14 (i) a physician who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) It is the utilization review agent's network management responsi-
2 bility to identify an available provider of needed covered services, as
3 determined through a person centered care plan, to effect safe discharge
4 from a hospital or other facility; payments shall not be denied to a
5 discharging hospital or other facility due to lack of an available post-
6 discharge provider as long as they have worked with the utilization
7 review agent to identify an appropriate provider. Utilization review
8 agents are required to approve the use of out-of-network providers if
9 the health maintenance organization does not have a participating
10 provider to address the needs of the child.

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

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

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

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

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

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

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

1 clinical standards, if any, for pediatric extended acute care set forth
2 in the utilization review plan by the utilization review agent.

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

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

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

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

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

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

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

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

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

53 (i) a physician who possesses a current and valid non-restricted
54 license to practice medicine and who is board certified or board eligi-
55 ble in pediatric rehabilitation, pediatric critical care, or neonatolo-
56 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 partic-
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 on the first day of January after it
40 becomes a law.