

# STATE OF NEW YORK

2121

2021-2022 Regular Sessions

## IN SENATE

January 19, 2021

Introduced by Sens. RIVERA, BRESLIN, HARCKHAM, MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to enhancing coverage and care for medically fragile children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (iv) of paragraph (a) of subdivision 2 of  
2 section 4900 of the public health law, as added by section 42 of subpart  
3 A of part BB of chapter 57 of the laws of 2019, is amended and a new  
4 subparagraph (v) is added to read as follows:

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

7 (A) a physician who possesses a current and valid non-restricted  
8 license to practice medicine and who specializes in behavioral health  
9 and has experience in the delivery of mental health courses of treat-  
10 ment; or

11 (B) a health care professional other than a licensed physician who  
12 specializes in behavioral health and has experience in the delivery of a  
13 mental health courses of treatment and, where applicable, possesses a  
14 current and valid non-restricted license, certificate, or registration  
15 or, where no provision for a license, certificate or registration  
16 exists, is credentialed by the national accrediting body appropriate to  
17 the profession; ~~and~~ or

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

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

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

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

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

8 (i) a physician who:

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

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

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

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

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

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

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

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

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

31 (E) 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 (iii) for purposes of a determination involving treatment of a  
35 medically fragile child;

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

45 2-a. "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 § 4. Paragraph (c) of subdivision 10 of section 4900 of the public  
51 health law, as added by chapter 705 of the laws of 1996, is amended to  
52 read as follows:

53 (c) a description of practice guidelines and standards used by a  
54 utilization review agent in carrying out a determination of medical  
55 necessity, which in the case of medically fragile children shall incor-

1 porate the standards required by section forty-nine hundred three-a of  
2 this article;

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

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

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

34 § 4903-a. Utilization review determinations for medically fragile  
35 children. 1. Notwithstanding any inconsistent provision of the utiliza-  
36 tion review agent's clinical standards, the utilization review agent  
37 shall administer and apply the clinical standards (and make determi-  
38 nations of medical necessity) regarding medically fragile children in  
39 accordance with the requirements of this section. If the utilization  
40 review agent is a separate entity from the health maintenance organiza-  
41 tion certified under article forty-four of this chapter, the health  
42 maintenance organization shall make contractual or other arrangements in  
43 order to facilitate the utilization review agent's compliance with this  
44 section.

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

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

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

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

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

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

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

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

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

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

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

51 6. The health maintenance organization must pay at least eighty-five  
52 percent of the facility's acute care rate, unless a different rate has  
53 been mutually negotiated, for all days of inpatient hospital care at a  
54 specialty care center for medically fragile children when the health  
55 maintenance organization and the specialty care facility mutually agree  
56 the patient is ready for discharge from the specialty care center to the

1 patient's home but requires specialized home services that are not  
2 available or in place, or the patient is awaiting discharge to a resi-  
3 dential health care facility when no residential health care facility  
4 bed is available given the specialized needs of the medically fragile  
5 child. The health maintenance organization must pay at least the facili-  
6 ty's Medicaid skilled nursing facility rate, unless a different rate has  
7 been mutually negotiated, for all days of residential health care facil-  
8 ity care at a 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. Such requirements shall apply until  
13 the health plan can identify and secure admission to an alternate  
14 provider rendering the necessary level of services. The specialty care  
15 center must cooperate with the health maintenance organization's place-  
16 ment efforts.

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

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

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

1 tation, as set forth in the utilization review plan by the utilization  
2 review agent.

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

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

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

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

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

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

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

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

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

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

44 (A) a physician who:

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

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

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

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

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

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

3 (ii) where applicable, is credentialed by the national accrediting  
4 body appropriate to the profession in the same profession and same or  
5 similar specialty as the health care provider who typically manages the  
6 medical condition or disease or provides the health care service or  
7 treatment under appeal;

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

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

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

15 (C) for purposes of a determination involving treatment of a medically  
16 fragile child:

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

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

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

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

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

33 (j) "Utilization review plan" means: (1) a description of the process  
34 for developing the written clinical review criteria; (2) a description  
35 of the types of written clinical information which the plan might  
36 consider in its clinical review, including but not limited to, a set of  
37 specific written clinical review criteria; (3) a description of practice  
38 guidelines and standards used by a utilization review agent in carrying  
39 out a determination of medical necessity, which, in the case of  
40 medically fragile children, shall incorporate the standards required by  
41 section forty-nine hundred three-a of this article; (4) the procedures  
42 for scheduled review and evaluation of the written clinical review  
43 criteria; and (5) a description of the qualifications and experience of  
44 the health care professionals who developed the criteria, who are  
45 responsible for periodic evaluation of the criteria and of the health  
46 care professionals or others who use the written clinical review crite-  
47 ria in the process of utilization review.

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

50 (k) "Medically fragile child" means an individual who is under twen-  
51 ty-one years of age and has a chronic debilitating condition or condi-  
52 tions, who may or may not be hospitalized or institutionalized, and  
53 meets one or more of the following criteria: (1) is technologically  
54 dependent for life or health sustaining functions; (2) requires a  
55 complex medication regimen or medical interventions to maintain or to  
56 improve their health status; or (3) is in need of ongoing assessment or



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

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

24 § 4903-a. Utilization review determinations for medically fragile  
25 children. (a) Notwithstanding any inconsistent provision of the utiliza-  
26 tion review agent's clinical standards, the utilization review agent  
27 shall administer and apply the clinical standards (and make determi-  
28 nations of medical necessity) regarding medically fragile children in  
29 accordance with the requirements of this section. If the utilization  
30 review agent is a separate entity from the health care plan, the health  
31 care plan shall make contractual or other arrangements in order to  
32 facilitate the utilization review agent's compliance with this section.

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

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

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

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

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

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

43 (5) Utilization review agents must ensure that medically fragile chil-  
44 dren receive services from appropriate providers that have the expertise  
45 to effectively treat the child and must contract with providers with  
46 demonstrated expertise in caring for the medically fragile children.  
47 Network providers shall refer to appropriate network community and  
48 facility providers to meet the needs of the child or seek authorization  
49 from the utilization review agent for out-of-network providers when  
50 participating providers cannot meet the child's needs. The utilization  
51 review agent must authorize services as fast as the insured's condition  
52 requires and in accordance with established timeframes in the contracts  
53 or policy forms.

54 (d) A utilization review agent shall have a procedure by which an  
55 insured who is a medically fragile child who requires specialized  
56 medical care over a prolonged period of time, may receive a referral to

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

28 (e) When rendering or arranging for care or payment, both the provider  
29 and the health care plan shall inquire of, and shall consider the  
30 desires of, the family of a medically fragile child including, but not  
31 limited to, the availability and capacity of the family, the need for  
32 the family to simultaneously care for the family's other children, and  
33 the need for parents to continue employment.

34 (f) The health care plan must pay at least eighty-five percent of the  
35 facility's acute care rate, unless a different rate has been mutually  
36 negotiated, for all days of inpatient hospital care at a specialty care  
37 center for medically fragile children when the insurer and the specialty  
38 care facility mutually agree the patient is ready for discharge from the  
39 specialty care center to the patient's home but requires specialized  
40 home services that are not available or in place, or the patient is  
41 awaiting discharge to a residential health care facility when no resi-  
42 dential health care facility bed is available given the specialized  
43 needs of the medically fragile child. The health care plan must pay at  
44 least the facility's skilled nursing Medicaid facility rate, unless a  
45 different rate has been mutually negotiated, for all days of residential  
46 health care facility care at a specialty care center for medically frag-  
47 ile children when the insurer and the specialty care facility mutually  
48 agree the patient is ready for discharge from the specialty care center  
49 to the patient's home but requires specialized home services that are  
50 not available or in place. Such requirements shall apply until the  
51 health care plan can identify and secure admission to an alternate  
52 provider rendering the necessary level of services. The specialty care  
53 center must cooperate with the health care plan's placement efforts.

54 (g) In the event a health care plan enters into a participation agree-  
55 ment with a specialty care center for medically fragile children in this  
56 state, and the terms of that participation agreement extend to one or

1 more other health care plans or insurers (including health care plans  
2 and insurers operating in other states) by virtue of affiliation with  
3 (or contracts with) the health care plan, the requirements of this  
4 section regarding procedures for utilization review of medically fragile  
5 children shall apply to those other health care plans or insurers.

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

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

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

49 § 13. This act shall take effect January 1, 2023.