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IN SENATE

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Introduced by Sens. RIVERA, BRESLIN, HARCKHAM, MAYER, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- reported favorably from said committee, second report, ordered to a third reading, amended and ordered reprinted, retaining its place in 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*
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.

LBD00514-08-1

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

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

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

(a) Consider as medically necessary all covered services that assist medically fragile children in reaching their maximum functional capacity, taking into account the appropriate functional capacities of children of the same age. Health maintenance organizations must continue to cover services until that child achieves age-appropriate functional capacity. A managed care provider, authorized by section three hundred sixty-four-j of the social services law, shall also be required to make payment for covered services required to comply with federal Early Periodic Screening, Diagnosis, and Treatment ("EPSDT") standards, as specified by the commissioner of health.

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

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

(d) It is the utilization review agent's network management responsibility to identify an available provider of needed covered services, as 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, asadded
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 twen-**
14 **ty-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

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

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

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

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

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

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

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

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