

# STATE OF NEW YORK

289--A

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

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

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

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

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

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

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

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

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

20 (A) a physician who possesses a current and valid non-restricted  
21 license to practice medicine and who is board certified or board eligi-

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

LBD00514-05-1

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

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

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

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

10 (i) a physician who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 7. In the event a health maintenance organization enters into a  
24 participation agreement with a specialty care center for medically frag-  
25 ile children in this state, the requirements of this section shall apply  
26 to such participation agreement and to all claims submitted to, or  
27 payments made by, any other health maintenance organizations, insurers  
28 or payors making payment to the specialty care center pursuant to the  
29 provisions of that participation agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (A) a physician who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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