

STATE OF NEW YORK

3276

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to prohibiting the application of fail-first or step therapy protocols to coverage for the diagnosis and treatment of mental health conditions

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

1 Section 1. Subparagraphs (A), (C) and (E) of paragraph 35 of
2 subsection (i) of section 3216 of the insurance law, as added by section
3 8 of subpart A of part BB of chapter 57 of the laws of 2019, are amended
4 to read as follows:

5 (A) Every policy delivered or issued for delivery in this state that
6 provides coverage for inpatient hospital care or coverage for physician
7 services shall provide coverage for the diagnosis and treatment of
8 mental health conditions as follows:

9 (i) where the policy provides coverage for inpatient hospital care,
10 benefits for inpatient care in a hospital as defined by subdivision ten
11 of section 1.03 of the mental hygiene law and benefits for outpatient
12 care provided in a facility issued an operating certificate by the
13 commissioner of mental health pursuant to the provisions of article
14 thirty-one of the mental hygiene law, or in a facility operated by the
15 office of mental health, or, for care provided in other states, to simi-
16 larly licensed or certified hospitals or facilities; and

17 (ii) where the policy provides coverage for physician services, bene-
18 fits for outpatient care provided by a psychiatrist or psychologist
19 licensed to practice in this state, a licensed clinical social worker
20 who meets the requirements of subparagraph (D) of paragraph four of
21 subsection (1) of section three thousand two hundred twenty-one of this
22 article, a nurse practitioner licensed to practice in this state, or a
23 professional corporation or university faculty practice corporation
24 thereof, including outpatient drug coverage.

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

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(C) Coverage under this paragraph shall not apply financial requirements or treatment limitations to mental health benefits, including drug coverage, that are more restrictive than the predominant financial requirements and treatment limitations applied to substantially all medical and surgical benefits covered by the policy. Coverage under this paragraph, including drug coverage, shall not apply any fail-first or step therapy protocol, as defined by section four thousand nine hundred of this chapter.

(E) For purposes of this paragraph:

(i) "financial requirement" means deductible, copayments, coinsurance and out-of-pocket expenses;

(ii) "predominant" means that a financial requirement or treatment limitation is the most common or frequent of such type of limit or requirement;

(iii) "treatment limitation" means limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment and includes nonquantitative treatment limitations such as: medical management standards limiting or excluding benefits based on medical necessity, or based on whether the treatment is experimental or investigational; formulary design for prescription drugs; network tier design; standards for provider admission to participate in a network, including reimbursement rates; methods for determining usual, customary, and reasonable charges; ~~[fail-first or step therapy protocols;]~~ exclusions based on failure to complete a course of treatment; and restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the policy; and

(iv) "mental health condition" means any mental health disorder as defined in the most recent edition of the diagnostic and statistical manual of mental disorders or the most recent edition of another generally recognized independent standard of current medical practice such as the international classification of diseases.

§ 2. Subparagraphs (A), (C) and (E) of paragraph 5 of subsection (1) of section 3221 of the insurance law, subparagraph (A) as amended by section 13 of subpart A of part BB of chapter 57 of the laws of 2019 and subparagraphs (C) and (E) as added by section 14 of subpart A of part BB of chapter 57 of the laws of 2019, are amended to read as follows:

(A) Every insurer delivering a group or school blanket policy or issuing a group or school blanket policy for delivery, in this state, which provides coverage for inpatient hospital care or coverage for physician services shall provide coverage for the diagnosis and treatment of mental health conditions and:

(i) where the policy provides coverage for inpatient hospital care, benefits for inpatient care in a hospital as defined by subdivision ten of section 1.03 of the mental hygiene law and benefits for outpatient care provided in a facility issued an operating certificate by the commissioner of mental health pursuant to the provisions of article thirty-one of the mental hygiene law, or in a facility operated by the office of mental health or, for care provided in other states, to similarly licensed or certified hospitals or facilities; and

(ii) where the policy provides coverage for physician services, it shall include benefits for outpatient care provided by a psychiatrist or psychologist licensed to practice in this state, a licensed clinical social worker who meets the requirements of subparagraph (D) of paragraph four of this subsection, a nurse practitioner licensed to practice

1 in this state, or a professional corporation or university faculty prac-
2 tice corporation thereof, including outpatient drug coverage.

3 (C) Coverage under this paragraph shall not apply financial require-
4 ments or treatment limitations to mental health benefits, including drug
5 coverage, that are more restrictive than the predominant financial
6 requirements and treatment limitations applied to substantially all
7 medical and surgical benefits covered by the policy. Coverage under this
8 paragraph, including drug coverage, shall not apply any fail-first or
9 step therapy protocol, as defined by section four thousand nine hundred
10 of this chapter.

11 (E) For purposes of this paragraph:

12 (i) "financial requirement" means deductible, copayments, coinsurance
13 and out-of-pocket expenses;

14 (ii) "predominant" means that a financial requirement or treatment
15 limitation is the most common or frequent of such type of limit or
16 requirement;

17 (iii) "treatment limitation" means limits on the frequency of treat-
18 ment, number of visits, days of coverage, or other similar limits on the
19 scope or duration of treatment and includes nonquantitative treatment
20 limitations such as: medical management standards limiting or excluding
21 benefits based on medical necessity, or based on whether the treatment
22 is experimental or investigational; formulary design for prescription
23 drugs; network tier design; standards for provider admission to partic-
24 ipate in a network, including reimbursement rates; methods for determin-
25 ing usual, customary, and reasonable charges; ~~fail-first or step thera-~~
26 ~~py protocols;~~ exclusions based on failure to complete a course of
27 treatment; and restrictions based on geographic location, facility type,
28 provider specialty, and other criteria that limit the scope or duration
29 of benefits for services provided under the policy; and

30 (iv) "mental health condition" means any mental health disorder as
31 defined in the most recent edition of the diagnostic and statistical
32 manual of mental disorders or the most recent edition of another gener-
33 ally recognized independent standard of current medical practice such as
34 the international classification of diseases.

35 § 3. Paragraphs 2 and 4, and subparagraph (C) of paragraph 6 of
36 subsection (g) of section 4303 of the insurance law, paragraph 2 as
37 added by section 22 of subpart A of part BB of chapter 57 of the laws of
38 2019, and paragraph 4 and subparagraph (C) of paragraph 6 as added by
39 section 23 of subpart A of part BB of chapter 57 of the laws of 2019,
40 are amended the read as follows:

41 (2) where the contract provides coverage for physician services bene-
42 fits for outpatient care provided by a psychiatrist or psychologist
43 licensed to practice in this state, a licensed clinical social worker
44 who meets the requirements of subsection (n) of this section, a nurse
45 practitioner licensed to practice on this state, or professional corpo-
46 ration or university faculty practice corporation thereof, including
47 outpatient drug coverage.

48 (4) Coverage under this subsection shall not apply financial require-
49 ments or treatment limitations to mental health benefits, including drug
50 coverage, that are more restrictive than the predominant financial
51 requirements and treatment limitations applied to substantially all
52 medical and surgical benefits covered by the contract. Coverage under
53 this paragraph, including drug coverage, shall not apply any fail-first
54 or step therapy protocol, as defined by section four thousand nine
55 hundred of this chapter.

1 (C) "treatment limitation" means limits on the frequency of treatment,
2 number of visits, days of coverage, or other similar limits on the scope
3 or duration of treatment and includes nonquantitative treatment limita-
4 tions such as: medical management standards limiting or excluding bene-
5 fits based on medical necessity, or based on whether the treatment is
6 experimental or investigational; formulary design for prescription
7 drugs; network tier design; standards for provider admission to partic-
8 ipate in a network, including reimbursement rates; methods for determin-
9 ing usual, customary, and reasonable charges; [~~fail-first or stop thera-~~
10 ~~py protocols;~~] exclusions based on failure to complete a course of
11 treatment; and restrictions based on geographic location, facility type,
12 provider specialty, and other criteria that limit the scope or duration
13 of benefits for services provided under the contract; and
14 § 4. This act shall take effect immediately and shall apply to all
15 policies and contracts issued, renewed, modified, altered or amended on
16 or after such date.