STATE OF NEW YORK

380

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

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

AN ACT to amend the insurance law, in relation to including certain out of home services such as transition from a hospital, nursing facility or other institutional setting to the home within home care insurance coverage

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

Section 1. Subparagraphs (C), (D) and (E) of paragraph 1 of subsection (k) of section 3221 of the insurance law, subparagraphs (C) and (D) as amended by chapter 557 of the laws of 2000, are amended to read as follows:

(C) Home care means the care and treatment of a covered person who is under the care of a physician [~~but only if~~] **and who requires the services of an agency described in subparagraph (D) of this paragraph for: transition of the covered person from hospital, nursing facility or other institutional setting to home; rehabilitation, recovery or medical management of the covered person at home following hospitalization or following care in a nursing facility or other institutional setting; or medical management of a condition predisposing the covered individual to** hospitalization [~~or~~]**,** confinement in a nursing facility [~~as defined in subchapter XVIII of the federal Social Security Act, 42 U.S.C. §§ 1395 et seq, would otherwise have been required~~] **or the need for other out-of-home services otherwise covered under the contract** if home care [~~was~~] **is** not provided, and the plan covering the home health service is established and approved in writing by such physician.

(D) Home care shall be provided by an agency possessing a valid certificate of approval or license issued pursuant to article thirty-six of the public health law and shall consist of one or more of the following:

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

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(i) Part-time or intermittent home nursing care by or under the supervision of a registered professional nurse (R.N.).

(ii) Part-time or intermittent home health aide services which consist primarily of caring for the patient.

(iii) Physical, occupational or speech therapy**, social work, respiratory therapy and nutritional counseling,** if provided by the home health service or agency.

(iv) Medical supplies, drugs and medications prescribed by a physician, and laboratory services by or on behalf of a certified home health agency or licensed home care services agency to the extent such items would have been covered under the contract if the covered person had been hospitalized or confined in a skilled nursing facility as defined in subchapter XVIII of the federal Social Security Act, 42 U.S.C. §§ 1395 et seq.

(E) For the purpose of determining the benefits for home care available to a covered person, [~~each visit by a member of a home care team shall be considered as one home care visit; the contract may contain a limitation on the number of home care visits, but not less than forty such visits in any calendar year or in any continuous period of twelve months, for each person covered under the contract; four hours of home health aide service shall be considered as one home care visit~~] **nothing in this paragraph shall be construed to prevent the management or utilization review of home care benefits, including the use of preauthorization and appropriateness criteria as to the level and intensity of treatment applicable to home care, provided however that any such determinations may be subject to appeal under article forty-nine of this chapter**.

§ 2. Paragraph 3 of subsection (a) of section 4303 of the insurance law, subparagraphs (A), (B) and (C) as amended by chapter 557 of the laws of 2000 and subparagraph (D) as amended by chapter 21 of the laws of 1990, is amended to read as follows:

(3) For home care to residents in this state. Such home care coverage shall be included at the inception of all new contracts and, with respect to all other contracts, added at any anniversary date of the contract subject to evidence of insurability. Such coverage may be subject to an annual deductible of not more than fifty dollars for each covered person and may be subject to a coinsurance provision which provides for coverage of not less than seventy-five percent of the reasonable cost of services for which payment may be made. No such corporation need provide such coverage to persons eligible for medicare.

(A) Home care shall mean the care and treatment of a covered person who is under the care of a physician [~~but only if:~~

~~(i)~~] **and who requires the services of an agency described in subparagraph (B) of this paragraph for: transition of the covered person from hospital, nursing facility or other institutional setting to home; for rehabilitation, recovery or medical management of the covered person at home following hospitalization or following care in a nursing facility or other institutional setting; or medical management of a condition predisposing the covered individual to** hospitalization [~~or~~]**,** confinement in a nursing facility [~~as defined in subchapter XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq, would otherwise have been required~~] **or the need for other out-of-home services otherwise covered under the policy,** if home care [~~was~~] **is** not provided, and

[~~(ii)~~] the plan covering the home health service is established and approved in writing by such physician.

(B) Home care shall be provided by an agency possessing a valid certificate of approval or license issued pursuant to article thirty-six of the public health law.

(C) Home care shall consist of one or more of the following:

(i) part-time or intermittent home nursing care by or under the supervision of a registered professional nurse (R.N.),

(ii) part-time or intermittent home health aide services which consist primarily of caring for the patient,

(iii) physical, occupational or speech therapy**, social work, respiratory therapy and nutritional counseling,** if provided by the home health service or agency, and

(iv) medical supplies, drugs and medications prescribed by a physician, and laboratory services by or on behalf of a certified home health agency or licensed home care services agency to the extent such items would have been covered or provided under the contract if the covered person had been hospitalized or confined in a skilled nursing facility as defined in subchapter XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

(D) For the purpose of determining the benefits for home care available to a covered person, [~~each visit by a member of a home care team shall be considered as one home care visit. The contract may contain a limitation on the number of home care visits, but not less than forty such visits in any calendar year or in any continuous period of twelve months, for each covered person. Four hours of home health aide service shall be considered as one home care visit. Every contract issued by a hospital service corporation or health service corporation which provides coverage supplementing part A and part B of subchapter XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq, must make available and, if requested by a subscriber holding a direct payment contract or by all subscribers in a group remittance group or by the contract holder in the case of group contracts issued pursuant to section four thousand three hundred five of this article, provide coverage of supplemental home care visits beyond those provided by part A and part B, sufficient to produce an aggregate coverage of three hundred sixty-five home care visits per contract year. Such coverage shall be provided pursuant to regulations prescribed by the superintendent. Written notice of the availability of such coverage shall be delivered to the group remitting agent or group contract holder prior to inception of such contract and annually thereafter, except that this notice shall not be required where a policy covers two hundred or more employees or where the benefit structure was the subject of collective bargaining affecting persons who are employed in more than one state~~] **nothing in this paragraph shall be construed to prevent the management or utilization review of home care benefits, including the use of preauthorization and appropriateness criteria as to the level and intensity of treatment applicable to home care, provided however that any such determinations may be subject to appeal under article forty-nine of this chapter**.

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date.