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2021-2022 Regular Sessions

IN SENATE

January 19, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (i) a physician who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 2-a. "Clinical standards" means those guidelines and standards set
46 forth in the utilization review plan by the utilization review agent
47 whose adverse determination is under appeal or, in the case of medically
48 fragile children, those guidelines and standards as required by section
49 forty-nine hundred three-a of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (A) a physician who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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