STATE OF NEW YORK

3104

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

AN ACT to amend the insurance law, in relation to including clinically necessary treatment for certain inpatient coverage

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

Section 1. Paragraph 30 of subsection (i) of section 3216 of the insurance law, as amended by section 5 of subpart A of part BB of chapter 57 of the laws of 2019, is amended to read as follows:

(30)(A) Every policy that provides hospital, major medical or similar comprehensive coverage shall provide inpatient coverage for the diagnosis and treatment of substance use disorder, including detoxification and rehabilitation services. Such inpatient coverage [~~shall~~] may include [~~unlimited medically~~] clinically necessary treatment for substance use disorder treatment services provided in residential settings at the discretion of the service provider. Further, such inpatient coverage shall not apply financial requirements or treatment limitations, including utilization review requirements, to inpatient substance use disorder benefits that are more restrictive than the predominant financial requirements and treatment limitations applied to substantially all medical and surgical benefits covered by the policy.

(B) Coverage provided under this paragraph may be limited to facilities in New York state that are licensed, certified or otherwise authorized by the office of [~~alcoholism and substance abuse~~] addiction services and supports and, in other states, to those which are accredited by the joint commission as alcoholism, substance abuse, or chemical dependence treatment programs and are similarly licensed, certified or otherwise authorized in the state in which the facility is located.

(C) Coverage provided under this paragraph may be subject to annual deductibles and co-insurance as deemed appropriate by the superintendent

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

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and that are consistent with those imposed on other benefits within a given policy.

(D) This subparagraph shall apply to facilities in this state that are licensed, certified or otherwise authorized by the office of [~~alcoholism and substance abuse~~] addiction services and supports that are participating in the insurer's provider network. Coverage provided under this paragraph shall not be subject to preauthorization. Coverage provided under this paragraph shall also not be subject to concurrent utilization review during the first twenty-eight days of the inpatient admission provided that the facility notifies the insurer of both the admission and the initial treatment plan within two business days of the admission. The facility shall perform daily clinical review of the patient, including periodic consultation with the insurer at or just prior to the fourteenth day of treatment to ensure that the facility is using the evidence-based and peer reviewed clinical review tool utilized by the insurer which is designated by the office of [~~alcoholism and substance abuse~~] addiction services and supports and appropriate to the age of the patient, to ensure that the inpatient treatment is [~~medically~~] clinically necessary for the patient. Prior to discharge, the facility shall provide the patient and the insurer with a written discharge plan which shall describe arrangements for additional services needed following discharge from the inpatient facility as determined using the evidence-based and peer-reviewed clinical review tool utilized by the insurer which is designated by the office of [~~alcoholism and substance abuse~~] addiction services and supports. Prior to discharge, the facility shall indicate to the insurer whether services included in the discharge plan are secured or determined to be reasonably available. Any utilization review of treatment provided under this subparagraph may include a review of all services provided during such inpatient treatment, including all services provided during the first twenty-eight days of such inpatient treatment. Provided, however, [~~the~~] such utilization review shall only be imposed to the extent the insurer's requirements are permitted under the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and applicable regulations (29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26; 45 C.F.R. Parts 146, 147). The insurer [~~shall~~] may only deny coverage for any portion of the initial twenty-eight day inpatient treatment on the basis that such treatment was not [~~medically~~] clinically necessary if such inpatient treatment was [~~contrary to~~] not indicated by the evidence-based and peer reviewed clinical review tool utilized by the insurer which is designated by the office of [~~alcoholism and substance abuse~~] addiction services and supports. Any denial must specifically identify: (i) how such treatment was not indicated by the office of addiction services and supports designated clinical review tool; and (ii) how the policy applied the office of addiction services and supports designated tool to the outpatient substance use disorder care in a manner comparable to and no more stringent than the policy's application of its clinical review tool for outpatient medical and surgical benefits covered by the policy. Any concurrent or retrospective review imposed by the plan, both as written and as applied, must be consistent with the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and applicable regulations (29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26; 45 C.F.R. Parts 146, 147). An insured shall not have any financial obligation to the facility for any treatment under this subparagraph other than any copayment, coinsurance, or deductible otherwise required under the policy.

(E) An insurer shall make available to any insured, prospective insured, or in-network provider, upon request, the criteria for [~~medical~~] **clinical** necessity determinations under the policy with respect to inpatient substance use disorder benefits.

(F) 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~~] **clinical** 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) "substance use disorder" shall have the meaning set forth 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[~~.~~]**; and**

(v) "clinical necessity" means both an individual's medical needs and any social determinants of health that will promote such individual's stability following discharge from treatment.

(G) An insurer shall provide coverage under this paragraph, at a minimum, consistent with the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a).

§ 2. This act shall take effect immediately.