

STATE OF NEW YORK

4135

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

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

AN ACT to amend the public health law and the insurance law, in relation to clinical standards for utilization review of care for medically fragile children; to amend a chapter of the laws of 2022 amending the public health law and the insurance law relating to enhancing coverage and care for medically fragile children, as proposed in legislative bills numbers S.2121-C and A.289-C, in relation to the effectiveness thereof; and to repeal certain provisions of the public health law and the insurance law relating to medically fragile children

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

1 Section 1. Subparagraphs (iv) and (v) of paragraph (a) of subdivision
2 2 of section 4900 of the public health law, subparagraph (iv) as amended
3 and subparagraph (v) as added by a chapter of the laws of 2022 amending
4 the public health law and the insurance law relating to enhancing cover-
5 age and care for medically fragile children, as proposed in legislative
6 bills numbers S.2121-C and A.289-C, are amended to read as follows:
7 (iv) for purposes of a determination involving treatment for a mental
8 health condition:
9 (A) a physician who possesses a current and valid non-restricted
10 license to practice medicine and who specializes in behavioral health
11 and has experience in the delivery of mental health courses of treat-
12 ment; or
13 (B) a health care professional other than a licensed physician who
14 specializes in behavioral health and has experience in the delivery of a
15 mental health courses of treatment and, where applicable, possesses a
16 current and valid non-restricted license, certificate, or registration
17 or, where no provision for a license, certificate or registration
18 exists, is credentialed by the national accrediting body appropriate to
19 the profession; [~~or~~]

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

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~~(v) for purposes of a determination involving treatment of a medically fragile child;~~

~~(A) a physician who possesses a current and valid non-restricted license to practice medicine and who is board certified or board eligible in pediatric rehabilitation, pediatric critical care, or neonatology; or~~

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

§ 2. Paragraph (b) of subdivision 2 of section 4900 of the public health law, as amended by a chapter of the laws of 2022 amending the public health law and the insurance law relating to enhancing coverage and care for medically fragile children, as proposed in legislative bills numbers S.2121-C and A.289-C, is amended to read as follows:

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

(i) a physician who:

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

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

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

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

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

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

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

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

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

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

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

~~(A) a physician who possesses a current and valid non-restricted license to practice medicine and who is board certified or board eligible in pediatric rehabilitation, pediatric critical care, or neonatology; or~~

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

§ 3. Subdivision 2-a of section 4900 of the public health law, as amended by a chapter of the laws of 2022 amending the public health law and the insurance law relating to enhancing coverage and care for medically fragile children, as proposed in legislative bills numbers S.2121-C and A.289-C, is amended to read as follows:

1 2-a. "Clinical standards" means those guidelines and standards set
2 forth in the utilization review plan by the utilization review agent
3 whose adverse determination is under appeal or, in the case of medically
4 fragile children, those guidelines and standards as required by section
5 [~~forty-nine hundred three-a~~] forty-four hundred six-i of this [~~article~~]
6 chapter.

7 § 4. Paragraph (c) of subdivision 10 of section 4900 of the public
8 health law, as amended by a chapter of the laws of 2022 amending the
9 public health law and the insurance law relating to enhancing coverage
10 and care for medically fragile children, as proposed in legislative
11 bills numbers S.2121-C and A.289-C, is amended to read as follows:

12 (c) a description of practice guidelines and standards used by a
13 utilization review agent in carrying out a determination of medical
14 necessity, which in the case of medically fragile children shall incor-
15 porate the standards required by section [~~forty-nine hundred three-a~~]
16 forty-four hundred six-i of this [~~article~~] chapter;

17 § 5. Subdivision 11 of section 4900 of the public health law as added
18 by a chapter of the laws of 2022 amending the public health law and the
19 insurance law relating to enhancing coverage and care for medically
20 fragile children, as proposed in legislative bills numbers S.2121-C and
21 A.289-C is REPEALED.

22 § 6. Section 4401 of the public health law is amended by adding a new
23 subdivision 9 to read as follows:

24 9. "Medically fragile child" means an individual who is under twenty-
25 one years of age and has a chronic debilitating condition or conditions,
26 who may or may not be hospitalized or institutionalized, and meets one
27 or more of the following criteria (a) is technologically dependent for
28 life or health sustaining functions, (b) requires a complex medication
29 regimen or medical interventions to maintain or to improve their health
30 status, or (c) is in need of ongoing assessment or intervention to
31 prevent serious deterioration of their health status or medical compli-
32 cations that place their life, health or development at risk. Chronic
33 debilitating conditions include bronchopulmonary dysplasia, cerebral
34 palsy, congenital heart disease, microcephaly, pulmonary hypertension,
35 and muscular dystrophy. The term "medically fragile child" shall also
36 include traumatic brain injury, the nature of which typically requires
37 care in a specialty care center for medically fragile children, even
38 though the child does not have a chronic debilitating condition or also
39 meet one of the three conditions of this subdivision. Notwithstanding
40 the definitions set forth in this subdivision, any patient which has
41 received prior approval from a health maintenance organization for
42 admission to a specialty care facility for medically fragile children
43 shall be considered a medically fragile child at least until discharge
44 from that facility occurs.

45 § 7. Subdivision 1 of section 4902 of the public health law is amended
46 by adding a new paragraph (1) to read as follows:

47 (1) The commissioner, in consultation with the superintendent of
48 financial services, may, as necessary, promulgate by regulation special
49 considerations and processes for utilization review related to medically
50 fragile children. Such regulations may include, at a minimum, consider-
51 ations and processes related to:

52 (i) medically necessary covered services to medically fragile chil-
53 dren;

54 (ii) determinations specific to the needs of medically fragile chil-
55 dren;

56 (iii) stabilization and discharge plans; and

1 (iv) payment for the care of medically fragile children.

2 § 8. Section 4903-a of the public health law is REPEALED.

3 § 9. The public health law is amended by adding a new section 4406-i
4 to read as follows:

5 § 4406-i. Utilization review determinations for medically fragile
6 children. 1. Notwithstanding any inconsistent provision of the health
7 maintenance organization's clinical standards, the health maintenance
8 organization, and any utilization review agent under contract with such
9 health maintenance organization, shall administer and apply the clinical
10 standards (and make determinations of medical necessity) regarding
11 medically fragile children in accordance with the requirements of this
12 section and any regulations with special considerations and processes
13 for utilization review related to medically fragile children.

14 2. Health maintenance organizations shall undertake the following with
15 respect to medically fragile children, and as applicable, shall ensure
16 that their contracted utilization review agents undertake the following
17 with respect to medically fragile children:

18 (a) Consider as medically necessary all covered services that assist
19 medically fragile children in reaching their maximum functional capaci-
20 ty, taking into account the appropriate functional capacities of chil-
21 dren of the same age. In the case of Medicaid managed care, health main-
22 tenance organizations shall continue to cover services until that child
23 achieves age-appropriate functional capacity.

24 (b) Shall not base determinations solely upon review standards appli-
25 cable to (or designed for) adults to medically fragile children. Deter-
26 minations shall take into consideration the specific needs of the child
27 and the circumstances pertaining to their growth and development.

28 (c) Accommodate unusual stabilization and prolonged discharge plans
29 for medically fragile children, as appropriate. Health maintenance
30 organizations, and as applicable their contracted utilization review
31 agents, shall consider when developing and approving discharge plans
32 issues including sudden reversals of condition or progress which may
33 make discharge decisions uncertain or more prolonged than for other
34 children or adults.

35 (d) It is the health maintenance organization's network management
36 responsibility to identify an available provider of needed covered
37 services, as determined through a person centered care plan, to effect
38 safe discharge from a hospital or other facility. In the case of Medi-
39 caid managed care, payments shall not be denied to a discharging hospi-
40 tal or other facility due to lack of an available post-discharge provid-
41 er as long as they have worked with the utilization review agent to
42 identify an appropriate provider.

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

48 (f) Health maintenance organizations shall contract with providers
49 with demonstrated expertise in caring for the medically fragile chil-
50 dren. Network providers shall refer to appropriate network community
51 and facility providers for covered services to meet the needs of the
52 child or seek authorization from the health maintenance organization for
53 out-of-network providers when participating providers cannot meet the
54 child's needs.

55 3. In the case of Medicaid managed care, when rendering or arranging
56 for care or payment, both the provider and the health maintenance organ-

1 ization shall inquire of, and shall consider the desires of the family
2 of a medically fragile child including, but not limited to, the avail-
3 ability and capacity of the family, the need for the family to simul-
4 taneously care for the family's other children, and the need for parents
5 to continue employment.

6 4. In the case of Medicaid managed care, the health maintenance organ-
7 ization shall pay for all days of inpatient hospital care at a partic-
8 ipating specialty care center for medically fragile children when the
9 health maintenance organization and the specialty care facility mutually
10 agree the patient is ready for discharge from the specialty care center
11 to the patient's home but requires specialized home services that are
12 not available or in place, or the patient is awaiting discharge to a
13 residential health care facility when no residential health care facili-
14 ty bed is available given the specialized needs of the medically fragile
15 child. In the case of Medicaid managed care, the health maintenance
16 organization shall pay, for all days of residential health care facility
17 care at a participating specialty care center for medically fragile
18 children when the health maintenance organization and the specialty care
19 facility mutually agree the patient is ready for discharge from the
20 specialty care center to the patient's home but requires specialized
21 home services that are not available or in place. In the case of Medi-
22 caid managed care, such requirements shall apply until the health plan
23 can identify and secure admission to an alternate provider rendering the
24 necessary level of services. The specialty care center shall facilitate
25 placement efforts to effectuate the discharge.

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

33 § 10. Subdivision 9 of section 4403 of the public health law, as added
34 by a chapter of the laws of 2022 amending the public health law and the
35 insurance law relating to enhancing coverage and care for medically
36 fragile children, as proposed in legislative bills numbers S.2121-C and
37 A.289-C, is amended to read as follows:

38 9. A health maintenance organization shall have procedures for cover-
39 age of medically fragile children including~~[, but not limited to,]~~ those
40 necessary to implement section [~~forty-nine hundred three-a~~] forty-four
41 hundred six-i of this article.

42 § 11. Subparagraphs (D) and (E) of paragraph 1 of subsection (b) of
43 section 4900 of the insurance law, subparagraph (D) as amended and
44 subparagraph (E) as added by a chapter of the laws of 2022 amending the
45 public health law and the insurance law relating to enhancing coverage
46 and care for medically fragile children, as proposed in legislative
47 bills numbers S.2121-C and A.289-C, are amended to read as follows:

48 (D) for purposes of a determination involving treatment for a mental
49 health condition:

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

54 (ii) a health care professional other than a licensed physician who
55 specializes in behavioral health and has experience in the delivery of
56 mental health courses of treatment and, where applicable, possesses a

1 current and valid non-restricted license, certificate, or registration
2 or, where no provision for a license, certificate or registration
3 exists, is credentialed by the national accrediting body appropriate to
4 the profession; [~~or~~

5 ~~(E) for purposes of a determination involving treatment of a medically~~
6 ~~fragile child;~~

7 ~~(i) a physician who possesses a current and valid non-restricted~~
8 ~~license to practice medicine and who is board certified or board eligi-~~
9 ~~ble in pediatric rehabilitation, pediatric critical care, or neonatolo-~~
10 ~~gy; or~~

11 ~~(ii) a physician who possesses a current and valid non-restricted~~
12 ~~license to practice medicine and is board certified in a pediatric~~
13 ~~subspecialty directly relevant to the patient's medical condition,] and~~

14 § 12. Paragraph 2 of subsection (b) of section 4900 of the insurance
15 law, as amended by a chapter of the laws of 2022 amending the public
16 health law and the insurance law relating to enhancing coverage and care
17 for medically fragile children, as proposed in legislative bills numbers
18 S.2121-C and A.289-C, is amended to read as follows:

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

20 (A) a physician who:

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

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

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

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

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

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

34 (ii) where applicable, is credentialed by the national accrediting
35 body appropriate to the profession in the same profession and same or
36 similar specialty as the health care provider who typically manages the
37 medical condition or disease or provides the health care service or
38 treatment under appeal;

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

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

43 (v) where applicable to such health care professional's scope of prac-
44 tice, is clinically supported by a physician who possesses a current and
45 valid non-restricted license to practice medicine[~~, or~~

46 ~~(C) for purposes of a determination involving treatment of a medically~~
47 ~~fragile child;~~

48 ~~(i) a physician who possesses a current and valid non-restricted~~
49 ~~license to practice medicine and who is board certified or board eligi-~~
50 ~~ble in pediatric rehabilitation, pediatric critical care, or neonatolo-~~
51 ~~gy; or~~

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

55 § 13. Subsection (b-1) of section 4900 of the insurance law, as
56 amended by a chapter of the laws of 2022 amending the public health law

1 and the insurance law relating to enhancing coverage and care for
2 medically fragile children, as proposed in legislative bills numbers
3 S.2121-C and A.289-C, is amended to read as follows:

4 (b-1) "Clinical standards" means those guidelines and standards set
5 forth in the utilization review plan by the utilization review agent
6 whose adverse determination is under appeal or, in the case of medically
7 fragile children those guidelines and standards as required by section
8 [~~forty-nine hundred three-a~~] three thousand two hundred seventeen-j and
9 four thousand three hundred six-i of this [~~article~~] chapter.

10 § 14. Subsection (j) of section 4900 of the insurance law, as amended
11 by a chapter of the laws of 2022 amending the public health law and the
12 insurance law relating to enhancing coverage and care for medically
13 fragile children, as proposed in legislative bills numbers S.2121-C and
14 A.289-C, is amended to read as follows:

15 (j) "Utilization review plan" means: (1) a description of the process
16 for developing the written clinical review criteria; (2) a description
17 of the types of written clinical information which the plan might
18 consider in its clinical review, including [~~but not limited to,~~] a set
19 of specific written clinical review criteria; (3) a description of prac-
20 tice guidelines and standards used by a utilization review agent in
21 carrying out a determination of medical necessity, which, in the case of
22 medically fragile children, shall incorporate the standards required by
23 [~~section forty-nine hundred three-a~~] sections three thousand two hundred
24 seventeen-j and four thousand three hundred six-i of this [~~article~~]
25 chapter; (4) the procedures for scheduled review and evaluation of the
26 written clinical review criteria; and (5) a description of the quali-
27 fications and experience of the health care professionals who developed
28 the criteria, who are responsible for periodic evaluation of the crite-
29 ria and of the health care professionals or others who use the written
30 clinical review criteria in the process of utilization review.

31 § 15. Subsection (k) of section 4900 of the insurance law, as added by
32 a chapter of the laws of 2022 amending the public health and the insur-
33 ance law relating to enhancing coverage and care for medically fragile
34 children, as proposed in legislative bills numbers S. 2121-C and A.
35 289-C, is REPEALED.

36 § 16. Subsection (a) of section 107 of the insurance law is amended by
37 adding a new paragraph 55 to read as follows:

38 (55) "Medically fragile child" means an individual who is under twen-
39 ty-one years of age and has a chronic debilitating condition or condi-
40 tions, who may or may not be hospitalized or institutionalized, and
41 meets one or more of the following criteria: (1) is technologically
42 dependent for life or health sustaining functions; (2) requires a
43 complex medication regimen or medical interventions to maintain or to
44 improve their health status; or (3) is in need of ongoing assessment or
45 intervention to prevent serious deterioration of their health status or
46 medical complications that place their life, health or development at
47 risk. Chronic debilitating conditions include bronchopulmonary dyspla-
48 sia, cerebral palsy, congenital heart disease, microcephaly, pulmonary
49 hypertension, and muscular dystrophy. The term "medically fragile child"
50 shall also include traumatic brain injury, the nature of which typically
51 require care in a specialty care center for medically fragile children,
52 even though the child does not have a chronic debilitating condition or
53 also meet one of the three conditions of this subsection. Notwithstand-
54 ing the definitions set forth in this subsection, any patient which has
55 received prior approval from an insurer for admission to a specialty
56 care facility for medically fragile children shall be considered a

1 medically fragile child at least until discharge from that facility
2 occurs.

3 § 17. Subsection (a) of section 4902 of the insurance law is amended
4 by adding a new paragraph 14 to read as follows:

5 (14) The superintendent, in consultation with the commissioner of
6 health, may, as necessary, promulgate by regulation special consider-
7 ations and processes for utilization review related to medically fragile
8 children. Such regulations may include, at a minimum, considerations and
9 processes related to:

10 (i) medically necessary covered services to medically fragile chil-
11 dren;

12 (ii) determinations specific to the needs of medically fragile chil-
13 dren;

14 (iii) stabilization and discharge plans; and

15 (iv) payment for the care of medically fragile children.

16 § 18. Section 4903-a of the insurance law, as added by a chapter of
17 the laws of 2022 amending the public health and the insurance law relat-
18 ing to enhancing coverage and care for medically fragile children, as
19 proposed in legislative bills numbers S. 2121-C and A. 289-C, is
20 REPEALED.

21 § 19. Section 3217-j of the insurance law, as added by a chapter of
22 the laws of 2022 amending the public health law and the insurance law
23 relating to enhancing coverage and care for medically fragile children,
24 as proposed in legislative bills numbers S.2121-C and A.289-C, is
25 REPEALED and a new section 3217-j is added to read as follows:

26 § 3217-j. Utilization review determinations for medically fragile
27 children. (a) Notwithstanding any inconsistent provision of the insur-
28 er's clinical standards, the insurer, and any utilization review agent
29 under contract with such insurer, shall administer and apply the clin-
30 ical standards (and make determinations of medical necessity) regarding
31 medically fragile children in accordance with the requirements of this
32 section and any regulations with special considerations and processes
33 for utilization review related to medically fragile children.

34 (b) Insurers shall undertake the following with respect to medically
35 fragile children, and as applicable, shall ensure that their contracted
36 utilization review agents undertake the following with respect to
37 medically fragile children:

38 (1) Consider as medically necessary all covered services that assist
39 medically fragile children in reaching their maximum functional capaci-
40 ty, taking into account the appropriate functional capacities of chil-
41 dren of the same age.

42 (2) Shall not base determinations solely upon review standards appli-
43 cable to (or designed for) adults to medically fragile children. Deter-
44 minations shall take into consideration the specific needs of the child
45 and the circumstances pertaining to their growth and development.

46 (3) Accommodate unusual stabilization and prolonged discharge plans
47 for medically fragile children, as appropriate. Insurers, and as appli-
48 cable their contracted utilization review agents, shall consider when
49 developing and approving discharge plans issues including sudden
50 reversals of condition or progress, which may make discharge decisions
51 uncertain or more prolonged than for other children or adults.

52 (4) It is the insurer's network management responsibility under a
53 managed care health insurance contract as defined in subsection (c) of
54 section four thousand eight hundred one of this chapter to identify an
55 available provider of needed covered services, as determined through a

1 person centered care plan, to effect safe discharge from a hospital or
2 other facility.

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

8 (6) Insurers shall contract with providers with demonstrated expertise
9 in caring for the medically fragile children. Network providers shall
10 refer to appropriate network community and facility providers for
11 covered services to meet the needs of the child or seek authorization
12 from the insurer for out-of-network providers when participating provid-
13 ers cannot meet the child's needs.

14 (c) In the event an insurer enters into a participation agreement with
15 a specialty care center for medically fragile children in this state,
16 the requirements of this section shall apply to that participation
17 agreement and to all claims submitted to, or payments made by, any other
18 insurers, health maintenance organizations or payors making payment to
19 the specialty care center pursuant to the provisions of that partic-
20 ipation agreement.

21 § 20. Section 4306-i of the insurance law, as added by a chapter of
22 the laws of 2022 amending the public health law and the insurance law
23 relating to enhancing coverage and care for medically fragile children,
24 as proposed in legislative bills numbers S.2121-C and A.289-C, is
25 amended to read as follows:

26 § 4306-i. Coverage for medically fragile children. A corporation that
27 is subject to the provisions of this article shall have procedures for
28 coverage of medically fragile children [~~including, but not limited to,~~
29 ~~those necessary to implement section four thousand nine hundred three-a~~]
30 consistent with section three thousand two hundred seventeen-j of this
31 chapter.

32 § 21. Section 17 of a chapter of the laws of 2022 amending the public
33 health law and the insurance law relating to enhancing coverage and care
34 for medically fragile children, as proposed in legislative bills numbers
35 S.2121-C and A.289-C, is amended to read as follows:

36 § 17. This act shall take effect on the first day of [~~January~~] Septem-
37 ber after it becomes a law.

38 § 22. Sections three, four, six, seven, nine, ten, thirteen, fourteen,
39 sixteen, seventeen, nineteen and twenty of this act shall not apply to
40 any qualified health plans in the individual and small group market on
41 and after the date, if any, when the federal department of health and
42 human services determines in writing that such provisions constitute
43 state-required benefits in addition to essential health benefits, pursu-
44 ant to the federal Affordable Care Act and regulations promulgated ther-
45 eunder.

46 § 23. This act shall take effect immediately; provided that sections
47 one through twenty of this act shall take effect on the same date and in
48 the same manner as a chapter of the laws of 2022 amending the public
49 health law and the insurance law relating to enhancing coverage and care
50 for medically fragile children, as proposed in legislative bills numbers
51 S.2121-C and A.289-C, takes effect.