STATE OF NEW YORK

6704

2023-2024 Regular Sessions

IN ASSEMBLY

May 5, 2023

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:

Section 1. Subparagraphs (A), (C) and (E) of paragraph 35 of subsection (i) of section 3216 of the insurance law, as added by section 8 of subpart A of part BB of chapter 57 of the laws of 2019, items (i) and (ii) of subparagraph (A) as amended by chapter 818 of the laws of 2022, are amended to read as follows:

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

(i) where the policy provides coverage for inpatient hospital care, such policy shall include 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 in a crisis stabilization center licensed pursuant to section 36.01 of the mental hygiene law, 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, such policy shall include benefits for outpatient care provided by a psychiatrist or psychologist licensed to practice in this state, a licensed clinical social worker within the lawful scope of his or her practice, who is licensed pursuant to article one hundred fifty-four of the educa-

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

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tion law, a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law, a nurse practitioner licensed to practice in this state, or a professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**. Nothing herein shall be construed to modify or expand the scope of practice of a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Further, nothing herein shall be construed to create a new mandated health benefit.

(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 (l) 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, item (i) of subparagraph (A) as amended by section 14 of part AA of chapter 57 of the laws of 2021, item (ii) of subparagraph (A) as amended by chapter 818 of the laws of 2022, 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 in a crisis stabilization center licensed pursuant to section 36.01 of the mental hygiene law 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, or a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law, or a licensed clinical social worker within the lawful scope of his or her practice, who is licensed pursuant to article one hundred fifty-four of the education law, a nurse practitioner licensed to practice in this state, or a professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**. Nothing herein shall be construed to modify or expand the scope of practice of a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Further, nothing herein shall be construed to create a new mandated health benefit.

(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 gener-

ally recognized independent standard of current medical practice such as the international classification of diseases.

§ 3. Paragraphs 2 and 4, and subparagraph (C) of paragraph 6 of subsection (g) of section 4303 of the insurance law, paragraph 2 as amended by chapter 818 of the laws of 2022, and paragraph 4 and subparagraph (C) of paragraph 6 as added by section 23 of subpart A of part BB of chapter 57 of the laws of 2019, are amended the read as follows:

(2) where the contract provides coverage for physician services such contract shall provide benefits for outpatient care provided by a psychiatrist or psychologist licensed to practice in this state, or a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law, or a licensed clinical social worker within the lawful scope of his or her practice, who is licensed pursuant to article one hundred fifty-four of the education law, a nurse practitioner licensed to practice in this state, or professional corporation or university faculty practice corporation thereof**, including outpatient drug coverage**. Nothing herein shall be construed to modify or expand the scope of practice of a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst licensed pursuant to article one hundred sixty-three of the education law. Further, nothing herein shall be construed to create a new mandated health benefit.

(4) Coverage under this subsection 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 contract**. 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**.

(C) "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 contract; and

§ 4. This act shall take effect immediately and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date.