STATE OF NEW YORK

1319

2023-2024 Regular Sessions

IN SENATE

January 11, 2023

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

Section 1. Subparagraphs (iv) and (v) of paragraph (a) of subdivision 2 of section 4900 of the public health law, subparagraph (iv) as amended and subparagraph (v) as added 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, are amended to read as follows:

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

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

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

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

§ 4. Paragraph (c) of subdivision 10 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:

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

§ 5. Subdivision 11 of section 4900 of the public health law as added 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 REPEALED.

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

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

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

(l) The commissioner, in consultation with the superintendent of financial services, may, as necessary, promulgate by regulation special considerations and processes for utilization review related to medically fragile children. Such regulations may include, at a minimum, considerations and processes related to:

(i) medically necessary covered services to medically fragile children;

(ii) determinations specific to the needs of medically fragile children;

(iii) stabilization and discharge plans; and

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

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

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

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

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

(a) Consider as medically necessary all covered services that assist medically fragile children in reaching their maximum functional capacity, taking into account the appropriate functional capacities of children of the same age. In the case of Medicaid managed care, health maintenance organizations shall continue to cover services until that child achieves age-appropriate functional capacity.

(b) Shall not base determinations solely upon review standards applicable to (or designed for) adults to medically fragile children. Determinations shall take into consideration the specific needs of the child and the circumstances pertaining to their growth and development.

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

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

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

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

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

ization shall inquire of, and shall consider the desires of the family of a medically fragile child including, but not limited to, the availability and capacity of the family, the need for the family to simultaneously care for the family's other children, and the need for parents to continue employment.

4. In the case of Medicaid managed care, the health maintenance organization shall pay for all days of inpatient hospital care at a participating specialty care center for medically fragile children when the health maintenance organization and the specialty care facility mutually agree the patient is ready for discharge from the specialty care center to the patient's home but requires specialized home services that are not available or in place, or the patient is awaiting discharge to a residential health care facility when no residential health care facility bed is available given the specialized needs of the medically fragile child. In the case of Medicaid managed care, the health maintenance organization shall pay, for all days of residential health care facility care at a participating specialty care center for medically fragile children when the health maintenance organization and the specialty care facility mutually agree the patient is ready for discharge from the specialty care center to the patient's home but requires specialized home services that are not available or in place. In the case of Medicaid managed care, such requirements shall apply until the health plan can identify and secure admission to an alternate provider rendering the necessary level of services. The specialty care center shall facilitate placement efforts to effectuate the discharge.

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

§ 10. Subdivision 9 of section 4403 of the public health law, as added 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:

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

§ 11. Subparagraphs (D) and (E) of paragraph 1 of subsection (b) of section 4900 of the insurance law, subparagraph (D) as amended and subparagraph (E) as added 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, are amended to read as follows:

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

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

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

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

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

~~(i) 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~~

~~(ii) 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

§ 12. Paragraph 2 of subsection (b) of section 4900 of the insurance 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:

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

(A) a physician who:

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

(ii) 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;

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

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

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

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

(ii) 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;

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

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

(v) 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~~

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

~~(i) 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~~

~~(ii) 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~~].

§ 13. Subsection (b-1) of section 4900 of the insurance 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-1) "Clinical standards" means those guidelines and standards set forth in the utilization review plan by the utilization review agent whose adverse determination is under appeal or, in the case of medically fragile children those guidelines and standards as required by section [~~forty-nine hundred three-a~~] three thousand two hundred seventeen-j and four thousand three hundred six-i of this [~~article~~] chapter.

§ 14. Subsection (j) of section 4900 of the insurance 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:

(j) "Utilization review plan" means: (1) a description of the process for developing the written clinical review criteria; (2) a description of the types of written clinical information which the plan might consider in its clinical review, including [~~but not limited to,~~] a set of specific written clinical review criteria; (3) a description of practice guidelines and standards used by a utilization review agent in carrying out a determination of medical necessity, which, in the case of medically fragile children, shall incorporate the standards required by [~~section forty-nine hundred three-a~~] sections three thousand two hundred seventeen-j and four thousand three hundred six-i of this [~~article~~] chapter; (4) the procedures for scheduled review and evaluation of the written clinical review criteria; and (5) a description of the qualifications and experience of the health care professionals who developed the criteria, who are responsible for periodic evaluation of the criteria and of the health care professionals or others who use the written clinical review criteria in the process of utilization review.

§ 15. Subsection (k) of section 4900 of the insurance law, as added by a chapter of the laws of 2022 amending the public health 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 REPEALED.

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

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

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

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

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

(i) medically necessary covered services to medically fragile children;

(ii) determinations specific to the needs of medically fragile children;

(iii) stabilization and discharge plans; and

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

§ 18. Section 4903-a of the insurance law, as added by a chapter of the laws of 2022 amending the public health 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 REPEALED.

§ 19. Section 3217-j of the insurance law, as added 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 REPEALED and a new section 3217-j is added to read as follows:

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

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

(1) Consider as medically necessary all covered services that assist medically fragile children in reaching their maximum functional capacity, taking into account the appropriate functional capacities of children of the same age.

(2) Shall not base determinations solely upon review standards applicable to (or designed for) adults to medically fragile children. Determinations shall take into consideration the specific needs of the child and the circumstances pertaining to their growth and development.

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

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

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

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

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

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

§ 20. Section 4306-i of the insurance law, as added 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:

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

§ 21. Section 17 of 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:

§ 17. This act shall take effect on the first day of [~~January~~] September after it becomes a law.

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

§ 23. This act shall take effect immediately; provided that sections one through twenty of this act shall take effect on the same date and in the same manner as 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, takes effect.