

STATE OF NEW YORK

3524

2023-2024 Regular Sessions

IN SENATE

January 31, 2023

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

AN ACT to amend the public health law, in relation to including mental health services, substance use disorder treatment services and recovery support services to network adequacy requirements; and directs the superintendent of financial services and the commissioner of health to review data and update regulations regarding health maintenance organizations and network adequacy requirements

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

Section 1. Short title. This act shall be known and may be cited as the "ensuring access to behavioral health act".

§ 2. Subdivision 3 of section 4401 of the public health law, as added by chapter 938 of the laws of 1976, is amended to read as follows:

3. "Comprehensive health services" means all those health services which an enrolled population might require in order to be maintained in good health, and shall include, but shall not be limited to, physician services (including consultant and referral services), in-patient and out-patient hospital services, mental health services, substance use disorder treatment services, recovery support services, diagnostic laboratory and therapeutic and diagnostic radiologic services, and emergency and preventive health services. Such term may be further defined by agreement with enrolled populations providing additional benefits necessary, desirable or appropriate to meet their health care needs.

§ 3. Paragraph (a) of subdivision 5 of section 4403 of the public health law, as amended by chapter 586 of the laws of 1998, is amended to read as follows:

(a) The commissioner, at the time of initial licensure, at least every three years thereafter, and upon application for expansion of service area, shall ensure that the health maintenance organization maintains a network of health care providers adequate to meet the comprehensive

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

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1 health needs, including mental health services, substance use disorder
2 treatment services, including but not limited to opioid treatment
3 programs and medication assisted treatment options, and recovery support
4 services, of its enrollees and to provide an appropriate choice of
5 providers sufficient to provide the services covered under its
6 enrollee's contracts by determining that (i) there are a sufficient
7 number of geographically accessible participating providers, including
8 all opioid treatment programs in all counties of the state and in the
9 city of New York and all authorized buprenorphine prescribers in all
10 counties of the state and in the city of New York; (ii) there are oppor-
11 tunities to select from at least three primary care providers pursuant
12 to travel and distance time standards, providing that such standards
13 account for the conditions of accessing providers in rural areas; (iii)
14 there are sufficient providers in each area of specialty practice to
15 meet the needs of the enrollment population; (iv) there is no exclusion
16 of any appropriately licensed type of provider as a class; and (v)
17 contracts entered into with health care providers neither transfer
18 financial risk to providers, in a manner inconsistent with the
19 provisions of paragraph (c) of subdivision one of this section, nor
20 penalize providers for unfavorable case mix so as to jeopardize the
21 quality of or enrollees' appropriate access to medically necessary
22 services; provided, however, that payment at less than prevailing fee
23 for service rates or capitation shall not be deemed or presumed prima
24 facie to jeopardize quality or access.

25 § 4. The superintendent of financial services, in consultation with
26 the office of addiction services and supports and the office of mental
27 health, shall review data gathered through the mental health and
28 substance use disorder parity compliance program required under 11 NYCRR
29 230.3 for every insurer, corporation organized pursuant to article 43 of
30 the insurance law, municipal cooperative health benefit plan certified
31 pursuant to article 47 of the insurance law, health maintenance organ-
32 ization certified pursuant to article 44 of the public health law, or
33 student health plan established or maintained pursuant to section 1124
34 of the insurance law. After such review and review of national best
35 practices for network adequacy for behavioral health, the superintendent
36 of financial services shall update any regulations or guidance regarding
37 network adequacy for all mental health and substance use disorder
38 services. Such updated regulations or guidance shall be based on
39 national best practices and shall include quantitative measures for
40 geographic distance and/or travel time, appointment wait time and
41 provider/enrollee ratios and any other appropriate metric determined by
42 the superintendent to be necessary to ensure access to needed mental
43 health and substance use disorder services. Such regulations shall
44 include a review of the appropriate use of telephonic and telehealth
45 services to supplement in-person services, as well as the adequacy of
46 the network to meet the needs of specific covered groups, including but
47 not limited to, low-income persons, persons with limited English profi-
48 ciency or illiteracy, diverse cultural or ethnic backgrounds, LGBTQ,
49 persons with disabilities, and children and adults with serious, chronic
50 or complex health conditions, including co-occurring mental health
51 conditions and substance use disorders.

52 § 5. The commissioner of health, in consultation with the independent
53 substance use disorder and mental health ombudsman, shall review and
54 update network adequacy requirements for mental health and substance use
55 disorder services covered by managed care plans as part of the periodic
56 reviews of plans network adequacy required by subdivision 11-a of

1 section 4403-f of the public health law. Such review and updated regu-
2 lations or guidance shall include quantitative measures for geographic
3 distance and/or travel time, appointment wait time and provider/enrollee
4 ratios and any other appropriate metric determined by the commissioner
5 of health to ensure access to mental health and substance use disorder
6 services. Such updated regulations shall be based on national best prac-
7 tices and shall include a review of the appropriate use of telephonic
8 and telehealth services to supplement in-person services, as well as the
9 adequacy of the network to meet the needs of specific covered groups,
10 including but not limited to, low-income persons, persons with limited
11 English proficiency or illiteracy, diverse cultural or ethnic back-
12 grounds, LGBTQ, persons with disabilities, and children and adults with
13 serious, chronic or complex health conditions, including co-occurring
14 mental health conditions and substance use disorders.

15 § 6. This act shall take effect immediately.