

# 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.