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

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

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

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

§ 6. This act shall take effect immediately.