

STATE OF NEW YORK

6688--A

2023-2024 Regular Sessions

IN SENATE

May 5, 2023

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 serious mental health conditions

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

1 Section 1. Item (ii) of subparagraph (A) and subparagraphs (C) and (E)
2 of paragraph 35 of subsection (i) of section 3216 of the insurance law,
3 item (ii) of subparagraph (A) as amended by chapter 62 of the laws of
4 2023 and subparagraphs (C) and (E) as added by section 8 of subpart A of
5 part BB of chapter 57 of the laws of 2019, are amended to read as
6 follows:
7 (ii) where the policy provides coverage for physician services, such
8 policy shall include benefits for outpatient care provided by a psychia-
9 trist or psychologist licensed to practice in this state, a licensed
10 clinical social worker within the lawful scope of his or her practice,
11 who is licensed pursuant to article one hundred fifty-four of the educa-
12 tion law, a mental health counselor, marriage and family therapist, or
13 psychoanalyst licensed pursuant to article one hundred sixty-three of
14 the education law, a nurse practitioner licensed to practice in this
15 state, or a professional corporation or university faculty practice
16 corporation thereof, including outpatient drug coverage. Nothing herein
17 shall be construed to modify or expand the scope of practice of a mental
18 health counselor, marriage and family therapist, or psychoanalyst
19 licensed pursuant to article one hundred sixty-three of the education
20 law. Further, nothing herein shall be construed to create a new mandated
21 health benefit.

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

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1 (C) Coverage under this paragraph shall not apply financial require-
2 ments or treatment limitations to mental health benefits, including
3 outpatient drug coverage, that are more restrictive than the predominant
4 financial requirements and treatment limitations applied to substantial-
5 ly all medical and surgical benefits covered by the policy. Coverage
6 under this paragraph, including drug coverage, shall not apply any of
7 the following to a drug or drugs prescribed for a serious mental health
8 condition:

9 (i) a fail-first or step therapy protocol, as defined by section four
10 thousand nine hundred of this chapter; or

11 (ii) a prior authorization requirement, as established pursuant to
12 subsection (h) of section four thousand nine hundred three of this chap-
13 ter.

14 (E) For purposes of this paragraph:

15 (i) "financial requirement" means deductible, copayments, coinsurance
16 and out-of-pocket expenses;

17 (ii) "predominant" means that a financial requirement or treatment
18 limitation is the most common or frequent of such type of limit or
19 requirement;

20 (iii) "treatment limitation" means limits on the frequency of treat-
21 ment, number of visits, days of coverage, or other similar limits on the
22 scope or duration of treatment and includes nonquantitative treatment
23 limitations such as: medical management standards limiting or excluding
24 benefits based on medical necessity, or based on whether the treatment
25 is experimental or investigational; formulary design for prescription
26 drugs; network tier design; standards for provider admission to partic-
27 ipate in a network, including reimbursement rates; methods for determin-
28 ing usual, customary, and reasonable charges; fail-first or step therapy
29 protocols; exclusions based on failure to complete a course of treat-
30 ment; and restrictions based on geographic location, facility type,
31 provider specialty, and other criteria that limit the scope or duration
32 of benefits for services provided under the policy; ~~and~~

33 (iv) "mental health condition" means any mental health disorder as
34 defined in the most recent edition of the diagnostic and statistical
35 manual of mental disorders or the most recent edition of another gener-
36 ally recognized independent standard of current medical practice such as
37 the international classification of diseases[-]; and

38 (v) "serious mental health condition" means the following mental
39 health disorders as defined in the most recent edition of the diagnostic
40 and statistical manual of mental disorders:

41 (I) bipolar disorders (hypomanic, manic, depressive, and mixed);

42 (II) depression in childhood and adolescence;

43 (III) major depressive disorders (single episode or recurrent);

44 (IV) obsessive-compulsive disorders;

45 (V) paranoid and other psychotic disorders;

46 (VI) schizoaffective disorders (bipolar or depressive); and

47 (VII) schizophrenia.

48 § 1-a. Items (vi) and (vii) of subparagraph (E) of paragraph 35 of
49 subsection (i) of section 3216 of the insurance law, as added by section
50 2 of subpart A of part II of chapter 57 of the laws of 2023, are amend
51 and a new item (viii) is added to read as follows:

52 (vi) "critical time intervention services" means services rendered by
53 a provider licensed under article thirty-one of the mental hygiene law
54 that provides evidence-based, therapeutic interventions that include
55 intensive outreach, engagement, and care coordination services that are
56 provided to an insured before the insured is discharged from inpatient

1 care in a hospital as defined by subdivision ten of section 1.03 of the
2 mental hygiene law or the emergency department of a hospital licensed
3 pursuant to article twenty-eight of the public health law and continue
4 after discharge until the insured is stabilized; ~~[and]~~

5 (vii) "residential facility" means crisis residence facilities and
6 community residences for eating disorder integrated treatment programs
7 licensed pursuant to article thirty-one of the mental hygiene law~~[-]~~;
8 and

9 (viii) "serious mental health condition" means the following mental
10 health disorders as defined in the most recent edition of the diagnostic
11 and statistical manual of mental disorders:

12 (I) bipolar disorders (hypomanic, manic, depressive, and mixed);

13 (II) depression in childhood and adolescence;

14 (III) major depressive disorders (single episode or recurrent);

15 (IV) obsessive-compulsive disorders;

16 (V) paranoid and other psychotic disorders;

17 (VI) schizoaffective disorders (bipolar or depressive); and

18 (VII) schizophrenia.

19 § 2. Item (ii) of subparagraph (A) and subparagraphs (C) and (E) of
20 paragraph 5 of subsection (1) of section 3221 of the insurance law, item
21 (ii) of subparagraph (A) as amended by chapter 62 of the laws of 2023
22 and subparagraphs (C) and (E) as added by section 14 of subpart A of
23 part BB of chapter 57 of the laws of 2019, are amended to read as
24 follows:

25 (ii) where the policy provides coverage for physician services, it
26 shall include benefits for outpatient care provided by a psychiatrist or
27 psychologist licensed to practice in this state, or a mental health
28 counselor, marriage and family therapist, or psychoanalyst licensed
29 pursuant to article one hundred sixty-three of the education law, or a
30 licensed clinical social worker within the lawful scope of his or her
31 practice, who is licensed pursuant to article one hundred fifty-four of
32 the education law, a nurse practitioner licensed to practice in this
33 state, or a professional corporation or university faculty practice
34 corporation thereof, including outpatient drug coverage. Nothing herein
35 shall be construed to modify or expand the scope of practice of a mental
36 health counselor, marriage and family therapist, or psychoanalyst
37 licensed pursuant to article one hundred sixty-three of the education
38 law. Further, nothing herein shall be construed to create a new mandated
39 health benefit.

40 (C) Coverage under this paragraph shall not apply financial require-
41 ments or treatment limitations to mental health benefits, including
42 outpatient drug coverage, that are more restrictive than the predominant
43 financial requirements and treatment limitations applied to substantial-
44 ly all medical and surgical benefits covered by the policy. Coverage
45 under this paragraph, including drug coverage, shall not apply any of
46 the following to a drug or drugs prescribed for a serious mental health
47 condition:

48 (i) a fail-first or step therapy protocol, as defined by section four
49 thousand nine hundred of this chapter; or

50 (ii) a prior authorization requirement, as established pursuant to
51 subsection (h) of section four thousand nine hundred three of this chap-
52 ter.

53 (E) For purposes of this paragraph:

54 (i) "financial requirement" means deductible, copayments, coinsurance
55 and out-of-pocket expenses;

1 (ii) "predominant" means that a financial requirement or treatment
2 limitation is the most common or frequent of such type of limit or
3 requirement;

4 (iii) "treatment limitation" means limits on the frequency of treat-
5 ment, number of visits, days of coverage, or other similar limits on the
6 scope or duration of treatment and includes nonquantitative treatment
7 limitations such as: medical management standards limiting or excluding
8 benefits based on medical necessity, or based on whether the treatment
9 is experimental or investigational; formulary design for prescription
10 drugs; network tier design; standards for provider admission to partic-
11 ipate in a network, including reimbursement rates; methods for determin-
12 ing usual, customary, and reasonable charges; fail-first or step therapy
13 protocols; exclusions based on failure to complete a course of treat-
14 ment; and restrictions based on geographic location, facility type,
15 provider specialty, and other criteria that limit the scope or duration
16 of benefits for services provided under the policy; [and]

17 (iv) "mental health condition" means any mental health disorder as
18 defined in the most recent edition of the diagnostic and statistical
19 manual of mental disorders or the most recent edition of another gener-
20 ally recognized independent standard of current medical practice such as
21 the international classification of diseases[-]; and

22 (v) "serious mental health condition" means the following mental
23 health disorders as defined in the most recent edition of the diagnostic
24 and statistical manual of mental disorders:

25 (I) bipolar disorders (hypomanic, manic, depressive, and mixed);

26 (II) depression in childhood and adolescence;

27 (III) major depressive disorders (single episode or recurrent);

28 (IV) obsessive-compulsive disorders;

29 (V) paranoid and other psychotic disorders;

30 (VI) schizoaffective disorders (bipolar or depressive); and

31 (VII) schizophrenia.

32 § 2-a. Items (vi) and (vii) of subparagraph (E) of paragraph 5 of
33 subsection (1) of section 3221 of the insurance law, as added by section
34 6 of subpart A of part II of chapter 57 of the laws of 2023, are amended
35 and a new item (viii) is added to read as follows:

36 (vi) "critical time intervention services" means services rendered by
37 a provider licensed under article thirty-one of the mental hygiene law
38 that provides evidence-based, therapeutic interventions that include
39 intensive outreach, engagement, and care coordination services that are
40 provided to an insured before the insured is discharged from inpatient
41 care in a hospital as defined by subdivision ten of section 1.03 of the
42 mental hygiene law or the emergency department of a hospital licensed
43 pursuant to article twenty-eight of the public health law and continue
44 after discharge until the insured is stabilized; [and]

45 (vii) "residential facility" means crisis residence facilities and
46 community residences for eating disorder integrated treatment programs
47 licensed pursuant to article thirty-one of the mental hygiene law[-];
48 and

49 (viii) "serious mental health condition" means the following mental
50 health disorders as defined in the most recent edition of the diagnostic
51 and statistical manual of mental disorders:

52 (I) bipolar disorders (hypomanic, manic, depressive, and mixed);

53 (II) depression in childhood and adolescence;

54 (III) major depressive disorders (single episode or recurrent);

55 (IV) obsessive-compulsive disorders;

56 (V) paranoid and other psychotic disorders;

1 (VI) schizoaffective disorders (bipolar or depressive); and
2 (VII) schizophrenia.

3 § 3. Paragraphs 2, 4, and 6 of subsection (g) of section 4303 of the
4 insurance law, paragraph 2 as amended by chapter 62 of the laws of 2023,
5 and paragraphs 4 and 6 as added by section 23 of subpart A of part BB of
6 chapter 57 of the laws of 2019, are amended to read as follows:

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

22 (4) Coverage under this subsection shall not apply financial require-
23 ments or treatment limitations to mental health benefits, including
24 outpatient drug coverage, that are more restrictive than the predominant
25 financial requirements and treatment limitations applied to substantial-
26 ly all medical and surgical benefits covered by the contract. Coverage
27 under this paragraph, including drug coverage, shall not apply any of
28 the following to a drug or drugs prescribed for a serious mental health
29 condition:

30 (i) a fail-first or step therapy protocol, as defined by section four
31 thousand nine hundred of this chapter; or

32 (ii) a prior authorization requirement, as established pursuant to
33 subsection (h) of section four thousand nine hundred three of this chap-
34 ter.

35 (6) For purposes of this subsection:

36 (A) "financial requirement" means deductible, copayments, coinsurance
37 and out-of-pocket expenses;

38 (B) "predominant" means that a financial requirement or treatment
39 limitation is the most common or frequent of such type of limit or
40 requirement;

41 (C) "treatment limitation" means limits on the frequency of treatment,
42 number of visits, days of coverage, or other similar limits on the scope
43 or duration of treatment and includes nonquantitative treatment limita-
44 tions such as: medical management standards limiting or excluding bene-
45 fits based on medical necessity, or based on whether the treatment is
46 experimental or investigational; formulary design for prescription
47 drugs; network tier design; standards for provider admission to partic-
48 ipate in a network, including reimbursement rates; methods for determin-
49 ing usual, customary, and reasonable charges; fail-first or step therapy
50 protocols; exclusions based on failure to complete a course of treat-
51 ment; and restrictions based on geographic location, facility type,
52 provider specialty, and other criteria that limit the scope or duration
53 of benefits for services provided under the contract; [~~and~~]

54 (D) "mental health condition" means any mental health disorder as
55 defined in the most recent edition of the diagnostic and statistical
56 manual of mental disorders or the most recent edition of another gener-

1 ally recognized independent standard of current medical practice such as
2 the international classification of diseases[-]; and

3 (E) "serious mental health condition" means the following mental
4 health disorders as defined in the most recent edition of the diagnostic
5 and statistical manual of mental disorders:

6 (i) bipolar disorders (hypomanic, manic, depressive, and mixed);

7 (ii) depression in childhood and adolescence;

8 (iii) major depressive disorders (single episode or recurrent);

9 (iv) obsessive-compulsive disorders;

10 (v) paranoid and other psychotic disorders;

11 (vi) schizoaffective disorders (bipolar or depressive); and

12 (vii) schizophrenia.

13 § 3-a. Subparagraphs (F) and (G) of paragraph 6 of subsection (g) of
14 section 4303 of the insurance law, as added by section 10 of subpart A
15 of part II of chapter 57 of the laws of 2023, are amended and a new
16 subparagraph (H) is added to read as follows:

17 (F) "critical time intervention services" means services rendered by a
18 provider licensed under article thirty-one of the mental hygiene law
19 that provides evidence-based, therapeutic interventions that include
20 intensive outreach, engagement, and care coordination services that are
21 provided to an insured before the insured is discharged from inpatient
22 care in a hospital as defined by subdivision ten of section 1.03 of the
23 mental hygiene law or the emergency department of a hospital licensed
24 pursuant to article twenty-eight of the public health law and continue
25 after discharge until the insured is stabilized; ~~and~~

26 (G) "residential facility" means crisis residence facilities and
27 community residences for eating disorder integrated treatment programs
28 licensed pursuant to article thirty-one of the mental hygiene law[-];
29 and

30 (H) "serious mental health condition" means the following mental
31 health disorders as defined in the most recent edition of the diagnostic
32 and statistical manual of mental disorders:

33 (i) bipolar disorders (hypomanic, manic, depressive, and mixed);

34 (ii) depression in childhood and adolescence;

35 (iii) major depressive disorders (single episode or recurrent);

36 (iv) obsessive-compulsive disorders;

37 (v) paranoid and other psychotic disorders;

38 (vi) schizoaffective disorders (bipolar or depressive); and

39 (vii) schizophrenia.

40 § 4. This act shall take effect on the first of January next succeed-
41 ing the date on which it shall have become a law and shall apply to all
42 policies and contracts issued, renewed, modified, altered or amended on
43 or after such date; provided however, that if subpart A of part II of
44 chapter 57 of the laws of 2023 shall not have taken effect on or before
45 such date then sections one-a, two-a and three-a of this act shall take
46 effect on the same date and in the same manner as such subpart of such
47 part of such chapter of the laws of 2023 takes effect.