

STATE OF NEW YORK

1876

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. L. ROSENTHAL, LAVINE, THIELE, SANTABARBARA, STECK
-- Multi-Sponsored by -- M. of A. COOK -- read once and referred to
the Committee on Insurance

AN ACT to amend the insurance law, in relation to requiring certain
health insurance coverage for lymphedema

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

1 Section 1. Clauses (i) and (ii) of subparagraph (A) of paragraph 20 of
2 subsection (i) of section 3216 of the insurance law, as amended by chap-
3 ter 571 of the laws of 2022, are amended and a new clause (iii) is added
4 to read as follows:

5 (i) all stages of reconstruction of the breast or chest wall on which
6 the mastectomy or partial mastectomy has been performed; [~~and~~]

7 (ii) surgery and reconstruction of the other breast or chest wall to
8 produce a symmetrical appearance;

9 in the manner determined by the attending physician and the patient to
10 be appropriate. Chest wall reconstruction surgery shall include aesthet-
11 ic flat closure as such term is defined by the National Cancer Insti-
12 tute. Such coverage may be subject to annual deductibles and coinsurance
13 provisions as may be deemed appropriate by the superintendent and as are
14 consistent with those established for other benefits within a given
15 policy. Written notice of the availability of such coverage shall be
16 delivered to the policyholder prior to inception of such policy and
17 annually thereafter[~~-~~]; and

18 (iii) prostheses and physical complications of all stages of mastecto-
19 my, including lymphedema;

20 § 2. Subsection (i) of section 3216 of the insurance law is amended by
21 adding two new paragraphs 39 and 40 to read as follows:

22 (39) Every policy which provides hospital, surgical, medical or major
23 medical coverage shall provide coverage for the differential diagnosis
24 and treatment of lymphedema, both primary and secondary lymphedema.

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

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1 Such coverage shall include, in addition to benefits for a course of
2 manual lymph drainage whose frequency and duration is determined by the
3 treating physician or therapist based on medical necessity and not based
4 on physical therapy and rehabilitation standards, benefits for equip-
5 ment, supplies, devices, complex decongestive therapy, and out-patient
6 self-management training and education for the treatment of lymphedema,
7 if prescribed by a health care professional legally authorized to
8 prescribe or provide such items under title eight of the education law.
9 Lymphedema therapy administered under this section shall be administered
10 only by a therapist certified to perform lymphedema treatment by the
11 Lymphology Association of North America (LANA) or certified in accord-
12 ance with standards equivalent to the certification standards of LANA.
13 Such equipment, supplies or devices shall include, but not be limited
14 to, bandages, compression garments, pads, orthotic shoes and devices,
15 with replacements when required to maintain compressive function or to
16 accommodate changes in the patient's dimensions. Coverage shall be
17 provided for follow-up treatments when medically required or to period-
18 ically validate home techniques, to monitor progress against the written
19 treatment plan and to modify the treatment plan as required. No individ-
20 ual, other than a licensed physician or surgeon competent to evaluate
21 the specific clinical issues involved in the care requested, may deny
22 requests for authorization of health care services pursuant to this
23 section.

24 (A) A policy which is a managed health care product may require such
25 health care professional be a member of such managed health care plan's
26 provider network, provided that such network includes sufficient health
27 care professionals who are qualified by specific education, experience
28 and credentials to provide the covered benefits described in this para-
29 graph.

30 (B) No insurer, corporation, or health maintenance organization shall
31 impose upon any person receiving benefits pursuant to this paragraph any
32 copayment, fee, policy year or calendar year, or durational benefit
33 limitation or maximum for benefits or services that is not equally
34 imposed upon all individuals in the same benefit category.

35 (C) This paragraph shall not apply to short-term travel, accident
36 only, limited or specified disease, or individual conversion policies or
37 contracts, nor to policies or contracts designed for issuance to persons
38 eligible for coverage under Title XVIII of the Social Security Act,
39 known as Medicare, or any other similar coverage under state or federal
40 governmental plans.

41 (D) For purposes of this paragraph, a "managed care product" shall
42 mean a policy which requires that medical or other health care services
43 covered under the policy, other than emergency care services, be
44 provided by, or pursuant to a referral from a primary care provider, and
45 that services provided pursuant to such a referral be rendered by a
46 health care provider participating in the insurer's managed care provid-
47 er network. In addition, a managed care product shall also mean the
48 in-network portion of a contract which requires that medical or other
49 health care services covered under the contract, other than emergency
50 care services, be provided by, or pursuant to a referral from a primary
51 care provider, and that services provided pursuant to such a referral be
52 rendered by a health care provider participating in the insurer's
53 managed care provider network, in order for the insured to be entitled
54 to the maximum reimbursement under the contract.

55 (40) Patients undergoing any surgery or radiotherapy procedure shall
56 be provided information on the risk of lymphedema associated with that

procedure, and the potential post-procedure symptoms of lymphedema. Informed consent agreements for all surgeries and radiation therapies shall include information on the risk of lymphedema associated with the alternative procedures.

§ 3. Clauses (i) and (ii) of subparagraph (A) of paragraph 10 of subsection (k) of section 3221 of the insurance law, as amended by chapter 571 of the laws of 2022, are amended and a new clause (iii) is added to read as follows:

(i) all stages of reconstruction of the breast or chest wall on which the mastectomy or partial mastectomy has been performed; ~~[and]~~

(ii) surgery and reconstruction of the other breast or chest wall to produce a symmetrical appearance;

in the manner determined by the attending physician and the patient to be appropriate. Chest wall reconstruction surgery shall include aesthetic flat closure as such term is defined by the National Cancer Institute. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate by the superintendent and as are consistent with those established for other benefits within a given policy. Written notice of the availability of such coverage shall be delivered to the policyholder prior to inception of such policy and annually thereafter~~[-]~~; and

(iii) prostheses and physical complications of all stages of mastectomy, including lymphedema;

§ 4. Subsection (k) of section 3221 of the insurance law is amended by adding two new paragraphs 23 and 24 to read as follows:

(23) Every group policy issued or issued for delivery in this state which provides hospital, surgical, medical or major medical coverage shall provide coverage for the differential diagnosis and treatment of lymphedema, both primary and secondary lymphedema. Such coverage shall include, in addition to benefits for a course of manual lymph drainage whose frequency and duration is determined by the treating physician or therapist based on medical necessity and not based on physical therapy and rehabilitation standards, benefits for equipment, supplies, devices, complex decongestive therapy, and out-patient self-management training and education for the treatment of lymphedema, if prescribed by a health care professional legally authorized to prescribe or provide such items under title eight of the education law. Lymphedema therapy administered under this section shall be administered only by a therapist certified to perform lymphedema treatment by the Lymphology Association of North America (LANA) or certified in accordance with standards equivalent to the certification standards of LANA. Such equipment, supplies or devices shall include, but not be limited to, bandages, compression garments, pads, orthotic shoes and devices, with replacements when required to maintain compressive function or to accommodate changes in the patient's dimensions. Coverage shall be provided for follow-up treatments when medically required or to periodically validate home techniques, to monitor progress against the written treatment plan and to modify the treatment plan as required. No individual, other than a licensed physician or surgeon competent to evaluate the specific clinical issues involved in the care requested, may deny requests for authorization of health care services pursuant to this section.

(A) A policy which is a managed health care product may require such health care professional be a member of such managed health care plan's provider network, provided that such network includes sufficient health care professionals who are qualified by specific education, experience

1 and credentials to provide the covered benefits described in this para-
2 graph.

3 (B) No insurer, corporation, or health maintenance organization shall
4 impose upon any person receiving benefits pursuant to this paragraph any
5 copayment, fee, policy year or calendar year, or durational benefit
6 limitation or maximum for benefits or services that is not equally
7 imposed upon all individuals in the same benefit category.

8 (C) This paragraph shall not apply to short-term travel, accident
9 only, limited or specified disease, or individual conversion policies or
10 contracts, nor to policies or contracts designed for issuance to persons
11 eligible for coverage under Title XVIII of the Social Security Act,
12 known as Medicare, or any other similar coverage under state or federal
13 governmental plans.

14 (D) For purposes of this paragraph, a "managed care product" shall
15 mean a policy which requires that medical or other health care services
16 covered under the policy, other than emergency care services, be
17 provided by, or pursuant to a referral from a primary care provider, and
18 that services provided pursuant to such a referral be rendered by a
19 health care provider participating in the insurer's managed care provid-
20 er network. In addition, a managed care product shall also mean the
21 in-network portion of a contract which requires that medical or other
22 health care services covered under the contract, other than emergency
23 care services, be provided by, or pursuant to a referral from a primary
24 care provider, and that services provided pursuant to such a referral be
25 rendered by a health care provider participating in the insurer's
26 managed care provider network, in order for the insured to be entitled
27 to the maximum reimbursement under the contract.

28 (24) Patients undergoing any surgery or radiotherapy procedure shall
29 be provided information on the risk of lymphedema associated with that
30 procedure, and the potential post-procedure symptoms of lymphedema.
31 Informed consent agreements for all surgeries and radiation therapies
32 shall include information on the risk of lymphedema associated with the
33 alternative procedures.

34 § 5. Subparagraphs (A) and (B) of paragraph 1 of subsection (x) of
35 section 4303 of the insurance law, as amended by chapter 571 of the laws
36 of 2022, are amended and a new subparagraph (C) is added to read as
37 follows:

38 (A) all stages of reconstruction of the breast or chest wall on which
39 the mastectomy or partial mastectomy has been performed; ~~and~~

40 (B) surgery and reconstruction of the other breast or chest wall to
41 produce a symmetrical appearance; and

42 (C) prostheses and physical complications of all stages of mastectomy,
43 including lymphedema;

44 in the manner determined by the attending physician and the patient to
45 be appropriate. Chest wall reconstruction surgery shall include aesthet-
46 ic flat closure as such term is defined by the National Cancer insti-
47 tute. Such coverage may be subject to annual deductibles or coinsurance
48 provisions as may be deemed appropriate by the superintendent and as are
49 consistent with those established for other benefits within a given
50 policy. Written notice of the availability of such coverage shall be
51 delivered to the group remitting agent or group contract holder prior to
52 the inception of such contract and annually thereafter.

53 § 6. Section 4303 of the insurance law is amended by adding two new
54 subsections (uu) and (vv) to read as follows:

55 (uu) Every contract issued by a hospital service corporation or health
56 service corporation which provides hospital, surgical, medical or major

1 medical coverage shall provide coverage for the differential diagnosis
2 and treatment of lymphedema, both primary and secondary lymphedema.
3 Such coverage shall include, in addition to benefits for a course of
4 manual lymph drainage whose frequency and duration is determined by the
5 treating physician or therapist based on medical necessity and not based
6 on physical therapy and rehabilitation standards, benefits for equip-
7 ment, supplies, devices, complex decongestive therapy, and out-patient
8 self-management training and education for the treatment of lymphedema,
9 if prescribed by a health care professional legally authorized to
10 prescribe or provide such items under title eight of the education law.
11 Lymphedema therapy administered under this section shall be administered
12 only by a therapist certified to perform lymphedema treatment by the
13 Lymphology Association of North America (LANA) or certified in accord-
14 ance with standards equivalent to the certification standards of LANA.
15 Such equipment, supplies or devices shall include, but not be limited
16 to, bandages, compression garments, pads, orthotic shoes and devices,
17 with replacements when required to maintain compressive function or to
18 accommodate changes in the patient's dimensions. Coverage shall be
19 provided for follow-up treatments when medically required or to period-
20 ically validate home techniques, to monitor progress against the written
21 treatment plan and to modify the treatment plan as required. No individ-
22 ual, other than a licensed physician or surgeon competent to evaluate
23 the specific clinical issues involved in the care requested, may deny
24 requests for authorization of health care services pursuant to this
25 section.

26 (1) A policy which is a managed health care product may require such
27 health care professional be a member of such managed health care plan's
28 provider network, provided that such network includes sufficient health
29 care professionals who are qualified by specific education, experience
30 and credentials to provide the covered benefits described in this
31 subsection.

32 (2) No insurer, corporation, or health maintenance organization shall
33 impose upon any person receiving benefits pursuant to this subsection
34 any copayment, fee, policy year or calendar year, or durational benefit
35 limitation or maximum for benefits or services that is not equally
36 imposed upon all individuals in the same benefit category.

37 (3) This subsection shall not apply to short-term travel, accident
38 only, limited or specified disease, or individual conversion policies or
39 contracts, nor to policies or contracts designed for issuance to persons
40 eligible for coverage under Title XVIII of the Social Security Act,
41 known as Medicare, or any other similar coverage under state or federal
42 governmental plans.

43 (4) For purposes of this subsection, a "managed care product" shall
44 mean a policy which requires that medical or other health care services
45 covered under the policy, other than emergency care services, be
46 provided by, or pursuant to a referral from a primary care provider, and
47 that services provided pursuant to such a referral be rendered by a
48 health care provider participating in the insurer's managed care provid-
49 er network. In addition, a managed care product shall also mean the
50 in-network portion of a contract which requires that medical or other
51 health care services covered under the contract, other than emergency
52 care services, be provided by, or pursuant to a referral from a primary
53 care provider, and that services provided pursuant to such a referral be
54 rendered by a health care provider participating in the insurer's
55 managed care provider network, in order for the insured to be entitled
56 to the maximum reimbursement under the contract.

1 (vv) Patients undergoing any surgery or radiotherapy procedure shall
2 be provided information on the risk of lymphedema associated with that
3 procedure, and the potential post-procedure symptoms of lymphedema.
4 Informed consent agreements for all surgeries and radiation therapies
5 shall include information on the risk of lymphedema associated with the
6 alternative procedures.

7 § 7. This act shall take effect on the first of January next succeed-
8 ing the date on which it shall have become a law and shall apply to all
9 insurance policies, contracts and plans issued, renewed, modified,
10 altered or amended on or after such effective date.