

# STATE OF NEW YORK

7522

2023-2024 Regular Sessions

## IN ASSEMBLY

May 25, 2023

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Insurance

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.

22 (C) Coverage under this paragraph 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

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

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1 financial requirements and treatment limitations applied to substantial-  
2 ly all medical and surgical benefits covered by the policy. Coverage  
3 under this paragraph, including drug coverage, shall not apply any of  
4 the following to a drug or drugs prescribed for a serious mental health  
5 condition:

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

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

11 (E) For purposes of this paragraph:

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

14 (ii) "predominant" means that a financial requirement or treatment  
15 limitation is the most common or frequent of such type of limit or  
16 requirement;

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

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

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

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

39 (II) depression in childhood and adolescence;

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

41 (IV) obsessive-compulsive disorders;

42 (V) paranoid and other psychotic disorders;

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

44 (VII) schizophrenia.

45 § 1-a. Items (vi) and (vii) of subparagraph (E) of paragraph 35 of  
46 subsection (i) of section 3216 of the insurance law, as added by section  
47 2 of subpart A of part II of chapter 57 of the laws of 2023, are amend  
48 and a new item (viii) is added to read as follows:

49 (vi) "critical time intervention services" means services rendered by  
50 a provider licensed under article thirty-one of the mental hygiene law  
51 that provides evidence-based, therapeutic interventions that include  
52 intensive outreach, engagement, and care coordination services that are  
53 provided to an insured before the insured is discharged from inpatient  
54 care in a hospital as defined by subdivision ten of section 1.03 of the  
55 mental hygiene law or the emergency department of a hospital licensed

1 pursuant to article twenty-eight of the public health law and continue  
2 after discharge until the insured is stabilized; [~~and~~]

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

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

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

11 (II) depression in childhood and adolescence;

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

13 (IV) obsessive-compulsive disorders;

14 (V) paranoid and other psychotic disorders;

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

16 (VII) schizophrenia.

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

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

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

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

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

51 (E) For purposes of this paragraph:

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

54 (ii) "predominant" means that a financial requirement or treatment  
55 limitation is the most common or frequent of such type of limit or  
56 requirement;

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

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

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

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

23 (II) depression in childhood and adolescence;

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

25 (IV) obsessive-compulsive disorders;

26 (V) paranoid and other psychotic disorders;

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

28 (VII) schizophrenia.

29 § 2-a. Items (vi) and (vii) of subparagraph (E) of paragraph 5 of  
30 subsection (1) of section 3221 of the insurance law, as added by section  
31 6 of subpart A of part II of chapter 57 of the laws of 2023, are amended  
32 and a new item (viii) is added to read as follows:

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

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

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

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

50 (II) depression in childhood and adolescence;

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

52 (IV) obsessive-compulsive disorders;

53 (V) paranoid and other psychotic disorders;

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

55 (VII) schizophrenia.

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

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

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

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

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

33 (6) For purposes of this subsection:

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

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

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

52 (D) "mental health condition" means any mental health disorder as  
53 defined in the most recent edition of the diagnostic and statistical  
54 manual of mental disorders or the most recent edition of another gener-  
55 ally recognized independent standard of current medical practice such as  
56 the international classification of diseases[-]; and

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

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

5 (ii) depression in childhood and adolescence;

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

7 (iv) obsessive-compulsive disorders;

8 (v) paranoid and other psychotic disorders;

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

10 (vii) schizophrenia.

11 § 3-a. Subparagraphs (F) and (G) of paragraph 6 of subsection (g) of  
12 section 4303 of the insurance law, as added by section 10 of subpart A  
13 of part II of chapter 57 of the laws of 2023, are amended and a new  
14 subparagraph (H) is added to read as follows:

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

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

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

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

32 (ii) depression in childhood and adolescence;

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

34 (iv) obsessive-compulsive disorders;

35 (v) paranoid and other psychotic disorders;

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

37 (vii) schizophrenia.

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