

# STATE OF NEW YORK

4529

2023-2024 Regular Sessions

## IN SENATE

February 9, 2023

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to including clinically necessary treatment for certain inpatient coverage

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

1 Section 1. Paragraph 30 of subsection (i) of section 3216 of the  
2 insurance law, as amended by section 5 of subpart A of part BB of chap-  
3 ter 57 of the laws of 2019, is amended to read as follows:

4 (30)(A) Every policy that provides hospital, major medical or similar  
5 comprehensive coverage shall provide inpatient coverage for the diagno-  
6 sis and treatment of substance use disorder, including detoxification  
7 and rehabilitation services. Such inpatient coverage [~~shall~~] may include  
8 [~~unlimited medically~~] clinically necessary treatment for substance use  
9 disorder treatment services provided in residential settings at the  
10 discretion of the service provider. Further, such inpatient coverage  
11 shall not apply financial requirements or treatment limitations, includ-  
12 ing utilization review requirements, to inpatient substance use disorder  
13 benefits that are more restrictive than the predominant financial  
14 requirements and treatment limitations applied to substantially all  
15 medical and surgical benefits covered by the policy.

16 (B) Coverage provided under this paragraph may be limited to facili-  
17 ties in New York state that are licensed, certified or otherwise author-  
18 ized by the office of [~~alcoholism and substance abuse~~] addiction  
19 services and supports and, in other states, to those which are accred-  
20 ited by the joint commission as alcoholism, substance abuse, or chemical  
21 dependence treatment programs and are similarly licensed, certified or  
22 otherwise authorized in the state in which the facility is located.

23 (C) Coverage provided under this paragraph may be subject to annual  
24 deductibles and co-insurance as deemed appropriate by the superintendent

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

LBD04901-01-3

1 and that are consistent with those imposed on other benefits within a  
2 given policy.

3 (D) This subparagraph shall apply to facilities in this state that are  
4 licensed, certified or otherwise authorized by the office of [~~alcoholism~~  
5 ~~and substance abuse~~] addiction services and supports that are partic-  
6 ipating in the insurer's provider network. Coverage provided under this  
7 paragraph shall not be subject to preauthorization. Coverage provided  
8 under this paragraph shall also not be subject to concurrent utilization  
9 review during the first twenty-eight days of the inpatient admission  
10 provided that the facility notifies the insurer of both the admission  
11 and the initial treatment plan within two business days of the admis-  
12 sion. The facility shall perform daily clinical review of the patient,  
13 including periodic consultation with the insurer at or just prior to the  
14 fourteenth day of treatment to ensure that the facility is using the  
15 evidence-based and peer reviewed clinical review tool utilized by the  
16 insurer which is designated by the office of [~~alcoholism and substance~~  
17 ~~abuse~~] addiction services and supports and appropriate to the age of the  
18 patient, to ensure that the inpatient treatment is [~~medically~~] clin-  
19 ically necessary for the patient. Prior to discharge, the facility shall  
20 provide the patient and the insurer with a written discharge plan which  
21 shall describe arrangements for additional services needed following  
22 discharge from the inpatient facility as determined using the evidence-  
23 based and peer-reviewed clinical review tool utilized by the insurer  
24 which is designated by the office of [~~alcoholism and substance abuse~~]  
25 addiction services and supports. Prior to discharge, the facility shall  
26 indicate to the insurer whether services included in the discharge plan  
27 are secured or determined to be reasonably available. Any utilization  
28 review of treatment provided under this subparagraph may include a  
29 review of all services provided during such inpatient treatment, includ-  
30 ing all services provided during the first twenty-eight days of such  
31 inpatient treatment. Provided, however, [~~the~~] such utilization review  
32 shall only be imposed to the extent the insurer's requirements are  
33 permitted under the federal Paul Wellstone and Pete Domenici Mental  
34 Health Parity and Addiction Equity Act of 2008 and applicable regu-  
35 lations (29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26; 45 C.F.R. Parts 146,  
36 147). The insurer [~~shall~~] may only deny coverage for any portion of the  
37 initial twenty-eight day inpatient treatment on the basis that such  
38 treatment was not [~~medically~~] clinically necessary if such inpatient  
39 treatment was [~~contrary to~~] not indicated by the evidence-based and peer  
40 reviewed clinical review tool utilized by the insurer which is desig-  
41 nated by the office of [~~alcoholism and substance abuse~~] addiction  
42 services and supports. Any denial must specifically identify: (i) how  
43 such treatment was not indicated by the office of addiction services and  
44 supports designated clinical review tool; and (ii) how the policy  
45 applied the office of addiction services and supports designated tool to  
46 the outpatient substance use disorder care in a manner comparable to and  
47 no more stringent than the policy's application of its clinical review  
48 tool for outpatient medical and surgical benefits covered by the policy.  
49 Any concurrent or retrospective review imposed by the plan, both as  
50 written and as applied, must be consistent with the federal Paul Well-  
51 stone and Pete Domenici Mental Health Parity and Addiction Equity Act of  
52 2008 and applicable regulations (29 U.S.C. § 1185a; 42 U.S.C. § 300gg-  
53 26; 45 C.F.R. Parts 146, 147). An insured shall not have any financial  
54 obligation to the facility for any treatment under this subparagraph  
55 other than any copayment, coinsurance, or deductible otherwise required  
56 under the policy.

1 (E) An insurer shall make available to any insured, prospective  
2 insured, or in-network provider, upon request, the criteria for  
3 ~~medical~~ clinical necessity determinations under the policy with  
4 respect to inpatient substance use disorder benefits.

5 (F) For purposes of this paragraph:

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

8 (ii) "predominant" means that a financial requirement or treatment  
9 limitation is the most common or frequent of such type of limit or  
10 requirement;

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

24 (iv) "substance use disorder" shall have the meaning set forth in the  
25 most recent edition of the diagnostic and statistical manual of mental  
26 disorders or the most recent edition of another generally recognized  
27 independent standard of current medical practice, such as the interna-  
28 tional classification of diseases~~[-]~~; and

29 (v) "clinical necessity" means both an individual's medical needs and  
30 any social determinants of health that will promote such individual's  
31 stability following discharge from treatment.

32 (G) An insurer shall provide coverage under this paragraph, at a mini-  
33 mum, consistent with the federal Paul Wellstone and Pete Domenici Mental  
34 Health Parity and Addiction Equity Act of 2008 (29 U.S.C. § 1185a).

35 § 2. This act shall take effect immediately.