

# STATE OF NEW YORK

8604

2025-2026 Regular Sessions

## IN ASSEMBLY

May 22, 2025

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the insurance law, in relation to supporting medically fragile children who require community-based and home health services

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

1 Section 1. Section 4406-i of the public health law, as added by chap-  
2 ter 170 of the laws of 2023, is amended to read as follows:

3 § 4406-i. Utilization review determinations for medically fragile  
4 children. 1. Notwithstanding any inconsistent provision of the health  
5 maintenance organization's clinical standards, the health maintenance  
6 organization, and any utilization review agent under contract with such  
7 health maintenance organization, shall administer and apply the clinical  
8 standards (and make determinations of medical necessity) for inpatient,  
9 outpatient and community-based services regarding medically fragile  
10 children in accordance with the requirements of this section and any  
11 regulations with special considerations and processes for utilization  
12 review related to medically fragile children.

13 2. Health maintenance organizations shall undertake the following with  
14 respect to medically fragile children, and as applicable, shall ensure  
15 that their contracted utilization review agents undertake the following  
16 with respect to medically fragile children:

17 (a) Consider as medically necessary all covered services that assist  
18 medically fragile children in reaching their maximum functional capaci-  
19 ty, taking into account the appropriate functional capacities of chil-  
20 dren of the same age. In the case of community-based long-term services  
21 and supports, those shall include but not be limited to skilled nursing,  
22 home-based private duty nursing, personal care services, consumer  
23 directed personal assistance program services, home health aide, phys-  
24 ical therapy, occupational therapy, speech therapy, and feeding therapy.

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

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1 In the case of Medicaid managed care, health maintenance organizations  
2 shall continue to cover services until that child achieves age-appropri-  
3 ate functional capacity.

4 (b) Shall not base determinations solely upon review standards appli-  
5 cable to (or designed for) adults to medically fragile children. Deter-  
6 minations shall take into consideration the specific needs of the child  
7 and the circumstances pertaining to their growth and development. The  
8 determinations shall consider the level of care required for a medically  
9 fragile child, including twenty-four hour, seven-day per week and/or  
10 institutional level of care and determinations shall be made on a case-  
11 by-case basis taking into account the particular needs of the child and  
12 family.

13 (c) Accommodate unusual stabilization and prolonged discharge plans  
14 for medically fragile children, as appropriate. Health maintenance  
15 organizations, and as applicable their contracted utilization review  
16 agents, shall consider when developing and approving discharge plans  
17 issues including sudden reversals of condition or progress which may  
18 make discharge decisions uncertain or more prolonged than for other  
19 children or adults.

20 (c-1) In the case of community-based long term care services for  
21 medically fragile children, the health maintenance organization's deter-  
22 mination additionally shall specify the level of care and supports that  
23 shall be in place in order to safely and adequately provide care for a  
24 medically fragile child in the home, and consider the child's long term  
25 care needs, not just what is required to address the immediate situ-  
26 ation.

27 (d) It is the health maintenance organization's network management  
28 responsibility to identify an available provider of needed covered  
29 services, as determined through a person centered care plan, to effect  
30 safe discharge from a hospital or other facility. In the case of Medi-  
31 caid managed care, payments shall not be denied to a discharging hospi-  
32 tal or other facility due to lack of an available post-discharge provid-  
33 er as long as they have worked with the utilization review agent to  
34 identify an appropriate provider.

35 (e) This section does not limit any other rights the medically fragile  
36 child may have, including the right to appeal the denial of out of  
37 network coverage at in-network cost sharing levels where an appropriate  
38 in-network provider is not available pursuant to subdivision one-b of  
39 section forty-nine hundred four of this chapter.

40 (f) Health maintenance organizations shall contract with providers  
41 with demonstrated expertise in caring for the medically fragile chil-  
42 dren. Network providers shall refer to appropriate network community  
43 and facility providers for covered services to meet the needs of the  
44 child or seek authorization from the health maintenance organization for  
45 out-of-network providers when participating providers cannot meet the  
46 child's needs.

47 3. In the case of Medicaid managed care, when rendering or arranging  
48 for care or payment, both the provider and the health maintenance organ-  
49 ization shall inquire of, and shall consider the desires of the family  
50 of a medically fragile child including, but not limited to, the avail-  
51 ability and capacity of the family, the need for the family to simul-  
52 taneously care for the family's other children, and the need for parents  
53 to continue employment.

54 4. In the case of Medicaid managed care, the health maintenance organ-  
55 ization shall pay for all days of inpatient hospital care at a partic-  
56 ipating specialty care center for medically fragile children when the

1 health maintenance organization and the specialty care facility mutually  
2 agree the patient is ready for discharge from the specialty care center  
3 to the patient's home but requires specialized home services that are  
4 not available or in place, or the patient is awaiting discharge to a  
5 residential health care facility when no residential health care facili-  
6 ty bed is available given the specialized needs of the medically fragile  
7 child. In the case of Medicaid managed care, the health maintenance  
8 organization shall pay, for all days of residential health care facility  
9 care at a participating specialty care center for medically fragile  
10 children when the health maintenance organization and the specialty care  
11 facility mutually agree the patient is ready for discharge from the  
12 specialty care center to the patient's home but requires specialized  
13 home services that are not available or in place. In the case of Medi-  
14 caid managed care, such requirements shall apply until the health plan  
15 can identify and secure admission to an alternate provider rendering the  
16 necessary level of services. The specialty care center shall facilitate  
17 placement efforts to effectuate the discharge.

18 5. In the event a health maintenance organization enters into a  
19 participation agreement with a specialty care center for medically frag-  
20 ile children in this state, the requirements of this section shall apply  
21 to such participation agreement and to all claims submitted to, or  
22 payments made by, any other health maintenance organizations, insurers  
23 or payors making payment to the specialty care center pursuant to the  
24 provisions of that participation agreement.

25 § 2. The public health law is amended by adding a new section 4406-j  
26 to read as follows:

27 § 4406-j. Home and community-based services for medically fragile  
28 children. 1. Private duty nursing. (a) Notwithstanding any other  
29 provision in this article, medical necessity reviews shall be prohibited  
30 for private duty nursing hours prescribed for private duty nursing  
31 services that includes: tracheostomy, respiratory support, suctioning, a  
32 nasogastric feeding tube, gastrostomy feeding tube, central lines, or  
33 total parenteral nutrition.

34 (b) Private duty nursing authorization shall be determined by consid-  
35 ering an institutional level of care that that would otherwise be needed and  
36 shall be individualized based on the assessment of the particular child,  
37 consistent with section forty-four hundred six-i of this article,  
38 reviewed on a case by case basis with consideration to skilled care  
39 needs, inclusive of tracheostomy, respiratory support, nasogastric feed-  
40 ing tube, gastrostomy feeding tube, central lines, or total parenteral  
41 nutrition.

42 (c) Informal care by family members shall be voluntary and cannot be  
43 assumed or required when determining authorization of private duty nurs-  
44 ing services.

45 2. Home health services. (a) Medicaid managed care organizations shall  
46 reimburse registered nurses for completing processes to recertify  
47 services.

48 (b) If a child meets the level of care criteria based upon the  
49 medically fragile child subgroup of the children's home and community  
50 based services waiver and is approved under such subgroup for such waiv-  
51 er, provided the Medicaid managed care plans and fee for services, Medi-  
52 caid shall not deny, reduce, suspend or discontinue home and community  
53 based waiver services, unless such services are subsequently deemed  
54 medically unnecessary by the prescribing physician, and dependent on  
55 continuing federal financial participation.

1 (c) Where a provider can demonstrate that appeals of denials for home  
2 health care services have been upheld by seventy percent or more over  
3 the past twelve months, the Medicaid managed care plan shall continue  
4 covering the services pending completion of the appeals process.

5 (d) In order to ensure appropriate transitions of care, home health  
6 services shall be continued for no less than ninety days where home  
7 health services are deemed to no longer be medically necessary or appro-  
8 priate.

9 (e) Telehealth and remote patient monitoring for children who meet  
10 medically fragile criteria when prescribed by a physician shall be reim-  
11 bursable services.

12 § 3. The public health law is amended by adding a new section 4406-k  
13 to read as follows:

14 § 4406-k. Fair hearings involving services for medically fragile chil-  
15 dren. Parents and caregivers of medically fragile children shall be  
16 given an option to appear virtually or telephonically for any fair hear-  
17 ing involving a medically fragile child.

18 § 4. Section 3217-j of the insurance law, as added by chapter 170 of  
19 the laws of 2023, is amended to read as follows:

20 § 3217-j. Utilization review determinations for medically fragile  
21 children. (a) Notwithstanding any inconsistent provision of the insur-  
22 er's clinical standards, the insurer, and any utilization review agent  
23 under contract with such insurer, shall administer and apply the clin-  
24 ical standards (and make determinations of medical necessity) for inpa-  
25 tient, outpatient and community-based services regarding medically frag-  
26 ile children in accordance with the requirements of this section and any  
27 regulations with special considerations and processes for utilization  
28 review related to medically fragile children.

29 (b) Insurers shall undertake the following with respect to medically  
30 fragile children, and as applicable, shall ensure that their contracted  
31 utilization review agents undertake the following with respect to  
32 medically fragile children:

33 (1) Consider as medically necessary all covered services that assist  
34 medically fragile children in reaching their maximum functional capaci-  
35 ty, taking into account the appropriate functional capacities of chil-  
36 dren of the same age. In the case of community-based long-term services  
37 and supports, those shall include but not be limited to home-based  
38 private duty nursing, personal care services, consumer directed personal  
39 assistance program services, home health aide, physical therapy, occupa-  
40 tional therapy, speech therapy, and feeding therapy.

41 (2) Shall not base determinations solely upon review standards appli-  
42 cable to (or designed for) adults to medically fragile children. Deter-  
43 minations shall take into consideration the specific needs of the child  
44 and the circumstances pertaining to their growth and development. The  
45 determinations also shall consider the level of care required for a  
46 medically fragile child, including twenty-four hour, seven-day per week  
47 and/or institutional level of care and determinations shall be made on a  
48 case-by-case basis taking into account the particular needs of the child  
49 and family.

50 (3) Accommodate unusual stabilization and prolonged discharge plans  
51 for medically fragile children, as appropriate. Insurers, and as appli-  
52 cable their contracted utilization review agents, shall consider when  
53 developing and approving discharge plans issues including sudden  
54 reversals of condition or progress, which may make discharge decisions  
55 uncertain or more prolonged than for other children or adults.

1 (4) In the case of community-based long-term care services for  
2 medically fragile children, the health maintenance organization's deter-  
3 mination additionally shall specify the level of care and supports that  
4 shall be in place in order to safely and adequately provide care for a  
5 medically fragile child in the home, and consider the child's long term  
6 care needs, not just what is required to address the immediate situ-  
7 ation.

8 (5) It is the insurer's network management responsibility under a  
9 managed care health insurance contract as defined in subsection (c) of  
10 section four thousand eight hundred one of this chapter to identify an  
11 available provider of needed covered services, as determined through a  
12 person centered care plan, to effect safe discharge from a hospital or  
13 other facility.

14 [~~(5)~~] (6) This section does not limit any other rights a medically  
15 fragile child may have, including the right to appeal the denial of out  
16 of network coverage at in-network cost sharing levels where an appropri-  
17 ate in-network provider is not available pursuant to subsection [~~a-two~~]  
18 (a-two) of section four thousand nine hundred four of this chapter.

19 [~~(6)~~] (7) Insurers shall contract with providers with demonstrated  
20 expertise in caring for the medically fragile children. Network provid-  
21 ers shall refer to appropriate network community and facility providers  
22 for covered services to meet the needs of the child or seek authori-  
23 zation from the insurer for out-of-network providers when participating  
24 providers cannot meet the child's needs.

25 (c) In the event an insurer enters into a participation agreement with  
26 a specialty care center for medically fragile children in this state,  
27 the requirements of this section shall apply to that participation  
28 agreement and to all claims submitted to, or payments made by, any other  
29 insurers, health maintenance organizations or payors making payment to  
30 the specialty care center or provider of community-based long-term care  
31 for medically fragile children pursuant to the provisions of that  
32 participation agreement.

33 § 5. Sections one and four of this act shall not apply to any quali-  
34 fied health plans in the individual and small group market on and after  
35 the date, if any, when the federal department of health and human  
36 services determines in writing that such provisions constitute state-re-  
37 quired benefits in addition to essential health benefits, pursuant to  
38 the federal Affordable Care Act and regulations promulgated thereunder.

39 § 6. This act shall take effect on the first day of January after it  
40 shall have become a law.