



7/22/22

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

VIA EMAIL: legislative.secretary@exec.ny.gov

Re: S2121-C (Rivera) /A289-C (Gottfried)

AN ACT to amend the public health law and the insurance law, in relation to enhancing coverage and care for medically fragile children

Dear Governor Hochul,

The New York State Society of Plastic Surgeons, Inc. (NYSSPS), the statewide medical specialty society representing practicing plastic surgeons with a mission of advancing quality care for plastic surgery patients and promoting public policy that protects patient safety, **strongly supports** the enactment of the above referenced legislation.

This legislation, which passed the Senate and Assembly with near unanimous support, amends to the Insurance and Public Health Laws to include important protections with respect to coverage and appeal mechanisms for medically fragile children. The bill establishes a definition of medically fragile child as:

"... means an individual who is under twenty-one years of age and has a chronic debilitating condition or conditions, who may or may not be hospitalized or institutionalized, and meets one or more of the following criteria (a) is technologically dependent for life or health sustaining functions, (b) requires a complex medication regimen or medical interventions to maintain or to improve their health status, or (c) is in need of ongoing assessment or intervention to prevent serious deterioration of their health status or medical complications that place their life, health or development at risk."

Codifying this definition is extremely important as it will provide a clear understanding for insurers, health plans, public health programs and most importantly for families. The legislation cites several examples of chronic debilitating conditions and empowers the Commissioner of Health to issue written guidance that provides further detail on conditions that qualify. As part of this written guidance and listing the type of patient care needs which are deemed to meet this definition, NYSSPS urges the Commissioner to include congenital anomalies that our members treat among others: cleft lip and palate, facial clefts, craniofacial microsomia, and craniosynostosis.

One of the most important provisions of the bill requires a health plan reviewer for an internal appeal or external appeal to be a physician with expertise in pediatric rehabilitation, pediatric critical care, neonatology, or pediatric subspecialty directly relevant to the medically fragile child's condition. Furthermore, the legislation requires the clinical standards used by utilization review agents to make medical necessity determinations must consider the special needs and accommodations of this population including "... health care services that are necessary to promote normal growth and development and prevent, diagnose, treat, ameliorate or palliate the effects of a physical, mental, behavioral, genetic, or congenital condition, injury or disability." This includes accommodation for "unusual stabilization and prolonged discharge plans."

Our members treat medically fragile children with congenital anomalies, such as cleft lip and palate, facial clefts, craniofacial microsomia, and craniosynostosis, in order to restore normal functioning and/or through reconstructive surgery that are lifesaving as well as important for quality of life. According to the New York State Department of Health's Bureau of Environmental and Occupational Epidemiology, 1 in 38 babies in New York State are born with a congenital anomaly as compared to 1 in 33 babies nationally according to the Centers for Disease Control and Prevention. The American Society of Plastic Surgeons released data for 2017 that found its members reportedly performed 24,428 reconstructive procedures to treat congenital anomalies with the majority of those procedures performed to repair cleft lip and palate.¹ The data:

Plastic Surgery Procedure	2017	% Change 2017 v. 2016
Birth defect (congenital anomalies)	24,428	5%
Cleft lip and palate	12,653	6%
Craniofacial reconstruction	5,173	13%
Hand defects	4,014	13%

This legislation is critically important to assure insurers and health plans have proper protocols and standards in determining coverage for treatments and services for medically fragile children. Currently, there are 13,200 medically fragile children in New York State under the age of 21 with an estimated projection the population will grow by 5 percent per year as they live longer thanks to new developments in treatments and technologies.² As it stands, our members have seen instances where coverage for necessary follow up reconstructive

¹ <https://www.plasticsurgery.org/reconstructive-procedures/congenital-anomalies>

² <http://parenttoparentnys.org/images/uploads/pdfs/St-Marys-Population-Assessment-WP.pdf>

surgeries and therapies are denied as the child continues to grow older and erroneously classified as “dental” or “cosmetic.”

For the above reasons, NYSSPS urges you to sign the above referenced legislation into law.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Aviva Preminger". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping tail.

Beth Aviva Preminger, MD
President, NYSSPS