

Senate Bill 289

By: Senators Moody of the 56th, Thomas of the 54th, Seay of the 34th and Orrock of the 36th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7C of Chapter 4 of Title 49 of the Official Code of Georgia Annotated,
2 relating to therapy services for children with disabilities, so as to add a definition; to revise
3 provisions relating to services and treatment for categorically needy and medically fragile
4 children; to revise provisions relating to requirements relating to administrative prior
5 approval for services and appeals; to provide for related matters; to repeal conflicting laws;
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 7C of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
10 therapy services for children with disabilities, is amended by revising Code Section
11 49-4-169.1, relating to definitions, as follows:

12 "49-4-169.1.

13 As used in this article, the term:

14 (1) 'Correct or ameliorate' means to improve or maintain a child's health in the best
15 condition possible, compensate for a health problem, prevent it from worsening, prevent
16 the development of additional health problems, or improve or maintain a child's overall
17 health, even if treatment or services will not cure the recipient's overall health.

18 (2) 'Department' means the Department of Community Health.

19 (3) 'Discipline' means occupational therapy, speech therapy, or physical therapy.

20 ~~(3)~~(4) 'EPSDT Program' means the federal Medicaid Early Periodic Screening,
21 Diagnostic, and Treatment Program contained at 42 U.S.C.A. Sections 1396a and 1396d.

22 ~~(4)~~(5) 'Medically necessary services' means services or treatments that are prescribed by
23 a physician or other licensed practitioner, and which, pursuant to the EPSDT Program,
24 diagnose or correct or ameliorate defects, physical and mental illnesses, and health
25 conditions, whether or not such services are in the state plan.

26 (5)(6) 'Therapy services' means occupational therapy, speech therapy, physical therapy,
 27 or other services provided pursuant to the EPSDT Program to an eligible Medicaid
 28 beneficiary 21 years of age or younger and which are recommended as medically
 29 necessary by a physician."

30 SECTION 2.

31 Said article is further amended by revising Code Section 49-4-169.2, relating to services and
 32 treatment for categorically needy and medically fragile children, as follows:

33 "49-4-169.2.

34 (a) All persons who are 21 years of age or younger who are eligible for services under the
 35 EPSDT Program shall receive therapy services in accordance with the provisions of this
 36 article, whether they are categorically needy children enrolled in the low income Medicaid
 37 program or medically fragile children enrolled in the aged, blind, and disabled Medicaid
 38 program.

39 (b) The department and the care management organizations with which it contracts shall
 40 at all times enroll and maintain in their provider network a sufficient number of providers
 41 of therapy services of all three disciplines and of other pediatric services who are actively
 42 filing claims for services to meet the needs of children in the Medicaid EPSDT Program
 43 in all areas of the state.

44 (c) Approval of enrollment of providers by the care management organizations shall be
 45 effective as of the date of application."

46 SECTION 3.

47 Said article is further amended by revising Code Section 49-4-169.3, relating to requirements
 48 relating to administrative prior approval for services and appeals, as follows:

49 "49-4-169.3.

50 (a) The department shall develop and implement for itself, the care management
 51 organizations with which it ~~enters into~~ contracts, and its utilization review vendors
 52 consistent requirements, paperwork, and procedures for utilization review and prior
 53 approval of physical, occupational, or speech language pathologist services prescribed for
 54 children. Approval of services shall be based on the individual needs of the child for whom
 55 approval is sought by a provider, without limitations as to any diagnosis of such child. A
 56 decision by the department, a care management organization, or utilization review vendor
 57 to grant prior approval for therapy services shall be binding on another care management
 58 organization, utilization review vendor, or the department for the duration and frequency
 59 of the approval, so long as the request is by a provider of the same discipline; provided,
 60 further, that a provider of the same discipline, regardless of whether he or she submitted

61 the request for the approved therapy services, may deliver such services to the recipient
62 according to the terms and conditions of the prior approval. Prior approval for therapy
63 services shall be for a period of up to six months with a frequency and duration that is as
64 consistent with the needs of the individual recipient.

65 (b) The department, its utilization review vendors, or the care management organizations
66 with which it contracts shall give notice to affected Medicaid recipients, with a copy to the
67 provider who submitted the prior approval request, of the following information in cases
68 where prior approval is denied:

69 (1) The medical procedure or service for which such entity is refusing to grant prior
70 approval or is reducing the frequency or duration of the therapy service being requested;

71 (2) Any additional information needed from the recipient's medical provider which could
72 change the decision of such entity; and

73 (3) The specific reason used by the entity to determine that the procedure is not
74 medically necessary to the Medicaid recipient, including facts pertinent to the individual
75 case.

76 (c) Notwithstanding any other provision of law, the department, its utilization review
77 vendors, or its care management organizations shall grant prior approval for requests for
78 therapy services when the recipient is eligible for Medicaid services and the services
79 prescribed are medically necessary. Requests for prior approval may not be denied until
80 they have been reviewed by a therapist of the same discipline as that of the services being
81 requested.

82 (d) In cases where prior approval is required under this article, the department, its
83 utilization review vendors, or its care management organizations shall decide requests for
84 therapy services it shall be decided with reasonable promptness, not to exceed 15 business
85 days beginning on the day that the request for prior approval is originally sent to the
86 department, its utilization review vendors, or its care management organizations. The
87 request for prior approval ~~and~~ may not be denied or reduced unless and until it has been
88 evaluated under the EPSDT Program.

89 (e) Prescriptions and prior approval for services shall be for general areas of treatment,
90 treatment goals, or ranges of specific treatments or processing codes. The department, its
91 utilization review vendors, and its care management organizations shall recognize, approve,
92 and use the diagnostic coverage guidelines recognized or used by the Center for Medicare
93 and Medicaid Services of the United States Department of Health and Human Services or
94 any successor thereto. Clinical coverage criteria or guidelines, including the results of
95 standardized tests, specific diagnoses, or restrictions such as location of service and
96 prohibitions on multiple services on the same day or at the same time, shall not be the sole
97 determinant used by the department, its utilization vendors, or its care management

98 organizations to limit either approval of therapy services under the EPSDT Program, the
 99 EPSDT standards themselves, or its definition of medically necessary definition in this
 100 article. Any such restrictions shall be waived under the EPSDT Program or this article if
 101 the prescribed services are medically necessary as defined in this article. Neither the
 102 department, its utilization review vendors, nor its care management organizations shall
 103 deny medically necessary services to a patient in the EPSDT Program due to the lack of
 104 results of a standardized test, either when such test is inappropriate due to the condition of
 105 the patient or when no such standardized test is generally available to evaluate the
 106 condition for which therapy services are requested.

107 (f) For purposes of this article and this Code section, a decision by the department, its
 108 utilization review vendors, or its care management organizations to reduce the duration or
 109 frequency of therapy services requested shall be treated as a denial of approval of services.

110 ~~(f)~~(g) Nothing in this article shall be construed to prohibit the department, its utilization
 111 review vendors, or its care management organizations from performing utilization reviews
 112 of the diagnosis or treatment of a child receiving therapy services pursuant to the EPSDT
 113 Program, the amount, duration, or scope or the actual performance or delivery of such
 114 services by providers, so long as such utilization review is consistent with the provisions
 115 of this article and does not unreasonably deny or unreasonably delay the provision of
 116 medically necessary services to the recipient.

117 ~~(g)~~(h) Nothing in this article shall be deemed to prohibit or restrict the department, its
 118 utilization review vendors, or its care management organizations from denying claims or
 119 prosecuting or pursuing beneficiaries or providers who submit false or fraudulent
 120 prescriptions, forms required to implement this article, or claims for services or whose
 121 eligibility as a beneficiary or a participating provider has been based on intentionally false
 122 information."

123 **SECTION 4.**

124 All laws and parts of laws in conflict with this Act are repealed.