INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Actuarial Services
Mandated Benefits for Biologically-Based Mental Illness
Proposed New Rules: N.J.A.C. 11:4-57

Authorized by: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15e; P.L. 1999, c. 106.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-191

Submit comments by July 18, 2003 to:

Douglas Wheeler, Assistant Commissioner
Department of Banking and Insurance
Legislative and Regulatory Affairs
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

P.L. 1999, c. 106 (the Act) (codified at N.J.S.A. 17:48-6v, 17:48A-7u, 17:48E-35.20, 17B:26-2.1s, 17B:27-461v, 17B:27A-7.5, 17B:27A-19.7, 26:2J-4.20 and 34:11A-15) was approved on May 13, 1999, and became effective on August 13, 1999. The Act requires that all health insurance carrier policies and contracts delivered, issued, executed, or renewed in New Jersey that provide hospital or medical expense benefits or services also provide coverage for biologically-based mental illness under the same terms and conditions as are

applicable to the coverage provided for any other sickness under the policy or contract.

The Department of Banking and Insurance (Department) has received complaints that some carriers have been denying coverage for certain conditions that clearly are covered under the Act's mandate (for example, pervasive developmental disorder and autism). Among the reasons offered in support of those denials have been assertions that the carriers' contracts or policies exclude coverage of physical, speech and occupational therapy for chronic conditions and/or therapy which does not restore a previously possessed ability or function, such as speech. Relying on the first type of exclusion, the chronic condition exclusion, carriers have refused to cover speech, physical and occupational therapy for children with autism and pervasive developmental disorder even though such therapy is a key component of the treatment of such conditions. Carriers have invoked the second type of exclusion, the nonrestorative exclusion, to deny speech therapy to the same children, arguing that because these children did not previously possess the ability to speak such therapy is not required to be covered. The Department believes the use of these exclusions to deny treatment for persons with biologically based mental disorders (BBMI) undermines the intent and purpose of the Act.

The Department is also clarifying in these rules that BBMI parity means that carriers may impose a preauthorization requirement for services used to treat BBMI only if preauthorization is also required when those same services are provided to treat other illnesses. The Department has determined that

preauthorization is a benefit limit because the requirement has been applied to reduce or deny benefits for services that would otherwise be covered simply because the covered person did not get the carrier's approval before the services were rendered. The Department is aware that some carriers are imposing a preauthorization requirement on outpatient treatment for BBMI, such as office visits, while not requiring preauthorization for outpatient treatment for other illnesses. Again, the Department believes that imposition of a preauthorization requirement on services only when used to treat BBMI and not when used to treat other illnesses is contrary to the intent of the Act.

The Department is proposing these new rules for the purpose of implementing the Act by establishing standards regarding carrier preauthorization requirements and exclusions from coverage relative to biologically-based mental illness.

The Department's proposed provisions include the following:

N.J.A.C. 11:4-57.1 sets forth the purpose and scope of these new rules.

N.J.A.C. 11:4-57.2 contains definitions for terms used throughout the subchapter.

N.J.A.C. 11:4-57.3 sets forth standards concerning benefit limits in the treatment of biologically-based mental illness which, as is explained more fully in the rule text below, include preauthorization requirements.

N.J.A.C. 11:4-57.4 establishes standards regarding exclusions of treatment for chronic conditions and of nonrestorative therapy.

N.J.A.C. 11:4-57.5 indicates that noncompliant forms will be deemed withdrawn as of December 31, 2003.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

These proposed new rules will have a positive impact on those individuals, and the families of individuals, with certain biologically-based mental illnesses who may have previously been, or might in the future, be denied treatment or receive limited benefits.

Economic Impact

These proposed new rules will have a favorable impact on those individuals who may have been paying out-of-pocket for treatment of certain biologically-based mental illnesses.

Health carriers who have been denying coverage for such treatment will likely be unfavorably impacted by these proposed new rules because they will be required to provide coverage for treatment of all biologically-based mental illnesses that they had not been providing prior to this clarification of the statutory mandate that they do so.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules mandate that certain benefits for the treatment of biologically-based mental illness be provided pursuant to P.L. 1999, c. 106, and are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that the proposed new rules will result in the generation or loss of jobs.

Regulatory Flexibility Analysis

The Department believes that the proposed new rules will apply to few, if any, "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules apply to small businesses, such small businesses will be health carriers authorized to transact business in this State. The rules may require such small business health carriers to incur additional costs by providing benefits for treatment for biologically-based mental illness that they may not have previously provided. However, these proposed new rules do not independently impose any undue additional costs or burdens on health carriers because the rules merely implement the statutory requirements of P.L. 1999, c. 106.

The proposed new rules provide no different reporting, recordkeeping or compliance requirements based on carrier size. As indicated in the Summary

above, all carriers who write policies and contracts delivered, issued, executed or renewed in New Jersey that provide coverage for hospital or medical expenses or services are also required to provide the coverage mandated by P.L. 1999, c. 106. That legislation provides no different compliance requirements based on carrier size. While some carriers who may have been denying coverage for the treatment mandated by this legislation may experience a negative economic impact, the statutory requirements do not vary based on carrier size, and the Department believes that different reporting or compliance requirements based on carrier size would undermine the intent and purpose of the legislation and would not be appropriate or feasible. The legislative mandate was intended to provide all individuals with certain biologically-based mental illnesses, and who have health insurance coverage, with appropriate treatment and benefits. Accordingly, the proposed new rules provide no differentiation in compliance requirements based on carrier size. The Department does not anticipate that carriers will need to hire additional employees or obtain professional services to comply with the rules' requirements.

Smart Growth Impact

The proposed new rules have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 57. MANDATED BENEFITS FOR BIOLOGICALLY-BASED MENTAL ILLNESS

11:4-57.1 Purpose and scope

(a) The purpose of this subchapter is to implement P.L. 1999, c. 106 by specifying that certain exclusions, requirements and limits in health insurance policies and health maintenance organization contracts may not be applied to deny benefits or services for the treatment of biologically-based mental illness when those exclusion and limits are not applied in the same manner to treatments for other illnesses.

(b) This subchapter shall apply to all policies and contracts providing hospital or medical services or benefits that are delivered, issued, executed or renewed in this State in the individual, small group and large group markets as follows: all hospital service corporation contracts issued pursuant to N.J.S.A. 17:48-1 et seq.; all medical service corporation contracts issued pursuant to N.J.S.A. 17:48A-1 et seq.; all health service corporation contracts issued pursuant to N.J.S.A. 17:48E-1 et seq.; all health insurance policies issued pursuant to N.J.S.A. 17B:26-1 et seq., 17B:27-26 et seq., 17B:27A-2 et seq. and 17B:27A-17 et seq.; and all health maintenance organization contracts issued pursuant to N.J.S.A. 26:2J-1 et seq.

11:4-57.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Benefit limit” means any exclusion, restriction, condition, or limitation (including, but not limited to, visit limits, dollar limits and preauthorization requirements) applied to the provision of health care services or benefits in a health insurance policy or health maintenance organization contract.

"Biologically-based mental illness" (BBMI) means a mental or nervous condition that is caused by a biological disorder of the brain and results in a clinically significant or psychological syndrome or pattern that substantially limits the functioning of the person with the illness, including, but not limited to, schizophrenia, schizoaffective disorder, major depressive disorder, bipolar disorder, paranoia and other psychotic disorders, obsessive-compulsive disorder, panic disorder and pervasive developmental disorder or autism.

"Carrier" means any insurer authorized to sell health insurance pursuant to Title 17B of the New Jersey Statutes; a health, hospital or medical service corporation; or a health maintenance organization.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Form" means any individual or group health insurance policy, health maintenance organization contract, any rider or endorsement for use with such policy or contract, certificates and evidence of coverage forms.

"Preauthorization" means a carrier's authorization, using paper or electronic means, for specified services or supplies that is given prior to the date the services or supplies are provided.

11:4-57.3 Benefit limits; preauthorization

(a) Carriers shall not impose benefit limits, including limits involving preauthorization requirements, on services for the treatment of biologically-based mental illness unless the same benefit limits are imposed on services for the treatment of physical illness. For example, a carrier can not require preauthorization for outpatient treatment for BBMI unless it also requires preauthorization for outpatient treatment for other illnesses.

(b) Carriers may require preauthorization for particular services for the treatment of biologically-based mental illness only if preauthorization is required for the same services when provided to treat physical illness. For example, a carrier that requires preauthorization for all hospital admissions may require preauthorization for a hospital admission for a biologically-based mental illness. Similarly, preauthorization may be required for outpatient treatment of biologically-based mental illness only if it is required for outpatient treatment for all other illnesses.

11:4-57.4 Applicability of limits or exclusions in health insurance policies and health maintenance organization contracts to treatments of biologically-based mental illnesses

Carriers shall not apply any exclusion, requirement or limit in a health insurance policy or health maintenance organization contract to deny, restrict or limit benefits or services to persons with biologically-based mental illness, including, but not limited to, exclusions for the treatment of chronic conditions and for physical, speech and occupational therapy that is non-restorative (that is, that does not restore previously possessed function, skill or ability).

11:4-57.5 Effect on previously filed forms

Forms that have been filed by the Commissioner containing provisions not in compliance with this subchapter shall be deemed withdrawn as of December 31, 2003.

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