State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF THE COMMISSIONER
PO BOX 325
TRENTON, NJ 08625-0325
TEL (609) 633-7667

PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

JUSTIN ZIMMERMAN
Commissioner

BULLETIN NO. 24-14

TO: ALL HEALTH SERVICE CORPORATIONS, HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, HEALTH INSURANCE COMPANIES AND HEALTH MAINTENANCE ORGANIZATIONS

FROM: JUSTIN ZIMMERMAN, ACTING COMMISSIONER

RE: COVERAGE FOR MENTAL HEALTH CONDITIONS AND SUBSTANCE USE DISORDERS, IMPLEMENTATION OF P.L. 2019, c. 58 AND P.L. 2022, c. 33

On September 9, 2024, the U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury released new final rules implementing the Mental Health Parity and Addiction Equity Act (MHPAEA).[1] The final rules amend certain provisions of the existing MHPAEA regulations and add new regulations to set forth content requirements and timeframes for responding to requests for nonquantitative treatment limitation (NQTL) comparative analyses required under MHPAEA, as amended by the Consolidated Appropriations Act, 2021. The purpose of this Bulletin is to advise all health service corporations, hospital service corporations, medical service corporations, health insurance companies and health maintenance organizations, (collectively, "carriers") of requirements relating to the coverage for the treatment of mental health conditions and substance use disorders ("SUD") in New Jersey, consistent with P.L. 2019, c. 58 ("Chapter 58") and P.L. 2022, c. 33 ("Chapter 33"), which are variously codified.[2]

[1] Fact Sheet: Final Rules under the Mental Health Parity and Addiction Equity Act (MHPAEA) | U.S. Department of Labor (dol.gov)

[2] Chapter 58 and Chapter 33 are codified at N.J.S.A. 17:48-6v, N.J.S.A. 17:48A-7u, N.J.S.A. 17:48E-35.20, N.J.S.A. 17B:26-2.1s, N.J.S.A. 17B:27-46.1v, N.J.S.A. 17B:27A-7.5, N.J.S.A. 17B:27A-19.7, N.J.S.A. 26:2J-4.20, N.J.S.A. 52:14-17.29d – 29e. Chapter 58 is also codified at N.J.S.A. 26:2S-10.8.

Chapter 58 replaces the term "biologically-based mental illnesses" with the term "mental health conditions" consistently as it relates to all carrier types. Mental health conditions are defined broadly to include all conditions that are referenced by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), currently in its Fifth Edition ("DSM-5"), and any subsequent editions. Chapter 58 applies to all policies and certificates of coverage issued or renewed effective June 10, 2019. Chapter 33 requires carriers to provide coverage for mental health and SUD treatment provided through psychiatric collaborative care models, with "Psychiatric Collaborative Care Model" defined as "the evidence-based, integrated behavioral health service delivery method wherein a primary care provider and a care manager collaborate with a psychiatric consultant to provide care to a patient." Chapter 33 applies to all policies and certificates of coverage issued or renewed effective August 29, 2022.

Chapter 58 requires that "every [Carrier] that [provides] hospital or medical expense benefits and is delivered, issued, executed or renewed in this State, on or after the effective date of this act shall provide coverage for mental health conditions and substance use disorders under the same terms and conditions as provided for any other sickness under the contract and shall meet the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), and any amendment to, and federal guidance or regulations issued under, that act"[3] Chapter 58 includes a definition for the term "same terms and conditions" which provides that the term refers to both quantitative and non-quantitative standards, consistent with MHPAEA.

All policies and certificates of coverage issued or renewed on or after the applicable effective dates, must include provisions consistent with the requirements of Chapter 58 and Chapter 33, including the use of specified terminology (i.e., mental health conditions; same terms and conditions; substance use disorder).

- The definition of "mental health conditions" must be at least as broad as the following definition: "'Mental Health Condition' means a condition which is referenced by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), currently in its Fifth Edition ("DSM-5"), and any subsequent editions."
- The definition of the term "same terms and conditions" must be as least as favorable to the covered person as the following definition: "'Same Terms and Conditions' means, with respect to the treatment of Mental Health Conditions and Substance Use Disorders, [a] Carrier cannot apply more restrictive non-quantitative limitations or more restrictive quantitative limitations to Mental Health Conditions and Substance Use Disorders, than Carrier applies to substantially all other medical or surgical benefits."
- The definition of "substance use disorder" must be defined to be consistent with generally recognized independent standards of current medical practice referenced in the most current version of the DSM.

The Department of Banking and Insurance ("Department") advises that, as SUD is a mental health condition pursuant to Chapter 58, the more specific standards set forth in P.L. 2017, c. 28 ("Chapter

[3] See 42 U.S.C. §18031(i), and amendments thereto, as well as regulations at 45 C.F.R. §146 and §147, and 45 C.F.R. §156.115(a)(3).

28") continue to apply. Therefore, carriers must retain separate provisions regarding SUD treatment in their amended policies and certificates of coverage, so it is clear to covered persons what their benefits are as is it relates to the treatment of SUD. Carriers must comply fully with both the requirements of Chapter 58 and the requirements under Chapter 28. See P.L. 2017, c. 28 and the guidance included in Bulletin 17-05 available at www.state.nj.us/dobi/bulletins/blt17_05.pdf.

The Department reminds carriers that, because "mental health condition" includes neurodevelopmental disorders, provisions addressing the diagnosis and treatment of autism and other developmental disabilities, as required by P.L. 2009, c. 115, must be reflected in policies and certificates of coverage. The standard forms used under the IHC program have been amended to reflect this requirement.

Similarly, forms under the IHC Program have been amended to reflect appropriate application of limitations for physical therapy, occupational therapy, and speech therapy. Carriers are reminded that policies and certificates of coverage that include benefit limitations for physical therapy, occupational therapy, and speech therapy as applied to the treatment of mental health conditions must meet parity standards with respect to quantitative treatment limitations.

The Department is aware that some previously filed policy forms included exclusions for treatment for nicotine dependence and gambling, both of which are mental health conditions under DSM-5 and the new definition of "mental health condition" established by Chapter 58. Carriers must identify and remove these and similar exclusions such that the policies and certificates of coverage do not contain any exclusions inconsistent with Chapter 58. In addition, the Department notes that eating disorders fall under the newly revised definition of mental health conditions; therefore, nutritional counseling needed to treat an eating disorder must be subject to the same terms and conditions as all other medical or surgical benefits.

In addition, Chapter 58 provides that carriers must approve a request for an in-plan exception if the carrier's network does not have any providers who are qualified, accessible, and available for the specific medically necessary service relative to the insurance coverage for mental health conditions and SUDs. N.J.S.A. 26:2S-10.8(b). A carrier shall communicate the availability of said in-plan exception through at least two venues: in writing on the carrier's website where lists of network providers are displayed, and through Member/Customer Services directly to beneficiaries who call the carrier to inquire about network providers.

Chapter 58 supplements the Health Care Quality Act ("Act") at N.J.S.A. 26:2S-1 to -33 by adding definitions for "mental health condition," "substance use disorder," and "non-quantitative treatment limitation" ("NQTL") at N.J.S.A. 26:2S-10.8. NQTLs are the processes, strategies, or evidentiary standards or other factors that are not expressed numerically, but that otherwise limit the scope or duration of benefits for treatment of mental health conditions and SUD. Chapter 58 clarifies that carriers cannot apply either quantitative or non-quantitative limits to the coverage of mental health conditions that are more restrictive than the quantitative and non-quantitative limits

applicable to substantially all other medical or surgical benefits covered under the contract.[4] The definition set forth at N.J.S.A. 26:2S-10.8 provides a non-exhaustive list of NQTLs.

Lastly, the Department reminds carriers that amendments to N.J.S.A. 26:2S-10.8c impose an annual reporting requirement on carriers, to be submitted to the Department on or before March 1, which report shall contain the following:

(1) A description of the process used to develop or select the medical necessity criteria for mental health benefits, SUD benefits, and medical and surgical benefits;

(2) Identification of all NQTLs that are applied to mental health benefits, all NQTLs that are applied to SUD benefits, and all NQTLs that are applied to medical and surgical benefits, including, but not limited to, those listed in N.J.S.A. 26:2S-10.8a;

(3) The results of an analysis that demonstrates that, for the medical necessity criteria described in paragraph (1) of this subsection and for the selected NQTLs identified in paragraph (2) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used to apply the medical necessity criteria and selected NQTLs to mental health condition and SUD benefits are comparable to, and are no more stringently applied than those used to apply the medical necessity criteria and selected NQTLs, as written and in operation, to medical and surgical benefits. The results of the analysis shall include the following:

   (a) identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected;

   (b) identify and define the specific evidentiary standards, if applicable, used to define the factors and any other evidentiary standards relied upon in designing each NQTL;

   (c) provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, for mental health and SUD benefits are comparable to and applied no more stringently than the processes and strategies used to design each NQTL as written for medical and surgical benefits;

   (d) provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health and SUD benefits are comparable to and applied no more stringently than the processes or strategies used to apply each NQTL in operation for medical and surgical benefits; and

   (e) disclose the specific findings and conclusions reached by the carrier that the results of the analyses above indicate that the carrier is in compliance with this section and MHPAEA.

The Department has a prepared a data collection tool that carriers must use to satisfy this reporting requirement, which is available at https://www.nj.gov/dobi/bulletins/AR_NQTLform.docx. Carriers are already required to perform a Comparative NQTL Analysis to demonstrate compliance with MHPAEA pursuant to the Consolidated Appropriations Act of 2021, Pub. L. 116-

[4] On September 9, 2024, the U.S. Department of Health and Human Services adopted final rules strengthening access to mental health and SUD care, which add additional protections against more restrictive, nonquantitative treatment limitations for mental health and substance use disorder benefits as compared to medical or surgical benefits.

260, therefore, carriers shall provide the most recently completed analysis to the Department within 10 days of the issuance of this bulletin. Carriers will have an additional 30 days to provide any supporting documents used to demonstrate state compliance to the Department.

If you have any questions, please contact the Department's Office of Life and Health at lifehealth@dobi.nj.gov.

10/31/2024

Date

Justin Zimmerman
Commissioner

AR P.L. 2019, c. 58 Bulletin/Bulletins