



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE
SMALL EMPLOYER HEALTH BENEFITS PROGRAM
PO BOX 325
TRENTON, NJ 08625-0325

CHRIS CHRISTIE
Governor

RICHARD J. BADOLATO
Commissioner

KIM GUADAGNO
Lt. Governor

TEL (609) 633-1882
FAX (609) 633-2030

PETER L. HARTT
Director

ADVISORY BULLETIN 17-SEH-02

April 26, 2017

To: SEH Program Member Carriers that Issue Coverage
SEH Program Interested Parties

From: Ellen DeRosa
Executive Director

Re: Adopted Amendments to Standard Plans B, C, D, HMO and HMO-POS

On April 19, 2017, the Small Employer Health Benefit Program Board (SEH Board) voted to adopt amendments to the standard health benefits plans. The notice of adoption has been filed and will appear in an upcoming *New Jersey Register*. The proposal and adoption are posted on the SEH Board's website.

http://www.state.nj.us/dobi/division_insurance/ihcseh/sehrulesadoptions.htm.

Recognizing that the process of reissuing policy and contract forms is both lengthy and costly the SEH Board determined it appropriate to give Carriers the option to implement the amendments by using the Compliance and Variability Rider set forth at N.J.A.C. 11:21 Appendix Exhibit DD. Since the amendments are necessary to satisfy the requirements of P.L. 2017, c. 28, which is effective May 16, 2017, the SEH Board expects that carriers will work as expeditiously as possible to ensure that all small employer plans issued or renewed on or after May 16, 2017 contain the amended text.

The text to be included on the Compliance and Variability rider is set forth below. Please note that Carriers must carefully review the text to determine which variable text should be included for each of the policies or contracts to be amended.

Please contact me with any questions at ellen.derosa@dobi.nj.gov.

Compliance and Variability Rider Text for Plans B – E

1. The **DEFINITIONS** section is amended to replace the terms and definitions of Emergency, Hospital, Illness or Ill, Medically Necessary and Appropriate, Mental Health Center, Substance Abuse and Substance Abuse Centers with the following terms and definitions:

Emergency means a medical condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain, psychiatric disturbances and/or symptoms of Substance Use Disorder such that a prudent layperson, who possesses an average knowledge of health and medicine, could expect the absence of immediate medical attention to result in: placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of a bodily organ or part. With respect to a pregnant woman who is having contractions, an emergency exists where: there is inadequate time to effect a safe transfer to another Hospital before delivery; or the transfer may pose a threat to the health or safety of the woman or unborn child.

Hospital means a Facility which mainly provides Inpatient care for Ill or Injured people. [Carrier] will recognize it if it carries out its stated purpose under all relevant state and local laws, and it is either:

- a) accredited as a Hospital by The Joint Commission; or
- b) approved as a Hospital by Medicare.

Among other things, a Hospital is not a convalescent home, rest or nursing Facility, or a Facility, or part of it which mainly provides Custodial Care, educational care or rehabilitative care. A Facility for the aged or persons with Substance Use Disorder is also not a Hospital.

Illness or Ill means a sickness or disease suffered by a Covered Person or a description of a Covered Person suffering from a sickness or disease. Illness includes Mental Illness and Substance Use Disorder.

Medically Necessary and Appropriate means that a service or supply is provided by a recognized health care Provider, and [Carrier] determines at its Discretion, that it is:

- a) necessary for the symptoms and diagnosis or treatment of the condition, Illness or Injury;
- b) provided for the diagnosis, or the direct care and treatment, of the condition, Illness or Injury;
- c) in accordance with generally accepted medical practice;
- d) not for the convenience of a Covered Person;
- e) the most appropriate level of medical care the Covered Person needs; and
- f) furnished within the framework of generally accepted methods of medical management currently used in the United States.

The fact that an attending Practitioner prescribes, orders, recommends or approves the care, the level of care, or the length of time care is to be received, does not make the services Medically Necessary and Appropriate.

With respect to treatment of Substance Use Disorder the determination of Medically Necessary and Appropriate shall use an evidence-based and peer reviewed clinical review tool as designated in regulation by the Commissioner of Human Services.

Mental Health Facility means a Facility which mainly provides treatment for people with Mental Illness. [Carrier] will recognize such a place if it carries out its stated purpose under all relevant state and local laws, and it is either:

- a) accredited for its stated purpose by The Joint Commission;
- b) approved for its stated purpose by Medicare; or
- c) accredited or licensed by the state of New Jersey to provide mental health services.

Substance Use Disorder is as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and any subsequent editions. Substance Use Disorder includes substance use withdrawal.

Substance Use Disorder Facility means a Facility that mainly provides treatment for people with Substance Use Disorder. [Carrier] will recognize such a Facility if it carries out its stated purpose under all relevant state and local laws, and it is either:

- a) accredited for its stated purpose by The Joint Commission; [or]
- b) approved for its stated purpose by Medicare[.][:];
- c) [accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF);or;
- d) credentialed by [Carrier].]

2. All references to Substance Abuse are replaced with Substance Use Disorder, all references to Mental Health Center are replaced with Mental Health Facility, and all references to Substance Abuse Center are replaced with Substance Use Disorder Facility.

3. The **APPEALS PROCEDURE** is amended to include the following text:

Note to Carriers: Add your text that addresses the specific appeals process and in-plan exception required by P.L. 2017, c.28.

4. The Mental Illness or Substance Abuse provision of the **COVERED CHARGES** section is deleted and replaced with the following:

Mental Illness or Substance Use Disorder

Except as stated below for the treatment of Substance Use Disorder, [Carrier] pays benefits for the Covered Charges a Covered Person incurs for the treatment of Mental Illness or Substance Use Disorder the same way [Carrier] would for any other Illness, if such treatment is prescribed by a Practitioner.

[Carrier] provides benefits for the treatment of Substance Use Disorder at Network Facilities subject to the following:

- a) the prospective determination of Medically Necessary and Appropriate is made by the Covered Person's Practitioner for the first 180 days of treatment during each Plan Year

and for the balance of the Plan Year the determination of Medically Necessary and Appropriate is made by [Carrier];

- b) pre-authorization or Pre-Approval are not required for the first 180 days of inpatient and/or outpatient treatment during each Plan Year but may be required for inpatient treatment for the balance of the Plan Year;
- c) concurrent and retrospective review are not required for the first 28 days of inpatient treatment during each Plan Year but concurrent and retrospective review may be required for the balance of the Plan Year;
- d) retrospective review is not required for the first 28 days of intensive outpatient and partial hospitalization services during each Plan Year but retrospective review may be required for the balance of the Plan Year;
- e) retrospective review is not required for the first 180 days of outpatient treatment including outpatient prescription drugs, during each Plan Year but retrospective review may be required for the balance of the Plan Year; and
- f) If no Network Facility is available to provide in-patient services the [Carrier] shall approve an in-plan exception and provide benefits for in-patient services at a non-Network Facility.

The first 180 days per Plan Year assumes 180 inpatient days whether consecutive or intermittent. Extended outpatient services such as partial hospitalization and intensive outpatient are counted as inpatient days. Any unused inpatient days may be exchanged for two outpatient visits.

Inpatient or day treatment may be furnished by any licensed, certified or State approved facility, including but not limited to:

- a) a Hospital
- b) a detoxification Facility licensed under New Jersey P.L. 1975, Chapter 305;
- c) a licensed, certified or state approved residential treatment Facility under a program which meets the minimum standards of care of The Joint Commission;
- d) a Mental Health Facility;
- e) a Substance Use Disorder Facility; or
- f) a combination Mental Health Facility and Substance Use Disorder Facility.

5. The **REQUIRED HOSPITAL STAY REVIEW** provision is deleted and replaced with the following:

REQUIRED FACILITY STAY REVIEW

Important Notice: If a Covered Person does not comply with these Facility stay review features, he or she will not be eligible for full benefits under this Policy.

Notice of Facility Admission Required

Except as explained below for certain admissions to treat Substance Use Disorder, [Carrier] requires notice of all Hospital or other Facility admissions. The times and manner in which the notice must be given is described below. When a Covered Person does not comply with the requirements of this section [Carrier] reduces what it pays for covered Hospital or other Facility charges as a penalty.

Pre-Admission Review

Except as explained below for certain admissions to treat Substance Use Disorder, all non-Emergency Hospital or other Facility admissions must be reviewed by [ABC] before they occur. The Covered Person or the Covered Person's Practitioner must notify [ABC] and request a pre-admission review. [ABC] must receive the notice and request as soon as possible before the admission is scheduled to occur. [For a maternity admission, a Covered Person or the Covered Person's Practitioner must notify [ABC] and request a pre-admission review at least [60 days] before the expected date of delivery, or as soon as reasonably possible.]

When [ABC] receives the notice and request, [they] evaluate:

- a) the Medical Necessity and Appropriateness of the admission
- b) the anticipated length of stay and
- c) the appropriateness of health care alternatives, like home health care or other out-patient care.

[ABC] notifies the Covered Person's Practitioner [by phone, of the outcome of their review. And [they] confirm the outcome of [their] review in writing.]

If [ABC] authorizes an admission, the authorization is valid for:

- a) the specified Hospital or named Facility;
- b) the named attending Practitioner; and
- c) the authorized length of stay.

The authorization becomes invalid and the Covered Person's admission must be reviewed by [ABC] again if:

- a) he or she enters a Facility other than the specified Facility
- b) he or she changes attending Practitioners; or
- c) more than [60 days] elapse between the time he or she obtains authorization and the time he or she enters the Hospital or other Facility, except in the case of a maternity admission.

Emergency Admission

Except as explained below for certain admissions to treat Substance Use Disorder, [ABC] must be notified of all Emergency admissions by phone. This must be done by the Covered Person or the Covered Person's Practitioner no later than the end of the next regular working day or as soon as possible after the admission occurs.

When [ABC] is notified [by phone,] they require the following information:

- a) the Covered Person's name, social security number and date of birth;
- b) the Covered Person group plan number;
- c) the reason for the admission
- d) the name and location of the Hospital or other Facility
- e) when the admission occurred; and
- f) the name of the Covered Person's Practitioner.

Continued Stay Review

Except as explained below for certain admissions to treat Substance Use Disorder, the Covered Person or his or her Practitioner, must request a continued stay review for any Emergency admission. This must be done at the time [ABC] is notified of such admission.

The Covered Person, or his or her Practitioner, must also initiate a continued stay review whenever it is Medically Necessary and Appropriate to change the authorized length of a Hospital or other Facility stay. This must be done before the end of the previously authorized length of stay.

[ABC] also has the right to initiate a continued stay review of any Hospital or other Facility admission. And [ABC] may contact the Covered Person's Practitioner or Hospital or Facility by phone or in writing.

In the case of an Emergency admission, the continued stay review evaluates:

- a) the Medical Necessity and Appropriateness of the admission;
- b) the anticipated length of stay; and
- c) the appropriateness of health care alternatives.

In all other cases, the continued stay review evaluates:

- a) the Medical Necessity and Appropriateness of extending the authorized length of stay; and
- b) the appropriateness of health care alternatives.

[ABC] notifies the Covered Person's Practitioner [by phone, of the outcome of the review. And [ABC] confirms the outcome of the review in writing.] The notice always includes any newly authorized length of stay.

Penalties for Non-Compliance

Except as explained below for certain admissions to treat Substance Use Disorder, in the case of a non-Emergency admission, as a penalty for non-compliance [[Carrier] reduces what it pays for covered Facility charges, **by 50%**] if:

- a) the Covered Person or his or her Practitioner does not request a pre-admission review; or
- b) the Covered Person or his or her Practitioner does not request a pre-admission review as soon as reasonably possible before the admission is scheduled to occur; or
- c) [ABC's] authorization becomes invalid and the Covered Person or his or her Practitioner does not obtain a new one; or
- d) [ABC] does not authorize the admission.

In the case of an Emergency admission, as a penalty for non-compliance, [[Carrier] reduces what it pays for covered Facility charges by 50%], if:

- a) [ABC] is not notified of the admission at the times and in the manner described above;
- b) the Covered Person or his or her Practitioner does not request a continued stay review; or
- c) the Covered Person or his or her Practitioner does not receive authorization for such continued stay.

The penalty applies to covered Hospital or Facility charges incurred after the applicable time limit allowed for giving notice ends.

For any Hospital or other Facility admission, if a Covered Person stays in the Hospital or other Facility longer than [ABC] authorizes, [Carrier] reduces what it pays for covered charges incurred after the authorized length of stay ends [by 50%] as a penalty for non-compliance.

Penalties cannot be used to meet this Policy's Maximum Out of Pocket or Cash Deductible.

Admissions for the Treatment of Substance Use Disorder – Network only

This section applies during the first 180 days of network treatment per Plan Year whether the treatment is inpatient or outpatient. Thereafter, inpatient treatment of Substance Use Disorder is subject to the above provisions governing Hospital and other Facility admissions.

If a Covered Person is admitted to a Facility for the treatment of Substance Use Disorder, whether for a scheduled admission or for an emergency admission, the Facility must notify [Carrier] of the admission and initial treatment plan within 48 hours of the admission.

[Carrier] will not initiate continued stay review, also known as concurrent review, with respect to the first 28 days of the inpatient stay. Continued stay review may be required for any subsequent days, but not more frequently than at two-week intervals. If [Carrier] determines continued stay is no longer Medically Necessary and Appropriate [Carrier] shall provide written notice within 24 hours to the Covered Person and his or her Practitioner along with information regarding appeal rights.

Compliance and Variability Text for HMO and HMO-POS Plans

1. The **DEFINITIONS** section is amended to replace the terms and definitions of Emergency, Hospital, Illness or Ill, Medically Necessary and Appropriate, Mental Health Center, Substance Abuse and Substance Abuse Centers with the following terms and definitions:

EMERGENCY. A medical condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain, psychiatric disturbances and/or symptoms of Substance Use Disorder such that a prudent layperson, who possesses an average knowledge of health and medicine, could expect the absence of immediate medical attention to result in: placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of a bodily organ or part. With respect to a pregnant woman who is having contractions, an Emergency exists where: there is inadequate time to effect a safe transfer to another Hospital before delivery; or the transfer may pose a threat to the health or safety of the woman or unborn child.

HOSPITAL. A Facility which mainly provides Inpatient care for Ill or Injured people. It must carry out its stated purpose under all relevant state and local laws, and it must either:

- a) be accredited as a Hospital by The Joint Commission, or
- b) be approved as a Hospital by Medicare.

Among other things, a Hospital is not a convalescent, rest or nursing home or Facility, or a Facility, or part of it, which mainly provides Custodial Care, educational care or rehabilitative care. A Facility for the aged or persons with Substance Use Disorder is not a Hospital.

ILLNESS or ILL. A sickness or disease suffered by a [Member] or a description of a [Member] suffering from a sickness or a disease. Illness includes Mental Illness and Substance Use Disorder.

MEDICALLY NECESSARY AND APPROPRIATE. Services or supplies provided by a recognized health care Provider that We [or the Care Manager] Determine to be:

- a) necessary for the symptoms and diagnosis or treatment of the condition, Illness or Injury;
- b) provided for the diagnosis or the direct care and treatment of the condition, Illness or Injury;
- c) in accordance with generally accepted medical practice;
- d) not for a [Member]'s convenience;
- e) the most appropriate level of medical care that a [Member] needs; and
- f) furnished within the framework of generally accepted methods of medical management currently used in the United States.

In the instance of an Emergency, the fact that a Non-Network Provider prescribes, orders, recommends or approves the care, the level of care, or the length of time care is to be received, does not make the services Medically Necessary and Appropriate.

With respect to treatment of Substance Use Disorder the determination of Medically Necessary and Appropriate shall use an evidence-based and peer reviewed clinical review tool as designated in regulation by the Commissioner of Human Services.

MENTAL HEALTH FACILITY. A Facility that mainly provides treatment for people with Mental Illness. It will be considered such a place if it carries out its stated purpose under all relevant state and local laws, and it is either:

- a) accredited for its stated purpose by The Joint Commission;
- b) approved for its stated purpose by Medicare or
- c) accredited or licensed by the State of New Jersey to provide mental health services.

SUBSTANCE USE DISORDER. The term as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and any subsequent editions. Substance Use Disorder includes substance use withdrawal.

SUBSTANCE USE DISORDER FACILITY. A Facility that mainly provides treatment for people with Substance Use Disorder. We will recognize such a Facility if it carries out its stated purpose under all relevant state and local laws, and it is either:

- a) accredited for its stated purpose by The Joint Commission; [or]
- b) approved for its stated purpose by Medicare[.][:];
- c) [accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF);or;
- d) credentialed by Us.]

2. All references to Substance Abuse are replaced with Substance Use Disorder, all references to Mental Health Center are replaced with Mental Health Facility, and all references to Substance Abuse Center are replaced with Substance Use Disorder Facility.

3. The **APPEAL PROCEDURE** is amended to include the following text:

Note to Carriers: Add your text that addresses the specific appeals process and in-plan exception required by P.L. 2017, c.28.

4. The Benefits for Mental Illness or Substance Abuse provision of the **COVERED SERVICES AND SUPPLIES** section is deleted and replaced with the following:

(d) **BENEFITS FOR MENTAL ILLNESS OR SUBSTANCE USE DISORDER.** Except as stated below for the treatment of Substance Use Disorder, We cover services and supplies for the treatment of Mental Illness or Substance Use Disorder the same way We would for any other Illness, if such treatment is prescribed by a Practitioner.

We provide coverage for the treatment of Substance Use Disorder at Network Facilities subject to the following:

- a) the prospective determination of Medically Necessary and Appropriate is made by the Member's Practitioner for the first 180 days of treatment during each Plan Year and for the balance of the Plan Year the determination of Medically Necessary and Appropriate is made by Us;

- b) pre-authorization or Pre-Approval are not required for the first 180 days of inpatient and/or outpatient treatment during each Plan Year but may be required for inpatient treatment for the balance of the Plan Year;
- c) concurrent and retrospective review are not required for the first 28 days of inpatient treatment during each Plan Year but concurrent and retrospective review may be required for the balance of the Plan Year;
- d) retrospective review is not required for the first 28 days of intensive outpatient and partial hospitalization services during each Plan Year but retrospective review may be required for the balance of the Plan Year;
- e) retrospective review is not required for the first 180 days of outpatient treatment including outpatient prescription drugs, during each Plan Year but retrospective review may be required for the balance of the Plan Year; and
- f) If no Network Facility is available to provide in-patient services the We shall approve an in-plan exception and provide benefits for in-patient services at a non-Network Facility.

The first 180 days per Plan Year assumes 180 inpatient days whether consecutive or intermittent. Extended outpatient services such as partial hospitalization and intensive outpatient are counted as inpatient days. Any unused inpatient days may be exchanged for two outpatient visits.

Inpatient or day treatment may be furnished by any licensed, certified or State approved facility, including but not limited to:

- a) a Hospital
- b) a detoxification Facility licensed under New Jersey P.L. 1975, Chapter 305;
- c) a licensed, certified or state approved residential treatment Facility under a program which meets the minimum standards of care of The Joint Commission;
- d) a Mental Health Facility;
- e) a Substance Use Disorder Facility; or
- f) a combination Mental Health Facility and Substance Use Disorder Facility.