NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 20, 2019

Dear Managed Care Organizations Certified Under Article 44 of Public Health Law:

Chapter 57 of the Laws of 2019 ("Chapter 57 of 2019") includes several changes to New York Insurance Law and Public Health Law provisions related to health insurance coverage for mental health conditions and substance use disorder ("MH/SUD"). The new provisions are effective on January 1, 2020 and are applicable to health maintenance organizations authorized to provide comprehensive health services through comprehensive health services plans, including those plans covering individuals eligible for the Medicaid Managed Care[1] and/or Child Health Insurance Programs (collectively, "Managed Care Organizations" or "MCOs"). This guidance provides direction to MCOs regarding implementation of the new requirements in these programs.

Please note that one important change in the law provided the NYS Office of Mental Health (OMH) with authority to review and approve clinical review criteria used to determine coverage for treatment of mental health conditions, in consultation with the NYS Department of Health (DOH). Even though some MCOs have previously received State approval for their clinical review criteria pursuant to Section 10.21(a) of the Medicaid Managed Care/HIV Special Needs Plan/Health and Recovery Plan Model Contract (for MCOs participating in the Medicaid Managed Care Program), all MCOs covering treatment for mental health conditions will be required to submit their currently operative clinical review criteria and utilization management-related policies and procedures for review and approval. This is to ensure MCO compliance with newly established guidelines for the review and approval of clinical review criteria to be used beginning January 1, 2020. Other state-issued guidance applicable to the utilization management of behavioral health services remains in force.[2]

New York State also reminds organizations about the applicability of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA"), 42 U.S.C. 18031(j), and any amendments to, and federal guidance or regulations issued thereunder, including the MHPAEA implementing regulations applicable to Medicaid Managed Care Organizations and the Children's Health Insurance Program codified in Parts 438, 440, and 457 of Title 42 of the Code of Federal Regulations, as well as various provisions of applicable State model contracts which mandate parity compliance and cooperation with New York State in the assessment of MCO compliance.

[1] Including, as of December 2019, Mainstream Medicaid Managed Care Plans, HIV Special Needs Plans, Health and Recovery Plans, and Prepaid Health Services Plans.
[2] Available at https://omh.ny.gov/omhweb/bho/policy-guidance.html.

Substance Use Disorder

A. Prohibition Against Preauthorization and Concurrent Review During First 28 Days of Inpatient Admission for Treatment of a Substance Use Disorder ("SUD")

Chapter 71 of the Laws of 2016 added Insurance Law §4303(k)(4) that applies when inpatient treatment is provided in New York facilities that are certified by the Office of Addiction Services and Supports ("OASAS" – formerly known as the Office of Alcoholism and Substance Abuse Services) and participate in the MCO's provider network. This provision prohibits MCOs from performing preauthorization for the inpatient admission for treatment of an SUD. It also prohibits MCOs from performing concurrent utilization review during the first 14 days of the inpatient admission provided the facility notifies the MCO of both the admission and the initial treatment plan within 48 hours of the admission.

Chapter 57 of 2019 amended the above-referenced section by expanding the facilities covered by the law to include those licensed, certified or otherwise authorized by OASAS and extending the prohibition against concurrent review to the first 28 days of an inpatient admission. It also changed the 48-hour notification period for the facility to notify the MCO of the inpatient admission to "two business days." In addition, Chapter 57 of 2019 requires the facility to perform periodic consultation with the MCO at or just prior to the fourteenth day of treatment to ensure the facility is using the evidence-based and peer-reviewed clinical review tool utilized by the MCO which is designated by OASAS and appropriate to the age of the patient to ensure the inpatient treatment is medically necessary for the patient. Chapter 57 of 2019 also added a requirement that, prior to discharge, the facility must provide the patient and the MCO with a written discharge plan describing the arrangements for additional services needed following discharge from the inpatient facility as determined using the evidence-based and peer-reviewed clinical review tool utilized by the MCO that is designated by OASAS. Further, prior to discharge, the facility is required to indicate to the MCO whether the services included in the discharge plan are secured or determined to be reasonably available.

B. Prohibition Against Preauthorization and Concurrent Review During First Four Weeks of Outpatient Treatment of an SUD

Chapter 57 of the Laws of 2018 ("Chapter 57 of 2018") added Insurance Law § 4303(l)(5) that applies when treatment is provided by New York outpatient facilities that are certified by OASAS and participate in the MCO's provider network. This provision prohibits MCOs from performing preauthorization for the outpatient services for treatment of an SUD. It also prohibits MCOs from performing concurrent utilization review during the first two weeks of continuous treatment, not to exceed 14 visits, provided the facility notifies the MCO of both the start of treatment and the initial treatment plan within 48 hours.

Chapter 57 of 2019 amended the above referenced section by expanding the types of facilities covered by the law to include those licensed, certified or otherwise authorized by OASAS and extending the prohibition against concurrent review from two to four weeks, not to exceed 28 visits. It also changed the 48-hour notification period for the facility to notify the MCO of the outpatient treatment to "two business days." Chapter 57 of 2019 also requires the facility to perform periodic consultation with the MCO at or just prior to the fourteenth day of treatment to ensure the facility is using the evidence-based and peer-reviewed clinical review tool utilized by the MCO which is designated by OASAS and appropriate to the age of the patient to ensure the outpatient treatment is medically necessary for the patient.

C. Requests for Medical Necessity Criteria

Chapter 57 of 2019 added Insurance Law §§ 4303(k)(5) and 4303(l)(6) that require an MCO to make available to any insured, prospective insured, or in-network provider, upon request, the criteria it uses in its medical necessity determinations for inpatient and outpatient SUD treatment, in addition to requirements in Public Health Law 4408(2)(j).

D. Prescription Medications to Treat an SUD

Chapter 69 of the Laws of 2016 added Insurance Law § 4303(l-2) to require every policy or contract that provides medical, major medical or similar comprehensive-type coverage and provides coverage for prescription drugs for the treatment of an SUD to include immediate access, without prior authorization, to a five-day emergency supply of prescribed medications otherwise covered under the policy or contract for the treatment of an SUD where an emergency condition exists, including a prescribed drug or medication associated with the management of opioid withdrawal and/or stabilization, except where otherwise prohibited by law.

Chapter 57 of 2019 expands on the existing law by requiring that every policy or contract that provides medical, major medical or similar comprehensive-type coverage and provides coverage for prescription drugs for the treatment of SUD include immediate access, without prior authorization, to the formulary forms of prescribed medication covered under the policy or contract for the treatment of an SUD including a prescribed drug or medication associated with the management of opioid withdrawal and/or stabilization, except where otherwise prohibited by law. Under Chapter 57 of 2019, the requirement to provide immediate access with no prior authorization is not limited to an emergency supply of the prescription drug to treat an SUD but rather applies to all formulary forms of prescribed medication that are covered under the policy or contract. Chapter 57 of 2019 also expands the requirement to provide immediate access without prior authorization to opioid overdose reversal medication otherwise covered under the policy or contract that is prescribed or dispensed to an individual covered under the policy or contract.

E. Definition of an SUD

Chapter 57 of 2019 added Insurance Law §§ 4303(k)(6)(D) and 4303(l)(7)(D) that provide that "substance use disorder" shall have the same meaning set forth in the most recent edition of the diagnostic and statistical manual of mental disorders ("DSM") or the most recent edition of another generally recognized independent standard of current medical practice such as the international classification of diseases ("ICD").

Mental Health Conditions

A. Clinical Review Criteria for Utilization Review

Chapter 57 of 2019 added a new provision to the utilization review program standards section in Articles 49 of the Insurance Law and the Public Health Law which applies to MCOs and independent agents performing utilization review under contract with such MCOs (collectively "UR Agents"). The new provision sets forth standards that UR Agents must consider when deciding what criteria, including medical necessity and level of care, to use to determine health care coverage for treatment of mental health conditions. It requires UR Agents who are reviewing mental health treatment for purposes of health insurance coverage to use evidence-based and peer-reviewed clinical review criteria that are appropriate to the age of the patient and are deemed

appropriate and approved by the Commissioner of the Office of Mental Health ("OMH"), in consultation with the Commissioner of Health and the Superintendent of Financial Services.

OMH, in consultation with DOH, has published expectations and guiding principles that will be used to assess the adequacy of the UR agent's clinical review criteria for the treatment of mental health conditions. Such guidelines include expectations regarding parity compliance in the application of clinical review criteria and stress support for quality improvement approaches to utilization review which are comparable to medical/surgical health services and applied no more stringently to mental health services. The guidelines are posted on OMH's website at https://omh.ny.gov/omhweb/bho/parity.html and were distributed via email.

MCOs must submit their clinical review criteria and policies and procedures regarding the application of the criteria by December 16, 2019, following instructions provided by OMH on November 26, 2019 (included below).

The clinical review criteria must be recognized as evidence-based and peer-reviewed and the criteria must be appropriate to the age of the patients to whom they are intended to apply. OMH strongly encourages UR Agents to use the most recent version of the Level of Care Utilization System for Psychiatric and Addiction Services ("LOCUS") tool, currently Version 20. When making coverage determinations related to treatment of mental health conditions for children and adolescents, OMH strongly encourages UR Agents to use the most recent version of the Child and Adolescent Level of Care Utilization System for Psychiatric and Addiction Services ("CALOCUS") tool, currently Version 2010. While LOCUS and CALOCUS are strongly encouraged to be used by UR Agents for mental health treatment coverage determinations, benefits covered are determined by applicable government-sponsored insurance program policies and model contracts.

UR Agents who use LOCUS and CALOCUS will not be required to demonstrate to OMH that the criteria are recognized as evidence-based, peer-reviewed, and appropriate to the age of the patients to whom it is intended to apply. However, the submissions should still include all policies and procedures regarding the application of such clinical review criteria. OMH will prioritize and expedite its review of submissions for UR Agents who use LOCUS and CALOCUS.

Independent UR Agents seeking to alter their clinical review criteria after obtaining approval should submit notice of the proposed change(s) and effective date to OMH and DOH and the actual criteria to OMH no later than 60 days before the date that the criteria are intended to be used.

B. Prohibition Against Preauthorization and Concurrent Review During First 14 Days of an Inpatient Admission for a Mental Health Condition for Individuals Under 18

Chapter 57 of 2019 added Insurance Law § 4303(g)(8) that prohibits an MCO from requiring preauthorization or from performing concurrent review during the first 14 days of an inpatient admission for the treatment of a mental health condition of an individual under the age of 18. The prohibition applies when the treatment occurs in a facility that is licensed by OMH and participates in the MCO's provider network and, with respect to the concurrent review prohibition, provided that the facility notifies the MCO of both the admission and the initial treatment plan within two business days of the admission, performs daily clinical review of the patient, and participates in periodic consultation with the MCO to ensure that the facility is using the evidence-based and peer-reviewed clinical review criteria utilized by the MCO which are approved by OMH

and appropriate to the age of the patient to ensure that the inpatient care is medically necessary for the patient.

C. Clinical Peer Reviewer

Chapter 57 of 2019 amended the definition of clinical peer reviewer in Articles 49 of the Insurance Law and Public Health Law by providing that, when performing utilization review for mental health treatment, the clinical peer reviewer must be a physician who possesses a current and valid non-restricted license to practice medicine and who specializes in behavioral health and has experience in the delivery of mental health courses of treatment or, a health care professional other than a licensed physician who specializes in behavioral health and has experience in the delivery of mental health courses of treatment and, where applicable, possesses a current and valid non-restricted license, certificate, or registration or, where no license, certificate or registration exists, is credentialed by the national accrediting body appropriate to the profession.

In addition, Managed Care Plans participating in the Medicaid Managed Care Program must continue to comply with qualification requirements contained in State-issued guidance[i] for clinical peer reviewers making coverage determinations for mental health and substance use disorder treatment.

D. Nurse Practitioners

Chapter 57 of 2019 requires MCOs to provide benefits for outpatient treatment of mental health conditions when provided by a nurse practitioner licensed to practice in New York. For the purposes of Medicaid Managed Care, provider qualifications for covered services shall remain consistent with the Medicaid State Plan.

E. Definition of Mental Health Condition

Chapter 57 of 2019 added Insurance Law § 4303(g)(6)(D) that defines "mental health condition" as any mental health disorder as defined in the most recent edition of the DSM or the most recent edition of another generally recognized independent standard of current medical practice such as the ICD.

Disclosure Requirements

A. Participating Provider Directory

Chapter 57 of 2019 amended Insurance Law § 4324(a)(17) and Public Health Law § 4408(1)(r) by requiring an MCO's participating provider directory to indicate whether the provider is accepting new patients and, for mental health and substance use disorder, any affiliations with participating facilities certified or authorized by OMH or OASAS and any restrictions regarding the availability of the individual provider's services.

B. MHPAEA Comparative Analysis

Chapter 57 of 2019 added new Insurance Law § 4324(a)(22) and Public Health Law § 4408(1)(v) that require an issuer to supply each insured, and upon request each prospective insured prior to enrollment, the most recent comparative analysis performed by the MCO to assess the provision of its covered services in accordance with MHPAEA, and any amendment to and federal guidance or regulations issued pursuant to MHPAEA.

Conclusion

MCOs should ensure their policies and procedures are appropriately updated in compliance with these statutory provisions. The DOH will monitor MCO compliance with the requirements for coverage of mental health and substance use disorder treatment as described in this letter, including during Comprehensive Operational and Targeted Operational Surveys. The DOH may pursue any and all regulatory action as appropriate against an MCO for any failure to adhere to all statutory and regulatory requirements for mental health and substance use disorder coverage.

We appreciate your continued cooperation in the State's efforts to assess MHPAEA compliance. Thank you for your prompt attention to this matter.

If you have any questions about the content of this letter, please contact BHParity@health.ny.gov.

Sincerely,

Jonathan Bick
Director
Division of Health Plan Contracting and Oversight
Office of Health Insurance Programs

Enclosure

[i] Available at http://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/related_links/docs/bh_policy_guidance_10-1-15.pdf