



Services

**Department of
Financial Services**

Insurance Circular Letter No. 13 (2018)

September 19, 2018

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations (“HMOs”), Student Health Plans Certified Pursuant to Insurance Law § 1124, and Municipal Cooperative Health Benefit Plans

RE: Preauthorization for Substance Use Disorder Treatment

STATUTORY REFERENCES: N.Y. Ins. Law §§ 3201, 3216, 3221, 4303, and Article 49; N.Y. Pub. Health Law Article 49; 29 U.S.C. § 1185a; 45 C.F.R. § 146.136

I. Purpose

The opioid epidemic continues to have a devastating impact in New York. Of utmost importance is guaranteeing that those individuals impacted by this epidemic have swift access to appropriate treatment. This circular letter advises insurers authorized to write accident and health insurance in this state, article 43 corporations, health maintenance organizations, student health plans certified pursuant to Insurance Law § 1124, and municipal cooperative health benefit plans (collectively, “issuers”) that Chapter 57 of the Laws of 2018 amended the Insurance Law to prohibit prior authorization and restrict an issuer’s ability to perform concurrent review of outpatient substance use disorder (SUD) treatment under insurance policies or contracts delivered or issued for delivery in New York State. This builds upon the protections of Chapter 71 of the Laws of 2016, which prohibited prior authorization and restricted an issuer’s ability to perform concurrent review of inpatient SUD treatment. This circular letter also encourages issuers to eliminate preauthorization requirements for all outpatient SUD treatment, including medication-assisted treatment dispensed by pharmacies. This circular letter further serves as a reminder to issuers that strict compliance with all existing statutory and regulatory requirements for coverage of SUD treatment is critical. This circular letter supplements Insurance Circular Letters [No. 15 \(2002\)](#), [No. 5 \(2014\)](#), [No. 6 \(2015\)](#), [No. 4 \(2016\)](#), [No. 6 \(2016\)](#), and [No. 14 \(2017\)](#).

II. Utilization Review

A. Prohibition against Preauthorization and Concurrent Review During First Two Weeks of Continuous Outpatient SUD Treatment

Chapter 57 of the Laws of 2018 amended the Insurance Law by adding §§3216(i)(31)(E), 3221(l)(7)(E) and 4303(l)(5), which prohibit issuers from requiring preauthorization for outpatient SUD treatment in

facilities that are certified by the New York State Office of Alcoholism and Substance Abuse Services (“OASAS”) and participate in the issuer’s provider network. These provisions also prohibit issuers from performing concurrent utilization review (“UR”) in facilities that are certified by OASAS and participate in the issuer’s provider network during the first two weeks of continuous treatment, not to exceed 14 visits, provided the facility notifies the issuer of both the start of treatment and the initial treatment plan within 48 hours. The facility is also required to perform clinical assessment of the patient at each visit, including periodic consultation with the issuer to ensure that the facility is using the evidence-based and peer reviewed clinical review tool used by the issuer which is designated by OASAS and appropriate to the age of the patient. Although an issuer may perform UR of the entire treatment after the first two weeks of continuous treatment, not to exceed fourteen visits, it may only deny coverage for that treatment on the basis that the treatment was not medically necessary if the outpatient treatment was contrary to the evidence based and peer reviewed clinical review tool utilized by the issuer which is designated by OASAS. The law also provides that the insured shall not have any financial obligation to the facility for any treatment under this provision other than copayment, coinsurance and deductible otherwise required under the policy. The law took effect on April 12, 2018.

B. Prohibition against Preauthorization and Concurrent Review During First 14 Days of Inpatient Admission for SUD Treatment

As explained in Insurance Circular Letters No. 6 (2016) and No. 14 (2017), Insurance Law §§ 3216(i)(30)(D), 3221(l)(6)(D), and 4303(k)(4) prohibit issuers from requiring preauthorization for inpatient SUD treatment in facilities that are certified by OASAS and participate in the issuer’s provider network. These provisions also prohibit issuers from performing concurrent UR in facilities that are certified by OASAS and participate in the issuer’s provider network during the first 14 days of an inpatient admission provided the facility notifies the issuer of both the admission and the initial treatment plan within 48 hours of the admission. Issuers are reminded that they must comply with these requirements regarding UR of inpatient SUD treatment.

C. Preauthorization for Outpatient SUD Treatment by Providers other than OASAS-certified Facilities that Participate in the Issuer’s Provider Network

Insurance Law Article 49 and Public Health Law Article 49 establish timeframes for the review of preauthorization requests, including outpatient SUD treatment. Additionally, the federal Mental Health Parity and Addiction Equity Act (“MHPAEA”), codified in 29 U.S.C. § 1185a, prohibits issuers whose policies or contracts provide medical and surgical benefits and mental health or SUD benefits from applying financial requirements, quantitative treatment limitations, and non-quantitative treatment limitations that are more restrictive than the predominant financial requirements or treatment limitations that are applied to substantially all medical and surgical benefits covered by the plan. Pursuant to 45 C.F.R. § 146.136(c)(4)(i), an issuer may not impose a non-quantitative treatment limitation with respect to SUD benefits in any classification of benefit unless the processes, strategies, evidentiary standards, or other factors used in applying the limitation are comparable to, and no more stringent than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to the medical and surgical benefits in the same classification of benefit. Insurance Law §§ 3216(i)(30) and (31), 3221(l)(6) and (7), and 4303(k) and (l) also require that coverage for inpatient and outpatient SUD services be provided consistent with MHPAEA. Issuers are reminded that UR, including preauthorization, is a non-quantitative treatment limitation. If it appears

that an issuer is requiring preauthorization for outpatient SUD treatment performed by providers other than OASAS-certified facilities, such as psychiatrists, psychologists or licensed clinical social workers, that participate in the issuer's provider network more frequently than it does for medical and surgical benefits in the same benefit classification, then the issuer must be prepared to demonstrate to the Superintendent how it is in compliance with MHPAEA.

D. Preauthorization for Medication-Assisted Treatment

Insurance Law §§ 3216(i)(31-a), 3221(l)(7-b), and 4303(l-2) 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 a SUD to include immediate access, without preauthorization, to a five-day emergency supply of prescribed medications otherwise covered under the policy or contract for the treatment of a SUD where an emergency condition exists, including a prescribed drug or medication associated with the management of opioid withdrawal or stabilization, except where otherwise prohibited by law. Coverage of an emergency supply includes medication for opioid overdose reversal otherwise covered under the policy or contract when prescribed to an individual covered under the policy or contract. The law is intended to ensure that individuals have immediate access to important medication-assisted treatment for SUD.

As discussed above, pursuant to 45 C.F.R. § 146.136(c)(4)(i), an issuer may not impose a non-quantitative treatment limitation with respect to SUD benefits in any classification of benefit unless the processes, strategies, evidentiary standards, or other factors used in applying the limitation are comparable to, and no more stringent than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to the medical and surgical benefits in the same classification of benefit. If it appears that an issuer is requiring preauthorization for a non-emergency supply of SUD medication-assisted treatment more frequently than it does for prescription drugs used to treat medical or surgical conditions, then the issuer must be prepared to demonstrate to the Superintendent how it is in compliance with MHPAEA. In addition, issuers are encouraged to remove preauthorization for all medication-assisted treatment at in-network pharmacies to ensure that there are no barriers to access.

Also, as discussed above, Chapter 57 of the Laws of 2018 amended the Insurance Law to prohibit issuers from requiring preauthorization for outpatient SUD treatment in facilities that are certified by OASAS and participate in the issuer's provider network. These provisions also prohibit issuers from performing concurrent UR in facilities that are certified by OASAS and participate in the issuer's provider network during the first two weeks of continuous treatment, not to exceed fourteen visits, provided the facility notifies the issuer of both the start of treatment and the initial treatment plan within 48 hours. These provisions apply to medication-assisted treatment performed as outpatient services at facilities that are certified by OASAS and participate in the issuer's provider network.

III. Conclusion

The Superintendent expects issuers to fully comply with the laws related to the UR restrictions on both inpatient and outpatient SUD treatment, as well as the laws related to prescription medications to treat SUD. Additionally, in light of the opioid crisis and the protections that MHPAEA provides regarding SUD treatment, issuers are encouraged to refrain from performing preauthorization review on outpatient SUD treatment including prescription drugs so that individuals have immediate access to outpatient SUD

treatment that is vital to their recovery. If an issuer does perform preauthorization reviews of outpatient SUD treatment at other than in-network OASAS-certified facilities, the issuer should limit the reviews to SUD treatment for which the issuer has evidence or an established basis for believing that the SUD treatment is likely to be provided when it is not medically necessary.

Additionally, the Department will monitor compliance with all SUD treatment coverage requirements, including during market conduct exams. The Department will take action against an issuer for any failure to adhere to all statutory and regulatory requirements for SUD treatment coverage.

Please direct any questions regarding this circular letter to Thomas Fusco, Supervising Insurance Attorney, Health Bureau, New York State Department of Financial Services, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202 or by e-mail at Thomas.Fusco@dfs.ny.gov.

Very truly yours,

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