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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

BULLETIN 2023-07

To: All Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations

From: Gary D. Anderson, Commissioner of Insurance

Date: January 4, 2023

Re: Coverage for Certain Behavioral Health Acute Treatment

The Division of Insurance ("Division") issues this Bulletin 2023-07 to Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations ("Carriers") to identify the Division's expectations regarding Carriers' requirement to provide coverage for behavioral acute health treatment. The Division issues this Bulletin pursuant to Sections 51, 55, 58, and 61 of Chapter 177 of the Acts of 2022, which amend Massachusetts laws to add M.G.L. c. 175, §47SS; M.G.L. c. 176A, §8SS; M.G.L. c. 176B, §4SS; and M.G.L. c. 176G, §4KK ("Statutes"). These additions to the Statutes are effective as of November 8, 2022.

Access to Acute Behavioral Health Services

With these statutory changes, insured health plans[1] that are issued, delivered, or renewed within or without Massachusetts are required to cover medically necessary mental health acute treatment, community-based acute treatment, and intensive community-based acute treatment when provided by facilities that are properly licensed to provide such care according to the recognized parameters established for such facilities.

The required behavioral health acute treatment services are defined in the Statutes as follows:

> "Community-based acute treatment", 24-hour clinically managed mental health diversionary or step-down services for children and adolescents that is usually provided as an alternative to mental health acute treatment.
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> "Intensive community-based acute treatment", intensive 24-hour clinically managed mental

health diversionary or step-down services for children and adolescents that is usually provided as an alternative to mental health acute treatment.

"Mental health acute treatment", 24-hour medically supervised mental health services provided in an inpatient facility licensed by the department of mental health that provides psychiatric evaluation, management, treatment and discharge planning in a structured treatment milieu.

Carriers are not permitted to apply any prior authorization utilization review processes for community-based acute treatment, intensive community-based acute treatment, or mental health acute treatment provided to insured members, however, Carriers may require that providers delivering this care must notify the Carrier within 72 hours of the patient's admission to the facility providing the care.

Although Carriers are not permitted to apply prior authorization processes, they may apply concurrent review and retrospective review processes, but only to review care that is provided after the post-admission notification period, or at any time, in case of suspected fraud or abuse. When a facility notifies a Carrier of an admission, the facility is required to report the member's name, facility name, time of admission, diagnosis, and initial treatment plan. Carriers are only permitted to request additional information when they are conducting the concurrent review or retrospective review process and providers that seek authorization for additional days beyond the notification period will need to provide clinical information to support that authorization.

Carriers Acting As Administrators

When Carriers are acting as administrators for employment-sponsored non-insured health benefit plans, the Division expects Carriers to encourage plan sponsors to take steps that are consistent with the provisions of this Bulletin 2023-07.

If you have any questions about this Bulletin, please contact Kevin Beagan, Deputy Commissioner for the Health Care Access Bureau, at (617) 521-7323.

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[1] Within the Section 51 modifications to M.G.L. c. 175, §47SS, it is noted that this the requirement applies to insured coverage "which is considered creditable coverage under section 1 of chapter 111M." Such language is not included in Sections 55, 58 nor 61. The term "creditable coverage", for the purpose of this section, refers to coverage that satisfies Commonwealth Health Insurance Connector Authority ("Health Connector") regulation 956 CMR 5.00 and satisfies certain health coverage requirements. In general, traditional insured health coverage is considered creditable health coverage. Therefore, insured health plans issued to individuals and employers within Massachusetts - as well as plans issued by Massachusetts-licensed companies without (outside) Massachusetts that cover Massachusetts residents - are required to meet the requirements of these statutory changes.