Massachusetts Division of Insurance
Frequently Asked Questions Regarding the Implementation of Bulletin 2015-05

SCOPE

1) When do the insurance provisions of Chapter 258 of the acts of 2014 [hereinafter "chapter 258"] become effective?

   All provisions of Chapter 258 became effective on October 1, 2015. As of October 1, 2015, all Massachusetts insured health plans that are currently in existence, as well as any insured health plans that are issued or renewed thereafter, must comply with all of the applicable requirements set forth in Chapter 258.

2) Do the Chapter 258 requirements discussed in Bulletin 2015-05 apply to all Massachusetts health coverage?
   Yes, with 3 exceptions. Bulletin 2015-05 and the utilization review restrictions identified in Bulletin 2015-05 apply to insured health plans issued in Massachusetts. Bulletin 2015-05 does not apply to (1) coverage issued through government programs (e.g., Medicare or Medicaid), (2) self-funded employment-based health plans, or (3) coverage issued outside Massachusetts.

3a) For insured health coverage issued in Massachusetts, are insurance carriers permitted to deny any ATS/CSS care before day 15 for care delivered by providers located in Massachusetts?
   No. However, for plans that provide or arrange for the delivery of care through a closed network of health care providers, acute treatment service and clinical stabilization services delivered by providers who are not part of an insured health plan's closed network of providers are subject to prior authorization procedures unless the health plan's provider network is found to be inadequate to provide access to acute treatment or clinical stabilization services for plan members.

   If a patient receives 14 days of ATS/CSS care and a carrier denies coverage for ATS/CSS care beyond the 14th day, is a carrier permitted to impose a waiting period before a patient is permitted to be readmitted for another ATS/CSS stay?
   No. As provided in chapter 258, "Medical necessity shall be determined by the treating clinician in consultation with the patient…" If the treating provider finds that a readmission for ATS/CSS care is medically necessary and appropriate, the carrier must provide coverage for an additional 14 days of ATS/CSS care.

3b) For insured health coverage issued in Massachusetts, are insurance carriers permitted to deny any ATS/CSS care before day 15 for care provided by providers located outside Massachusetts?
   No. However, for plans that provide or arrange for the delivery of care through a closed network of health care providers, acute treatment service and clinical stabilization services delivered by providers who are not part of an insured health plan's closed network of providers are subject to prior authorization procedures unless the health plan's provider network is found to be inadequate to provide access to acute treatment or clinical stabilization services for plan members. (Please note that this answer is the same as to question 3a.)

3c) For insured health coverage issued in Massachusetts, are insurance carriers required to pay for covered substance use disorder services other than ATS/CSS care provided by any providers located inside Massachusetts without any prior authorization requirements?

Yes. Carriers must pay for covered "substance abuse treatment services" as defined within Chapter 258, delivered by providers "certified or licensed by the department of public health," without any prior authorization requirements. However, insurance carriers providing or arranging for care through a closed network of providers may restrict coverage for substance use treatment services to network health care practitioners within their defined service area, unless the health plan's provider network is found to be inadequate to provide access to treatment.

Insurance carriers may not impose prior authorization requirements on network providers who are certified or licensed by the Department of Public Health. Insurance carriers may only impose prior authorization reviews on non-network providers or network providers who are not certified or licensed by the Department of Public Health.

Are carriers permitted to perform any concurrent review of covered substance use disorder services other than ATS/CSS care and deny payments for care beyond the first day?

Yes. Concurrent utilization review may be performed in accordance with the carrier's policies and guidelines for non-ATS/CSS care.

3d) For insured health coverage issued in Massachusetts, are insurance carriers required to pay for covered substance use disorder treatment services other than ATS/CSS care provided by providers located outside Massachusetts without any utilization review requirements?

No. Out-of-state providers are not certified or licensed by the Department of Public Health. Insurance carriers may only impose prior authorization reviews on providers delivering substance use treatment services if the provider is not certified or licensed by the Department of Public Health.

3e) For insured health coverage issued outside Massachusetts, are insurance carriers required to pay for substance use treatment (ATS, CSS, and all other substance use treatment) without any utilization review denials for care provided by providers whether located inside or outside Massachusetts?

No. Chapter 258 applies to insured coverage issued by insurance carriers in Massachusetts. It does not apply to coverage issued outside of Massachusetts, even if that insurance provides coverage to Massachusetts residents. Therefore, insurance carriers offering coverage outside of Massachusetts may deny ATS/CSS care provided through Massachusetts ATS/CSS providers if the care does not meet the carrier's medical necessity criteria, but carriers are required to offer procedures to appeal the denied care.

4) If a patient receives 3 days of ATS at an in-network facility and then transfers to a different in-network facility for CSS, is a carrier required to pay for 3 days of ATS at the first facility and then up to 11 days (for a total of 14 days) at the second facility? Is the carrier permitted to use utilization review procedures and deny continued care after the 14th day?

Yes, the carrier must pay for the 3 days of ATS and the 11 days of CSS. The carrier may use utilization review procedures to deny continued care on day 15; provided that, the carrier

complies with all the requirements in the managed care law for notification and provides appropriate appeal rights to the patient and treating provider.

SERVICES

5) Does ATS or CSS include any of the following: partial hospitalization, intensive outpatient or routine outpatient services?
No. ATS and CSS do not include partial hospitalization, intensive outpatient services or routine outpatient services.

6) Does CSS include residential treatment?
No. A residential treatment program licensed under 105 CMR 164.400 is not considered a CSS level of care.

PROVIDER'S MEDICAL NECESSITY DECISIONS

7) Which ***providers*** are licensed or certified by the Department of Public Health (DPH)?
DPH licenses many provider types who provide treatment to individuals with a substance use disorder. For the purposes of chapter 258, provider types certified or licensed by the department of public health include:
    - Providers licensed by the DPH's Bureau of Health Care Safety and Quality. Such providers include:
        - hospitals, clinics, and nursing homes; a list of these licensed providers can be found at: www.mass.gov/eohhs/docs/dph/quality/healthcare/healthcare-facilities.xls
        - nurses, pharmacists, and physicians assistants; these providers' license can be confirmed by searching for the specific provider on the DPH website: https://checkalicense.hhs.state.ma.us/MyLicenseVerification/
    - Providers licensed by the Bureau of Substance Abuse Services (BSAS). Such providers include:
        - licensed alcohol and drug counselors (LADC); a list of all licensed LADCs can be found at: https://hhsvgapps01.hhs.state.ma.us/elicensing-pubweb/couns/main.htm
        - acute service providers, opioid treatment providers, outpatient counselors , and residential rehabilitation providers; a list of all licensed providers for these service categories can be found at: https://hhsvgapps01.hhs.state.ma.us/elicensing-pubweb/prog/main.htm

8) Will ***providers*** be considered to be licensed or certified by the DPH if they provide substance use treatment services in a facility or program that is licensed or certified by DPH?
Yes. If a provider is delivering substance use treatment through a facility or program licensed or certified by DPH, that treatment should not be subject to prior authorization. Services delivered outside a facility or program licensed or certified by DPH by a person not licensed or certified by DPH would not be considered to be delivered by a provider licensed or certified by DPH.

9) What happens if a patient and a provider disagree on continued treatment?
"Medical necessity shall be determined by the treating clinician in consultation with the patient…" The provider makes the medical necessity determination, not the patient. The carrier must cover the ATS/CSS treatment for up to 14 days so long as the provider determines

that the treatment is medically necessary. A carrier need not provide coverage without prior authorization for the ATS/CSS treatment in situations where the provider does not determine the treatment to be medically necessary, even if the patient has a contrary opinion.

NOTIFICATION REQUIREMENTS

10a) Is there a consequence if a substance use facility does not notify a carrier within 48 hours of an insured's admission for acute treatment services (ATS) or clinical stabilization services (CSS)? If there is no such notice, is a carrier still required to cover these services for up to 14 days, and/or can a carrier begin utilization review and deny coverage prior to the 14th day of a patient's stay?
Chapter 258 requires service providers to notify carriers of an admission to an ATS or CSS level of care and the initial treatment plan within 48 hours of the admission. Regardless of whether this notification is made, a carrier is required to provide coverage for the ATS/CSS treatment for up to 14 days without prior authorization. When a service provider fails to provide appropriate notification to a carrier, as required by chapter 258, the carrier is encouraged to notify the Division of Insurance (DOI). DOI will work in coordination with DPH to address patterns of non-compliance with providers, with DPH taking appropriate action under their licensing authority.

10b) Is there a consequence if a substance use facility does not comply with an insurance carrier's request for utilization review information on day 8 of an ATS/CSS stay?
Insurance carriers are required to provide coverage for the ATS/CSS treatment for up to 14 days without prior authorization even if a facility fails to comply with an insurance carrier's request for utilization review information on day 8 of an ATS/CSS stay.