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Questions and Answers
about Chapter 41 of the Acts of 2019

Prohibitions on Certain Retroactive Claims Denials Associated with Services
Provided by Certain Types of Massachusetts Licensed Behavioral Health Providers

Sections 53 to 58 of Chapter 41 of the Acts of 2019 added provisions to M.G.L. c. 175, §§1 and 108; M.G.L. c. 176A, §8A3/4; M.G.L. c. 176B, §7D; and M.G.L. c. 176G, §6B.

The above-noted sections, which became effective on July 1, 2019, provide protections for certain behavioral health providers so that health insurance carriers may not retroactively deny certain previously paid claims beginning 12 months after the claim was submitted by the behavioral health provider.

The statute creates a new definition for “Retroactive claims denial,” which is defined as “an action by an insurer, an entity with which the insurer subcontracts to manage behavioral health services or an entity with which the insurer has entered into an administrative services contract or a contract to manage behavioral health services to deny a previously paid claim for such services and to require repayment of the claim or to impose a reduction in other payments or otherwise withhold or affect future payments owed to a provider in order to recoup payment for the denied claim.”

Within the new sections, “Behavioral health services” is defined as “mental health and substance use disorder prevention, recovery and treatment services including, but not limited to, inpatient, 24-hour levels of care, 24-hour and non-24-hour diversionary levels of care, intermediate levels of care and outpatient services.”

The statute also defines the providers that are protected under the law as “(i) a mental health clinic or substance use disorder treatment program licensed by the department of public health under chapters 17, 111, 111B or 111E; or (ii) a behavioral, substance use disorder or mental health professional who is licensed under chapter 112 and accredited or certified to provide behavioral health services and who has provided such services under an express or implied contract or with the expectation of receiving payment, other than co-payment, deductible or co-insurance, directly or indirectly from an insurer or other entity.”

Q: What does the law do?

A: The law prohibits Massachusetts health insurance carriers from retroactively denying certain previously paid claims for behavioral health services provided by certain mental health clinics, substance use disorder treatment programs, or other behavioral health providers, beginning on the one-year anniversary of the submission of the claim.

This Massachusetts law does not apply to self-insured, Medicare, or other federally regulated plans. A Massachusetts health insurance carrier is not violating the law when the retroactive denial is related to health coverage that is not governed by state insurance law. Under such circumstances, the health insurance carrier may instead be subject to federal requirements.

Q: Which behavioral health facilities are protected by this law? Which facilities are mental health clinics and substance use disorder treatment programs that are licensed by the Department of Public Health under M.G.L. c. 17, 11, 111B, or 111E?

A: The statute applies to any Massachusetts facility that becomes licensed as a mental health clinic or substance use disorder treatment program by the Department of Public Health.

Q: Which behavioral health providers are impacted by the law? Which providers are considered behavioral, substance use disorder, or mental health professionals licensed under chapter 112 and accredited or certified to provide behavioral health services?

A: The list below identifies provider types which are licensed as psychologists or allied mental health professionals under M.G.L. c. 112. The list below is non-exclusive, and carriers should recognize all Massachusetts professionals who are licensed under M.G.L. c. 112 and who are accredited or certified to provide behavioral health or substance use disorder services.

- Applied Behavior Analyst
- Assistant Applied Behavior Analyst
- Educational Psychologist
- Marriage and Family Therapist
- Mental Health Counselor
- Psychiatric Nurse Mental Health Clinical Specialist
- Psychiatrist
- Psychoanalyst
- Psychologist
- Rehabilitation Counselor

Q: Does a provider need to be in a carrier's network to get the protection from this law?

A: No, but the provider must have "provided such services under an express or implied contract or with the expectation of receiving payment, other than co-payment, deductible or co-insurance, directly or indirectly from an insurer or other entity."

Q: If less than 12 months have elapsed from the time of submission of the claim, under what circumstances may a Massachusetts health insurance carrier retroactively deny a previously paid claim for behavioral health services from a protected mental health

clinic, substance use disorder treatment program, or behavioral, substance use disorder, or mental health professional?

A: A carrier may impose a retroactive claims denial for behavioral health services on a provider if:

- (i) less than 12 months have elapsed from the time of submission of the claim by the provider to the insurer or other entity responsible for payment;
- (ii) the carrier or other entity has furnished the provider with a written explanation of the reason for the retroactive claims denial and, where applicable, a description of additional documentation or other any corrective action required for payment of the claim; and
- (iii) where applicable, the carrier or other entity responsible for payment allows the provider 30 days to submit additional documentation or to take other corrective action required for payment of the claim.

Q: What about claims going through coordination of benefits review that may be retroactively denied?

A: If a retroactive claims denial is imposed because the claim payment is subject to adjustment due to expected payment from a payer other than the health insurance carrier or an entity with which the health insurance carrier contracts to provide or manage health insurance benefits, including mental health and substance use disorder services, then the health insurance carrier or the entity with which it contracts shall notify the provider not less than 15 days before imposing the retroactive claims denial. The provider shall have 12 months from the date of denial to determine whether the claim is subject to payment by a secondary insurer, provided that if the claim is denied by the secondary insurer due to the insured's transfer or termination of coverage, then the health insurance carrier shall allow for the provider's resubmission of the claim.

Q: After 12 months have elapsed from the time of submission of the claim, under what circumstances may a Massachusetts health insurance carrier retroactively deny a previously paid claim for behavioral health services from a protected mental health clinic, substance use disorder treatment program, or behavioral, substance use disorder, or mental health professional?

A: A retroactive claims denial for behavioral health services is allowed after 12 months if:

- (i) the claim was submitted fraudulently;
- (ii) the claim, or behavioral health services for which the claim was submitted, is the subject of legal action;
- (iii) the claim payment was incorrect because the provider was paid or the insured member has already paid for the behavioral health services identified in the claim; or
- (iv) the behavioral health services identified in the claim were not delivered by the provider.

Q: What should a provider do if a claim is retroactively denied after 12 months, and the provider is entitled to protection under this law?

A: The provider should contact the insurance company directly, and inform them that you believe the retroactive denial is in violation of this law. If, after a reasonable period of

inquiry, you believe that the health insurance carrier continues in violation, then you may file a complaint with the Division of Insurance, using the form at this link:
<https://www.mass.gov/forms/doi-insurance-complaint-submission-form>.