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To: Commercial Health Insurers, Blue Cross Blue Shield of Massachusetts, and Health Maintenance Organizations Accredited Pursuant to M.G.L. c. 176O (“carriers”); External Review Agencies under Contract with the Health Policy Commission Pursuant to M.G.L. c. 176O, § 14; and Other Interested Parties

From: Nancy K. Ryan, Director, Office of Patient Protection

Re: Interim Guidance Regarding Chapter 177 of the Acts of 2022, *An Act Addressing Barriers to Care for Mental Health*

Date: October 25, 2022

Interim Guidance Regarding Chapter 177 of the Acts of 2022, *An Act Addressing Barriers to Care for Mental Health*

On August 10, 2022, Governor Baker signed into law Chapter 177 of the Acts of 2022, *An Act Addressing Barriers to Care for Mental Health* (“Chapter 177”). Chapter 177 amends Sections 13, 14, and 16 of M.G.L. c. 176O, effective November 8, 2022. The Office of Patient Protection (“OPP”) is issuing this interim guidance to notify carriers, external review agencies, and other parties about OPP’s implementation related to the external review process in compliance with Chapter 177 until such time as 958 CMR 3.000 is revised to align with the amended provisions.

Enforcement of Time Limits of the Internal Grievance Process

Section 64 of Chapter 177 amends section 13 of M.G.L. c. 176O to require that carriers send written resolutions of each internal grievance by certified or registered mail or other express carrier with proof of delivery. In addition, pursuant to section 66 of Chapter 177, an external review shall be decided in favor of the insured unless the carrier provides substantial evidence, such as proof of delivery, that the carrier properly complied with the time limits required under Section 13.

OPP understands that carriers may require time to develop and implement new processes for using registered or certified mail or express carrier with proof of delivery for every final adverse determination letter and may not be able to do so by November 8, 2022. Until such time as 958 CMR 3.000 is amended, OPP will accept as substantial evidence of carrier compliance with the internal grievance time limits documentation submitted to OPP that the carrier maintains a standard operating procedure designed to mail timely written notifications to consumers. When reviewing external review requests that allege noncompliance with internal grievance time limits, OPP will review the facts of the case presented by the consumer along with the carrier’s standard operating procedure.

Each carrier shall provide to OPP, by email to HPC-OPP@mass.gov by November 8, 2022, written documentation of its current standard operating procedure for responding to internal grievances. Such documentation shall include, but not be limited to, details about how an internal grievance decision is dated, stamped, and mailed following completion of the review.

Continuation of Coverage during External Review

Section 68 of Chapter 177 amends Section 16 of M.G.L. c. 176O to provide that an insured may apply to the external review panel to seek continuation of coverage of the health care service(s) at issue during the course of an expedited or non-expedited external review. Additionally, the law requires that the external review agency consider a pattern of denials that have been overturned by prior internal or external reviews when deciding whether to grant continuation of coverage.

Until such time as 958 CMR 3.000 is revised to align with these changes, OPP will accept requests for continuation of coverage from consumers submitting either expedited or non-expedited external reviews. OPP will direct the external review agencies to approve continuation of coverage upon a showing of substantial harm to the insured's health absent such continuation or for other good cause, which shall include, but not be limited to, a pattern of denials that have been overturned by prior internal or external review. Consumers should include evidence of any pattern of denials with requests for continuation of coverage. Except for these changes, requests for continuation of coverage will follow the current process.¹

Documents and Information Considered by the External Review Agencies

Section 67 of Chapter 177 adds the following language to Section 14 of M.G.L. c. 176O to specify that external review agencies shall consider: "any related right to such treatment or service under any related state statute or regulation...and medical records and medical opinions regarding medical necessity by the insured's treating provider that requested or provided the disputed service, which shall be obtained by the carrier, or by the panel if the carrier fails to do so".

First, consistent with current practice, OPP will continue to provide external review agencies with guidance on related state laws to consider as part of reviews. This guidance to external review agencies is publicly available on OPP's website: <https://www.mass.gov/service-details/hpc-regulations-and-guidance>. Second, per current regulation, OPP requires the external review agencies to consider all medical records timely submitted.² Carriers are required to forward such record, along with other medical records and information in the carrier's possession that are relevant to the service at issue, to OPP for consideration by the external review agency.³ If not in possession of relevant records, carriers are required to make good faith efforts to obtain records from providers, and external review agencies may request additional information from the carrier or insured necessary to render a decision.⁴

If you have questions about this guidance, please contact Nancy K. Ryan, Director of the Office of Patient Protection, at Nancy.K.Ryan@mass.gov or 857-327-2571.

¹ See 958 CMR 3.414.

² 958 CMR 3.409 and 3.412.

³ Id.

⁴ Id.