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BULLETIN 19-01

TO: All Licensed Tennessee Health Insurance Carriers

FROM: Carter Lawrence, Interim Commissioner

RE: Coverage for Mental Health Services

DATE: 2/1, 2019

The purpose of this Bulletin is to provide guidance regarding Tenn. Code Ann. §§ 56-7-1007 and 56-7-2360, which were added and amended, respectively, to the Tennessee Code by Public Chapter 1012 (SB2165/HB2355) of the 110th General Assembly, effective January 1, 2019. The Department has received numerous inquiries regarding the application of the amendments made by Public Chapter 1012.

Who: Tenn. Code Ann. § 56-7-2360 applies to “any entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner of commerce and insurance, that contracts with healthcare providers in connection with a plan of health insurance, health benefits, or health services.” (Tenn. Code Ann. § 56-7-2360(a)(1)(F)). The law applies to individual, small group, and large group policies issued in Tennessee, including short-term, limited duration policies, grandfathered plans that include mental health benefits, and policies issued to or plans issued by Multiple Employer Welfare Arrangements.

The law does **not** apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, or other limited benefit hospital insurance policies. (Tenn. Code Ann. § 56-7-2360(h)).

What: Tenn. Code Ann. § 56-7-2360 requires all health benefit plans to cover mental health, alcoholism, and drug dependency services. Those services are required to be covered in compliance with the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The included benefits are those for the “. . . treatment of any condition or disorder that falls under any of the diagnostic categories listed in the mental disorders section of the current edition of the International Classification of Disease (ICD) or that is listed in the mental disorders section of the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM).” (*International Classification of Diseases* (11th ed.; ICD-11); *The Diagnostic and Statistical Manual of Mental Disorders* (5th ed.; DSM-5); Tenn. Code Ann. § 56-7-2360(a)(1)(G)).

The Department has received specific inquiries regarding autism treatment. In 2006, the Tennessee legislature passed a coverage mandate for treatment of autism spectrum disorders for people under twelve years of age. (Tenn. Code Ann. § 56-7-2367). At the time the Tennessee mandate became effective, the federal mental health parity regulations defined “mental health benefits” as “. . .benefits for mental health services, as defined under the terms of the plan or group health insurance coverage . . .” (45 C.F.R. § 146.136). The federal regulation at the time did not incorporate an independent standard of current medical practice like the ICD and DSM.

Tenn. Code Ann. § 56-7-2360 now requires treatment of mental disorders listed in the ICD and DSM to be covered at parity. Autism is included among the conditions listed in both independent standards of current medical practice. Therefore, any treatment that is medically necessary and appropriate and is not experimental, such as Applied Behavioral Analysis therapy, must be covered at parity as outlined by MHPAEA.

How: Tenn. Code Ann. § 56-7-1007(b) requires the chief executive officers and chief medical officers of health insurance carriers to sign a certification that the carrier has completed a comprehensive review of its compliance with Tennessee mental health coverage laws and MHPAEA. This certification may be an attestation confirming compliance during the previous calendar year and should be submitted to the Department annually on or before March 1st beginning in 2020. Carriers should submit the notifications electronically to mhpcertification@tn.gov.

Any questions about this Bulletin should be directed to the Director of Insurance, 10th Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, and/or (615) 741-3450.