# STATE OF NEW MEXICO
# OFFICE OF SUPERINTENDENT OF INSURANCE

**SUPERINTENDENT OF INSURANCE**
Russell Toal

**DEPUTY SUPERINTENDENT**
Jennifer A. Catechis

**BULLETIN 2021-009**

**June 14, 2021**

**TO: ALL INSURERS LICENSED TO SELL HEALTH INSURANCE IN NEW MEXICO**

**RE: SENATE BILL 317: APPLYING COST-SHARING WAIVERS TO BEHAVIORAL HEALTH SERVICES**

Senate Bill 317, titled "No Behavioral Health Cost Sharing", was signed into law by Governor Michelle Lujan Grisham on April 8, 2021, will become effective January 1, 2022 and is scheduled to expire on December 31, 2026. Among other advancements, SB317 prohibits cost sharing, including imposition of a deductible, for behavioral health ("BH") services covered by any health care plan "delivered, issued for delivery or renewed in New Mexico". To ensure that all New Mexicans receive equal treatment with respect to health plan coverage for BH services, the application of the prohibition on cost-sharing for BH services must be standardized across all subject health plans on January 1, 2022. To that end, the New Mexico Office of Superintendent of Insurance ("OSI") directs every subject health plan to use the following criteria to identify BH services that are not subject to cost sharing, listed by service type.

**Professional Services**

- Professional services rendered by a BH provider, except when delivered in an emergency room or urgent-care center.
- Services rendered by a primary care provider when a BH diagnosis is the 1st or 2nd code on the claim (see definition of BH diagnoses below.)

**Outpatient Facility Services**

- Outpatient services, including professional services, delivered in a BH facility.
- Outpatient services, including professional services, delivered in a non-BH facility if the attending provider is a BH provider.
- Non-emergency room and non-urgent care center outpatient services, including professional services, delivered in a non-BH facility, by a non-BH provider, when a BH diagnosis is the 1st or 2nd code on the claim.
- Transcranial magnetic stimulation treatment services and electroconvulsive therapy services, including professional services.

**Inpatient Facility Services**

- Inpatient services, including professional services, delivered in a BH hospital or in the BH department of a general acute care hospital.
- Inpatient services, including professional services, delivered in a residential treatment center.
- Inpatient services, including professional services, delivered in a general, acute care hospital when the attending provider is a BH provider.
- Detoxification services, including professional services, delivered in a BH hospital, a general acute care hospital, or a residential treatment center.
- Transcranial magnetic stimulation treatment services and electroconvulsive therapy services, including professional services.

**Ancillary Services**

- Clinical laboratory services, radiology services and other imaging services when the ordering provider is a BH provider.
- Clinical laboratory services, radiology services and other imaging services when the ordering provider is not a BH provider, or when the ordering provider information is not present on the claim, but a BH diagnosis code is 1st or 2nd on the claim.

**Prescription Drugs**

- A prescription drug covered on the plan's drug formulary or authorized by the plan when the drug is in a USP therapeutic category and class combination as specified on the attached list. While examples of drugs in a class are provided, the lists are not all inclusive and the carrier shall ensure its Pharmacy Benefits Manager is able to identify all drugs included in the listed categories and class combinations.
- Special considerations apply for the off-label use of drugs for the treatment of BH conditions. To that end, the attached list includes some non-BH USP therapeutic categories and classes of drugs that might be used off-label for BH conditions. If the prescriber is a BH provider, the drug is to be considered a BH drug.
    - A BH provider might prescribe drugs from other therapeutic categories and classes that are not on the attached list. It is up to the carrier to determine whether the drug should be treated as a BH drug for cost-sharing purposes.
    - Cost-sharing may be applied to these non-BH drugs if the prescriber is not a BH provider. However, at least monthly, a carrier shall analyze utilization of these drugs to identify members who likely filled these prescriptions for treatment of a BH condition. When confirmed with the prescriber, carriers will reimburse these identified members their cost-sharing expenditures for these drugs and take appropriate steps to remove the cost sharing requirement for the member when prescriptions for the specified drug(s) are filled in the future.

These directives apply to cost-sharing policies. Carriers may continue to apply their plans' drug formulary policies, prior authorization and utilization management policies, and other drug coverage policies. For example, if a carrier's formulary covers the generic version of a brand drug, there is nothing in the bill or in this guidance that would require the carrier to pay for the brand name product.

If a member receives BH services subject to this guidance from an out-of-network provider, the plan may impose cost-sharing for those services unless:

1. Reimbursement for the service is governed by the Surprise Billing Act; or
2. The plan specifically authorized the out-of-network provider to deliver the service(s).

If a plan is required to reimburse a member for cost sharing pursuant to this guidance, the plan may recoup the reimbursement amount from the contracted provider that accepted the cost sharing from the member, if authorized under the terms of the provider agreement.

**BH Diagnosis Codes**

The International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) contains a set of diagnosis codes that begin with "F" that includes behavioral health conditions subject to SB317. Carriers are directed to use the presence of an ICD-10-CM "F-code" in the 1st or 2nd diagnosis as needed to identify a BH service, except for the following code sets:

- F01.x – F09.9x - Mental disorders due to known physiological conditions
- F70.x – F79.9x - Mild intellectual disabilities
- F80.x – F83.9x - Pervasive and specific developmental disorders
- F85.x – F89.9x - Pervasive and specific developmental disorders
- F91.x – F98.9x - Behavioral and emotional disorders with onset usually occurring in childhood and adolescence

The OSI will, at times, reevaluate these directives based on carrier and other stakeholder input and on claims data.

As always, OSI thanks carriers for their partnership and cooperation.

**ISSUED** this 14th day of June, 2021.

**RUSSELL TOAL**
**Superintendent of Insurance**