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**BULLETIN No. 01-2019**

TO: Insurance Carriers offering Health Insurance Policies in Wyoming  
FROM: Tom Glause, Insurance Commissioner *Tg*  
DATE: April 19, 2019  
SUBJECT: Coverage of Treatments for Autism Spectrum Disorder

On February 27, 2019, the Mental Health and Substance Use Disorder Insurance Parity Act, (Wyoming House Enrolled Act 89) was signed into law. In short, this act requires that all individual and group health insurance policies shall meet the requirements of the federal Mental Health Parity and Addiction Equity Act of 2008, (42 U.S.C. § 300gg-26, as amended) and the related promulgated regulations. This bulletin is intended to clarify the federal and state law regarding mental health parity as it is related to autism spectrum disorder services.

While mental health services are an essential health benefit (EHB) for ACA-qualified plans, the Department acknowledges that not all non-ACA plans include mental health services. However, for the plans that include mental health coverages, the new Wyoming law requires that these services be treated in parity with medical/surgical benefits. Under the ACA, autism spectrum disorder is included under the broad category of mental health.

Pursuant to the authority granted to the Commissioner by W.S. §26-2-109, the Department of Insurance (DOI) issues this Bulletin to notify all health insurance carriers covering mental health, that treatments for Autism Spectrum Disorder cannot be excluded from the mental health services in an insurance policy. All grandfathered and transitional health insurance policies regulated by the DOI, including the individual and small group markets, must follow the guidance set forth in this Bulletin. All individual and group health insurance policies that offer mental health benefits and are under the jurisdiction of the Department, must also follow the guidance in the Bulletin. Terms of this bulletin are in effect beginning no later than July 1, 2019.

Further, if a health insurance policy includes both medical/surgical benefits and mental health/substance use disorder benefits, under the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), the financial requirements (such as deductibles and co-payments) and treatment limitations (such as the number of visits or days of coverage) that apply to mental health/substance use disorder benefits must be no more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits in a classification. Such limitations are known as quantitative treatment limitations (QTLs).<sup>1</sup>

<sup>1</sup> 45 CFR §146.136(a)-(c); [https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea\\_factsheet.html](https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html).

The MHPAEA also prohibits a health insurance policy from imposing non-quantitative treatment limitations (NQTL) with respect to mental health/substance use disorder benefits in any classification unless factors used in applying the NQTL to mental health/substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the factors used in applying the limitation with respect to substantially all medical/surgical benefits in the classification.<sup>2</sup> NQTLs are non-numerical limits on the scope or duration of benefits for treatment and include medical management standards such as preauthorization requirements, limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative.

Based on the foregoing law and principles, if an insurance carrier covers autism spectrum disorder and seeks to place QTLs or NQTLs on autism spectrum disorder benefits or treatments, it must show that a similar limitation exists regarding substantially all benefits and treatments on the medical/surgical portion of their insurance coverage within the same classification.

Benefits for autism spectrum disorder may not be subject to any separate cost-sharing requirements or treatment limitation that only apply to mental health /substance use disorder benefits.<sup>3</sup>

In order to ensure compliance with this Bulletin, insurance carriers are hereby notified that exclusion of Applied Behavior Analysis (ABA) therapy to treat children with autism spectrum disorder on the basis that ABA therapy is experimental or investigative treatment will not be allowed by the Department. Professionally recognized treatment guidelines and a requisite number of randomized controlled trials support the use of ABA therapy to treat children with autism spectrum disorder.<sup>4</sup>

Nothing in this Bulletin should be construed to limit an insurance carrier from evaluating the medical necessity of treatments for autism spectrum disorder. Insurance carriers may establish a policy to periodically review the medical necessity of continuing autism spectrum disorder related treatments, as long as the standards for such reviews are comparable to and not more stringent than reviews conducted for substantially all medical/surgical series in the same classification.

When applying this Bulletin, “autism spectrum disorder” means any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).<sup>5</sup> In accordance with this guidance, “treatments for autism spectrum disorder” means evidence-based care and related equipment prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary, including but not limited to behavioral health treatment, pharmacy care, psychiatric care, psychological care, and therapeutic care.

If you have any questions regarding this Bulletin, please contact Wyoming Insurance Commissioner, Tom Glause, Deputy Insurance Commissioner Jeff Rude, or Senior Health Policy Analyst Denise Burke at 307-777-7401.

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<sup>2</sup> 45 CFR § 149-6.136(a)-(c); <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtlsd=that-require-additional-analysis-to-determine-mhpaea-compliance.pdf>

<sup>3</sup> 45CFR§146.136(a)-(c); [https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea\\_factsheet.html](https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html).

<sup>4</sup> <https://dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-39-proposed.pdf>.

<sup>5</sup> <https://www.psychiatry.org/psychiatrists/practice/dsm>.