



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

Insurance Circular Letter No. 6 (2015)
March 30, 2015

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations, Student Health Plans Certified Pursuant to Insurance Law § 1124, and Municipal Cooperatives (collectively, “insurers”)

RE: Changes in Utilization Review Standards for Substance Use Disorder Treatment Pursuant to Chapter 41 of the Laws of 2014

STATUTORY REFERENCES: N.Y. Insurance Law Article 49; N.Y. Public Health Law Article 49

Introduction

The purpose of this circular letter is to provide guidance to insurers regarding the changes that Chapter 41 of the Laws of 2014 (“Chapter 41”) has made to the utilization review (“UR”) provisions in Articles 49 of the Insurance Law and Public Health Law (“Articles 49”) relating to substance use disorder (“SUD”) treatment and to remind insurers of other statutory requirements regarding availability of clinical review criteria.

Background

Chapter 41 was enacted as part of a package of legislation intended to combat the rise in heroin use in New York. In part, Chapter 41 codified existing requirements regarding health insurance coverage for SUD treatment that resulted from the federal Mental Health Parity and Addiction Equity Act¹. Additionally, Chapter 41 made changes to a number of provisions in Articles 49 that govern UR in the context of treatment for SUD. These provisions take effect on April 1, 2015 and apply to policies and contracts issued, renewed, modified, altered, or amended on or after that date.

¹ See Insurance Circular Letter No. 5 (2014).

Analysis

A. Definition of “Clinical Peer Reviewer”

Articles 49 defines “clinical peer reviewer” for purposes of utilization review determinations as either a physician who possesses a current and valid non-restricted license to practice medicine or another health care professional who, where applicable: (1) possesses a current and valid non-restricted license, certificate, or registration or, where no provision for a license, certificate, or registration exists, is credentialed by the national accrediting body appropriate to the profession; and (2) is in the same profession and same or similar specialty as the health care provider who typically manages the medical condition or disease or provides the health care service or treatment under review.

Chapter 41 amended the definition of “clinical peer reviewer” by adding a requirement that, for purposes of UR determinations involving SUD treatment, a “clinical peer reviewer” must be either: (1) a currently licensed physician who specializes in behavioral health and has experience in the delivery of SUD courses of treatment; or (2) a health care professional, other than a licensed physician, who specializes in behavioral health, has experience in the delivery of SUD courses of treatment, and is licensed, certified, or registered, where applicable, or if no license, certification, or registration requirement exists, is credentialed by the national accrediting body appropriate to the profession.²

The change to the definition of “clinical peer reviewer” applies to Title I of Articles 49, which governs internal UR determinations. The definition of “clinical peer reviewer” for purposes of Title II of Articles 49, which governs external appeals, remains unchanged.

B. UR Criteria

Chapter 41 added a new provision to the UR program standards section in Articles 49. The new provision sets forth standards a UR agent must consider when deciding what criteria to use to determine health care coverage for SUD treatment. It requires that a UR agent who is reviewing SUD treatment for purposes of health insurance coverage must use recognized evidence-based and peer-reviewed clinical review criteria that are appropriate to the age of the patient and are deemed appropriate and approved for such use by the Commissioner of the Office of Alcoholism and Substance Abuse Services (“OASAS”) in consultation with the Commissioner of Health and the Superintendent of Financial Services (“Superintendent”).³

OASAS strongly encourages UR agents to use the Level of Care for Alcohol and Drug Treatment Referral (“LOCADTR”) tool to determine health care coverage for SUD treatment. LOCADTR is a web-based patient placement criteria system designed for use in making level of care decisions in New York State. As described on the OASAS website, a level of care determination is a clinical procedure provided by OASAS-certified alcoholism and substance abuse treatment services

² Insurance Law § 4900(b)(1)(B)(ii)(C); Public Health Law § 4900.2(a)(i)(B).

³ Insurance Law § 4902(a)(9); Public Health Law § 4902.1(i).

or by qualified health professionals, as defined in the OASAS chemical dependence regulations. See <http://www.oasas.ny.gov/treatment/health/locadtr/index.cfm>. As such, LOCADTR is pre-approved by OASAS for use in SUD treatment determinations. UR agents who use LOCADTR will only be required to notify the Commissioner of OASAS by letter, with copies of the letter sent to the Commissioner of Health and the Superintendent. It is expected that OASAS will require UR agents to use the LOCADTR tool to determine coverage for SUD treatment provided through NYS Medicaid Managed Care. While LOCADTR should be used by UR agents to determine level of care, coverage will depend on the terms of the individual's insurance contract or policy.

A UR agent who does not use LOCADTR must submit to OASAS the UR criteria that the UR agent intends to use no later than 60 days before the date that the criteria are intended to be used. The UR agent must demonstrate to OASAS that the criteria are recognized as evidence-based and peer-reviewed and that the criteria are appropriate to the age of the patients to whom they are intended to apply. The criteria may not be used until OASAS deems them appropriate and approves their use. Notice of such approval should be forwarded to the Commissioner of Health and the Superintendent.

C. Request for Inpatient SUD Treatment

Articles 49 provides that a UR agent must make a determination involving continued or extended health care services and provide notice of the determination within one business day of the receipt of the necessary information except, with respect to home health care services following an inpatient hospital admission, within 72 hours of receipt of all of the necessary information when the day subsequent to the request falls on a weekend or holiday. Chapter 41 amended Articles 49 by adding a requirement that a UR agent must make a determination regarding a request for inpatient SUD treatment within 24 hours of receiving the request, if the request is submitted to the UR agent at least 24 hours before discharge from an inpatient admission. Further, if the request for inpatient SUD treatment is submitted to the UR agent at least 24 hours before discharge from an inpatient admission, the UR agent may not deny, on the basis of medical necessity or lack of prior authorization, coverage for the inpatient SUD treatment while the UR agent's determination is pending.⁴

D. Expedited Appeal of Inpatient SUD Treatment

Articles 49 provides that when an appeal is expedited, a UR agent must make a determination on an adverse determination within two business days of receiving information necessary to conduct the appeal. Chapter 41 amended Articles 49 to require a UR agent to determine an expedited appeal of an adverse determination of a request for inpatient SUD treatment within 24 hours of receiving the appeal if the initial request for inpatient SUD treatment was submitted at least 24 hours before discharge from an inpatient admission. If an insured or an insured's provider files an expedited internal and external appeal within 24 hours from receiving an adverse determination for inpatient SUD treatment for which coverage was provided while the initial utilization review determination was pending pursuant to Insurance Law § 4903(c)(3) or Public Health Law § 4903.3(c), a UR agent may not deny on the basis of medical necessity or lack of prior authorization coverage of the inpatient SUD treatment while a determination by the UR agent or external appeal agent is pending.⁵ In the

⁴ Insurance Law § 4903(c); Public Health Law § 4903.3.

⁵ Insurance Law § 4904(b); Public Health Law § 4904.2.

event the external appeal agent upholds the adverse determination, the UR agent may deny coverage of the services only prospectively from the date of the external appeal agent's determination.

E. Availability of Clinical Review Criteria

Section 4903(e)(3) of the Insurance Law and § 4903(5)(c) of the Public Health Law require that a UR agent who makes an adverse determination must, in its notice of adverse determination, notify the insured or the insured's designee of the availability upon request of the clinical review criteria relied upon to make the determination. Additionally, §§ 3217-a(b)(10) and 4324(b)(10) of the Insurance Law and § 4408(2)(j) of the Public Health Law require that, upon written request, an insurer must provide specific written clinical review criteria relating to a particular condition or disease to an insured or prospective insured.

Conclusion

Chapter 41 amends Articles 49 in several ways as they relate to SUD treatment. It modifies the definition of clinical peer reviewer, sets forth standards for determining the UR criteria to be used, shortens the timeframes for a UR agent to make an initial or expedited appeal determination regarding a request for inpatient SUD treatment and to provide notice of the determination, and prohibits, under certain circumstances, a UR agent from denying on the basis of medical necessity or lack of prior authorization coverage for inpatient SUD treatment while either an initial determination, expedited appeal, or external appeal is pending.

Please direct any questions regarding this circular letter to Thomas Fusco, Supervising Insurance Attorney, by mail at Health Bureau, New York State Department of Financial Services, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202, or by e-mail at thomas.fusco@dfs.ny.gov.

Very truly yours,

Lisette Johnson
Bureau Chief, Health Bureau