

Assessment of Public Comments for the Fifty-Second Amendment to 11 NYCRR 52 (Insurance Regulation 62).

The New York State Department of Financial Services (“Department”) received comments from a law firm that represents health insurers and a health plan trade organization.

Comment: The law firm commented that the proposed amendment directly conflicts with Insurance Law Sections 3216(c)(3) (individual policies) and 4235(f)(1)(A) (group policies) because it requires that services provided to an individual be covered by a policy under which the individual is not an insured.

Response: As explained in an informational bulletin issued by the Center for Medicaid and CHIP Services, “maternal depression is a serious and widespread condition that not only affects the mother, but may have a lasting, detrimental impact on the child’s health. Maternal depression presents a significant early risk to proper child development, the mother-infant bond, and the family.” See CMCS Informational Bulletin from Vicki Wachino, Director, Center for Medicaid and CHIP Services, on Maternal Depression Screening and Treatment: A Critical Role for Medicaid in the Care of Mothers and Children (May 22, 2016) at <https://www.medicaid.gov/federal-policy-guidance/downloads/cib051116.pdf>. Citing to a Harvard University working paper, the bulletin notes that children who are raised by clinically depressed mothers “may perform lower on cognitive, emotional, and behavioral assessments than children of non-depressed caregivers, and are at risk for later mental health problems, social adjustment difficulties, and difficulties in school.” Id. The bulletin further states that “[m]aternal depression screening and treatment is an important tool to protect the child from the potential adverse physical and developmental effects of maternal depression.” Id.

As a result, assessment of a mother’s mental health is a health benefit to the child. Therefore, the Department did not make any changes to address this comment.

Comment: The law firm commented that the proposed amendment would require maternal depression screenings to be covered under both the mother’s policy and the child’s policy when the child is covered under a different policy than the mother. The law firm stated that it believes that this is not the intent of the proposed

amendment because the regulatory impact statement raises concerns about coverage for maternal depression screening for women who do not have health coverage. The law firm recommended that the Department remove the word “also” from the last sentences of 11 NYCRR Sections 52.17(a)(39) and 52.18(a)(14) so that the sentences read: “However, if the infant is covered under a different policy than the mother and the screening and referral are performed by a provider of pediatric services, coverage for the screening and referral shall be provided under the policy under which the infant is covered.” This would prevent the possibility that two claims for the same services are paid under different policies while providing coverage where the mother is uninsured.

Response: The amendment does not create any different rules regarding coordination of benefits between different policies. 11 NYCRR Section 52.23 provides for coordination of benefits under blanket and group policies and contracts and those rules equally apply here. Coordination of benefit provisions are not permitted in individual policies and group policies may not coordinate benefits with individual policies pursuant to 11 NYCRR Section 52.23. The Department finds that it is unnecessary to establish a separate special rule just for these circumstances. Therefore, the Department did not make any changes to address this comment.

Comment: The law firm commented that federal law prohibits extending the requirement that a maternal depression screening and referral for the mother be covered under the child’s policy to the Child Health Plus program because federal law requires ensuring that “only targeted low-income children are furnished child health assistance under the state child health plan.”

Response: As explained above, assessment of a mother’s mental health is a health benefit to the child. Therefore, the Department did not make any changes to address this comment.

Comment: The health plan trade organization requested confirmation that health plans may use the ICD-10 screening code for maternal depression in programming their claims systems.

Response: It is outside the purview of the Department to decide which codes should be used when health plans program their claim systems.

Comment: The health plan trade organization requested that coverage for maternal depression screenings be limited to one-year postpartum.

Response: The United States Preventive Services Task Force has published recommendations for depression screenings, including screenings for pregnant and postpartum women. These recommendations do not include a recommendation for how long health care providers should perform maternal depression screenings. Therefore, health plans may use reasonable medical management techniques to determine the frequency, scope and setting for the provision of the preventive service, and may review claims for medical necessity.