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CONSUMER ADVISORY

New Mexico's law to eliminate out-of-pocket costs for behavioral health services for many insured New Mexicans

Here's what you need to know

Behavioral health is important, but many people struggle because of the cost. In 2021, New Mexico passed Senate Bill 317. This new law took effect on January 1, 2022. The law[1] requires the insurance companies regulated by the Office of Superintendent of Insurance to cover the *total* cost of behavioral health services and prescriptions. This means patients will not have any cost sharing if they are in a fully insured health plan. Cost sharing includes deductibles, coinsurance or copayments, for services delivered by in-network providers. This is similar to the way preventive care and mammograms are fully covered fully insured health plans.

What is cost sharing?

"Cost sharing" means the out-of-pocket costs that you pay to your health care provider or pharmacist when you use health care services or fill prescriptions. Cost sharing includes deductibles, co-pays, and coinsurance that consumers pay for most healthcare services. SB 317 ends all forms of cost sharing for behavioral health services for people enrolled in most health plans. This means that the insurance company pays the full price for the behavioral health service or prescription.

Who qualifies for behavioral health services with $0 cost sharing?

Eligible New Mexicans who are enrolled in:

- private health insurance that is overseen by the Office of Superintendent of Insurance;
- state plans including the NM Public School Insurance Authority (NMPSIA), the Risk Management Division (RMD), the NM Retirees Health Care Authority (NMRHCA) or Albuquerque Public Schools (APS);
- plans offered through New Mexico's Health Insurance Exchange (beWellnm.com);
- major medical policies purchased directly from health insurance companies;
- the New Mexico Medical Insurance Pool; and
- Medicaid.

[1] New Mexico Statutes Annotated Sections 59A-22-57, 59A-23-16, 59A-46-57 and 13-7-26. The New Mexico Statutes Annotated can be found at www.nmcompcomm.us.

Who is NOT included?

New Mexicans enrolled in self-insured/self-funded plans and Medicare are NOT covered by the law. If your health coverage is provided through a self-funded or self-insured plan (usually offered by an employer), then your plan is governed by federal law. Plans that are governed by federal law are exempt from state law requirements like no behavioral health cost-sharing. The federal law governing these types of plans is ERISA (Employee Retirement Income Security Act, 29 United States Code § 1001 et seq.). Self-insured plans can elect to provide behavioral health services without cost sharing, but they are not required to do so.

What kinds of behavioral health services are included?

Behavioral health services include:

- visits with behavioral health professionals;
- treatment for mental illness, treatment for drug or alcohol problems;
- trauma spectrum disorders;
- inpatient, detox, residential treatment and partial hospitalization, and intensive outpatient therapy services; and
- behavioral health medications, including brand-name if generics are unavailable.

Which types of health insurance <u>do not</u> qualify for $0 cost sharing behavioral health services?

There are certain employer plans regulated by the federal government that are exempt from state laws like SB 317. These are often called **self-insured** or **self-funded** plans and are governed by federal laws.

Traditional Medicare or Medicare Advantage, Tricare, and federal employee plans are not included for the same reason – they are federally regulated.

The law does permit self-insured plans and Medicare Advantage plans to *choose* to eliminate cost sharing for covered behavioral health services. Employees can ask their employers whether they have chosen to waive cost sharing for covered behavioral health services. Medicare Advantage enrollees can ask their insurers to consider deleting the cost sharing.

Can uninsured people get behavioral health services without having to pay?

No. The state law only limits how much people enrolled in certain health plans have to pay out-of-pocket for behavioral health services. Many uninsured New Mexicans qualify for no-cost or reduced-cost coverage through Medicaid, beWellnm, or the New Mexico Medical Insurance Pool. Contact beWellnm today so that you can get a health insurance plan and access behavioral health services without cost sharing. You can apply for beWellnm at www.beWellnm.com.

How do I know if my health plan must cover behavioral health services at no charge?

- First, call your insurance company and ask if your plan is included and whether you will be free from cost sharing for behavioral health services and related prescriptions. Check the website for your insurance plan and see if the co-pays or cost-sharing have changed for behavioral health services and related prescriptions. If your insurance is through beWellnm, then the insurance company must comply with SB 317 and fully pay for behavioral health services and related prescriptions.
- You can also ask your employer if your health insurance plan is fully-insured or self-insured. If it is *fully-insured*, the plan cannot require cost sharing for covered behavioral health services. If it is *self-insured*, the State of New Mexico does not have the authority to require $0 cost sharing for behavioral health services. Self-insured plans may *choose* to include $0 behavioral health services but aren't required to do so.
- If your plan is through the state (including the NM Public School Insurance Authority (NMPSIA), the Risk Management Division (RMD), the NM Retirees Health Care Authority (NMRHCA) or Albuquerque Public Schools (APS), it must eliminate cost sharing for behavioral health services. Contact your insurance carrier and/or your employer to verify that they are complying with the law on eliminating cost-sharing for behavioral health services.

Is there anything I can do if my employer's self-funded plan does not cover behavioral health services at no charge?

As noted above, you can talk to your employer about the benefits of offering behavioral health services to employees and explain that other types of health plans have begun to offer no cost behavioral health services. This could be a great way for employers to attract and retain employees.

Does the law apply to *out-of-network* services?

In order to get behavioral health services without charge, you must visit a provider in your insurance company's network, unless your plan has approved use of a provider who is not in the plan's network due to exceptional circumstances.

Do high deductible health plans with Health Savings Accounts qualify for $0 cost sharing behavioral health services?

Because federal rules control Health Savings Accounts, (HSAs), individuals enrolled in HSA-eligible, high deductible health plans must pay their deductible amounts. However, if the high deductible health plan is a fully-insured plan, then the plan must pay any coinsurance or copayment amounts. The member will pay deductibles but will not pay coinsurance or copays. Again, we recommend contacting your insurer about what will be covered.

When does the law take effect?

The law went into effect on January 1, 2022[2]. If your health plan is not exempt from the law and you paid cost sharing for behavioral health services or prescriptions you received on or after January 1, you should ask your insurance carrier for reimbursement. If your insurance carrier does not reimburse you for services after January 1, 2022, you should file a grievance with your health plan and, if not resolved, you may file a complaint with the OSI Managed Healthcare Bureau at https://www.osi.state.nm.us/index.php/managed-healthcare-complaint/.

If you receive health insurance through a state government entity (RMD, NMPSIA, NMRHCA or APS), you should file a grievance with your insurance carrier, then with your state or public education employer. If that does not resolve the issue, then you can file a grievance with the OSI Managed Healthcare Bureau.

How can behavioral health providers find out their patient's health plan's cost-sharing requirements for covered behavioral health services?

Providers are urged to always verify their patients' eligibility and benefits before the appointment. When the provider asks the patient for their insurance coverage, the provider should also ask the patient if they have contacted their insurance carrier, employer, or state government insurance provider about whether cost sharing has been eliminated for behavioral health services. If the patient does not know, the provider should follow up with the insurance carrier. As of January 1, 2022, insurance carriers are required to pay behavioral health providers the full payment amount agreed to for services that are exempt from all cost sharing.

OSI has issued Bulletin 2021-009 and a Clarification of Eligibility (January 14, 2022) which may also be consulted for guidance. If an insurance carrier fails to comply with the requirements of SB 317 and the resulting state laws, other than plans through state government (RMD, NMPSIA, NMRHCA or APS), a complaint may be filed with the OSI at https://www.osi.state.nm.us/wp-content/uploads/2021/11/MHCB-Provider-Complaint-Form-_Feb_2021.pdf.

[2] Currently, the law is scheduled to expire on December 31, 2026, unless the New Mexico legislature extends the law.