STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal

DEPUTY SUPERINTENDENT
Jennifer A. Catechis

NOTICE:
CLARIFICATION OF ELIGIBILITY FOR BEHAVIORAL HEALTH COST-SHARING

The provisions of Senate Bill 317 (SB317) prohibiting cost-sharing for most behavioral health (BH) services went into effect on January 1, 2022. In response to confusion among providers and people with major medical insurance, the Office of Superintendent of Insurance (OSI) is clarifying to which kinds of major medical insurance the BH cost-sharing prohibitions apply.

The no BH cost-sharing provisions of Senate Bill 317 apply to individual and small group health plans sold on the New Mexico Health Insurance Marketplace (the Exchange, or beWellnm), fully-insured[1] individual, small group and large group plans sold off the Exchange, and state and public school employee health plans. New Mexicans enrolled in these types of health plans will not owe payments for deductibles, coinsurance or copayments for BH services or BH prescription drugs received on or after January 1, 2022. Specific information about BH services and BH prescription drugs that are not subject to cost-sharing can be found in Bulletin 2021-009 "Senate Bill 317: Applying Cost-Sharing Waivers To Behavioral Health Services" which is available on the OSI website at: https://www.osi.state.nm.us/index.php/news/senate-bill-317-applying-cost-sharing-waivers-to-behavioral-health-services/.

The BH cost-sharing prohibitions of SB317 do not apply to self-insured[2] insurance plans. Self-insured health plans, usually offered by very large employers, are governed by the Employee Retirement Income Security Act of 1974 (ERISA), a federal law which exempts these health plans from state insurance laws. Individuals with this kind of insurance are responsible for their plans' BH cost-sharing requirements. In addition, the BH cost-sharing exemption does not apply to health savings account (HSA) eligible, high deductible health plans (HDHPs). For HDHPs to offer these tax-deferred HSAs,

[1] A fully-insured health plan is a plan that the insurance company funds the cost of insurance through the premiums it collects from individuals and employers.
[2] A self-insured health plan is one where the employer funds the insurance through the premiums it collects from its employees, including the employer's own contribution to the cost of coverage.

they must comply with Internal Revenue Service (IRS) rules which only allow cost-sharing exemptions for preventive services, which do not include BH services. Individuals enrolled in an HSA-eligible HDHP are not exempt from cost-sharing for BH services. Please note that a health savings account is not the same as a health *spending* account, also called a flexible spending account, that many employers offer.

Health insurance cards do not generally indicate whether the plan is fully-insured, self-insured, or an HDHP. BH providers are urged to verify a patient's eligibility and cost-sharing amounts prior to the appointment. Insured patients who believe they are covered by a health plan governed by the BH cost-sharing prohibitions of SB317 but who have paid a cost-sharing amount are advised to first contact their health insurance company to confirm and correct the situation if necessary. If the issue is not resolved to the patient's satisfaction, patients and providers can submit a complaint to the Managed Health Care Bureau at https://www.osi.state.nm.us/index.php/managed-healthcare-complaint/ or they can call 855-427-5674.

The OSI is committed to correctly implementing SB317's BH cost-sharing prohibitions and reducing financial barriers for many insured New Mexicans who need BH services. Please direct any questions or comments concerning this notice to Julie Weinberg at julie.weinberg2@state.nm.us. Thank you for your ongoing cooperation in this effort.

ISSUED this 14th day of January, 2022.

SUPERINTENDENT OF INSURANCE



RUSSELL TOAL