



The State of New Hampshire Insurance Department

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BULLETIN Docket No.: INS-15-046-AB

TO: All New Hampshire Licensed Health Carriers and Producers
FROM: Roger A. Sevigny *RS*
Insurance Commissioner
DATE: July 6, 2015
RE: Guidance on Administration of Autism Benefits

The purpose of this bulletin is to give carriers guidance on the administration of autism benefits, in particular on whether dollar or visit limits are permissible.

New Hampshire law requires coverage of certain treatments for persons with pervasive developmental disorder or autism. RSA 417-E:2. These treatments include “[p]rofessional services and treatment programs, including applied behavioral analysis, necessary to produce socially significant improvements in human behavior or to prevent loss of attained skill or function,” specifically including prescribed pharmaceuticals and services provided by certain types of licensed professionals. RSA 417-E:2, I(a). On its face, the statute allows services to be capped at certain monetary levels depending on age. RSA 417-E:2, III. However, this provision may be preempted by the federal Affordable Care Act (ACA) if it prevents the application of federal law. ACA section 1321(d), 42 USC § 18041(d).

Under the ACA, mental health benefits are considered part of the Essential Health Benefits which must be covered under any individual or small group market health plan. ACA section 1302(b)(1)(E), 42 USC § 18021(b)(1)(E). In New Hampshire, “pervasive developmental disorder” and autism are specifically defined as biologically-based mental illnesses. RSA 417-E:1, III (h). Because state law defines these conditions as mental illnesses, they are subject not only to state law parity requirements, but also to the federal Mental Health Parity and Addiction Equity Act (MHPAEA), 42 USC § 300gg-26.

As a defined mental illness under RSA 417-E:1, autism is subject to the MHPAEA and must be treated in parity with any other illness covered under the plan. Coverage of the condition is also considered one of the Essential Health Benefits. The dollar limits set forth in RSA 417-E:2, if read as caps, would prevent the application of the ACA, and are therefore preempted. Any visit limitations established as equivalents to those dollar limits serve only as a minimum threshold for autism related services, not as a maximum cap.

Questions related to this bulletin should be directed to Jennifer Patterson, Health Policy Legal Counsel, at (603) 271-2261 ext. 215 or email at jennifer.patterson@ins.nh.gov; or Michael Wilkey, Director of Compliance and Consumer Services at the New Hampshire Insurance Department, at michael.wilkey@ins.nh.gov or by phone at (603) 271-2261 ext. 330.