

Provider Guidance: Assisting with Behavioral Health Insurance Issues

Understanding the Insurance Department Role

The NHID has a dual regulatory role with respect to issues a provider might encounter:

- **Consumer services:** Help consumers get benefits to which entitled under insurance contract
- **Market conduct:** Oversee carriers' treatment of members at market-wide level

Key legal authorities: Insurance Code; federal mental health parity law; insurance contracts

Two categories of issues provider may encounter:

- Issues related to **particular consumer** (e.g., denied claim/denied preauthorization)
- Issues related to **particular insurance carrier**, affecting multiple consumers (e.g., late payment, low reimbursement levels, credentialing issues)

Steps to Follow: Issues Relating to a Particular Consumer

(These are the same steps a consumer should follow, but a provider may assist with them also. In some cases the provider may need to obtain written authorization to act on the patient's behalf)

STEP 1. Contact insurance carrier directly using contact information on patient's insurance card. Making contact early, before a service is ordered, reduces the chance of miscommunication. A direct communication between the provider and the carrier's medical review staff can lead to resolution without the need for the patient to file a formal appeal.

STEP 2. File an internal appeal. This level of appeal, which is required by law for all fully-insured insurance coverage, occurs *within* the insurance carrier. The patient's denial letter will contain instructions on how to appeal. If the patient does not have a copy of the letter, contact the insurance carrier to get another copy.

STEP 3: File for external review using the forms on the NHID website. External review, required by law to be available for all fully-insured insurance coverage, involves an evaluation by an independent review organization (IRO) *outside* the carrier of the carrier's medical necessity determination. The carrier pays for this process and is legally bound by the IRO's determination.

BUT WAIT . . . when do I contact the NHID Consumer Services Unit?

One of the central functions of the Consumer Services Unit is to guide consumers through the steps above, so if you or your patient encounter obstacles as you follow these steps, you are welcome to contact our staff at **1.800.852.3416**. We can assist in identifying the appropriate contact person at the insurance carrier, making sure the carrier is being responsive, etc. We also track the nature and number of complaints, and use this information in determining the focus of market conduct exams.

Steps to Follow: Issues Relating to a Particular Carrier But Not a Particular Patient

The NHID does not directly regulate carriers' treatment of providers, which is governed by the terms of the contract between the carrier and the provider. As a consequence, the NHID does not have the ability or the authority to intercede with carriers on behalf of specific providers as it does with policyholders. However, if the NHID discovers through an investigation or market conduct examination that a carrier is not meeting a particular legal standard, it can order the carrier to correct the violation, and may potentially take other enforcement action such as imposing administrative fines. These standards including promptly paying contracted providers for the services they provide, and complying with mental health parity requirements.

STEP 1: A provider with a billing, credentialing or reimbursement issue should always contact the carrier directly, as this is in the first instance a contractual matter between two private parties, not an insurance regulatory matter. A best first step for providers seeking resolution of an issue not involving a particular patient is to **contact the carrier's provider relations department**. Information on appropriate contacts should be included in the **provider manual** supplied by that carrier.

STEP 2: Contact the NHID's Consumer Services Unit, and **mention that you are a provider calling about an issue that does not relate to a particular patient**. Carriers must meet certain legal standards that involve providers (e.g., prompt pay, mental health parity), and the NHID is interested in being kept abreast of issues and developments that could be the subject of a market conduct examination in the future. The NHID tracks calls about provider issues, and considers this information in conducting investigations and market conduct examinations, and in setting enforcement priorities.

How a Market Conduct Examination Works

One way insurance regulators like the NHID exercise their regulatory authority over insurance carriers is through market conduct examinations, an enforcement process that is laid out specifically by statute (RSA 400-A:37). This process is set forth in great detail, and is quite different from the approach that might be taken by state or federal regulators in other contexts.

Key components of a market conduct exam include:

- **Issuance of warrant:** The warrant defines the scope of the examination. It identifies the carrier being examined, the time period at issue, and may also define specific issues of focus.
- **Examination of insurance carrier files:** The NHID has authority to examine any and all insurance carrier records. The examiners may request production of particular records, or may go to the carrier's office to examine the records. The examiners may also issue subpoenas or require the carrier to answer questions under oath.
- **Confidentiality:** All records being examined and all communications between the carrier and the NHID are confidential, not subject to subpoena, and may not be used in any civil action. The Commissioner may choose to make some materials public at the conclusion of the exam.
- **Issuance of Exam Report and Order:** Once the fact-finding phase is complete, the examiner-in-charge files a draft exam report. The carrier being examined has the opportunity to review and respond to the report, which is then issued by the Commissioner in final form, along with any orders or other associated enforcement action.
- **Cost:** The company being examined bears the cost of the examination.