The State of New Hampshire
Insurance Department
56 Old Suncook Road
Concord NH 03301-7317
(603) 271-2261 Fax (603)271-0248
TDD Access: Relay NH 1-800-735-2964

Roger Sevigny
Commissioner

Alex Feldvebel
Deputy Commissioner

BULLETIN

Docket No.: Ins 04-002-AB

To: All Companies Licensed to Sell Health Insurance

Date: February 6, 2004

From: Roger A. Sevigny, Commissioner

Re: Medical Necessity

This bulletin addresses the criteria that the Department will use in determining whether to approve a health carrier's definition of medical necessity and whether to approve a policy provision addressing medical necessity. The criteria set forth below are the minimum criteria that the Department believes are required to ensure that medical necessity definitions or provisions can be approved under RSA 415:2, RSA 417, RSA 420-B:8 III (a) and (b), RSA 420-J:7-a, Ins 1901.04 (b) (7) and (8), and Ins 1901.04 (c) (6) and (7).

Criteria For Medical Necessity Definitions and Provisions:

The Department will review all definitions of medical necessity filed separately under RSA 420-J:7-a and all policy provisions pertaining to medical necessity. In conducting its review, the Department will apply the following criteria:

1. **The definition may not contain a provision making the carrier's determination of medical necessity infallible.** The definition must provide an objective standard against which to measure a carrier's judgment about medical necessity. The definition may not state that a service, supply or drug can be medical necessary only if it is so determined by the carrier. For example, a carrier may not begin the definition as follows: "This term means health services and supplies deemed by this plan to be . . ." The requirement that the definition incorporate an objective standard

does not preclude a carrier from establishing utilization procedures whereby approval for a proposed intervention is given only after medical necessity is determined by the carrier.

2. **The definition may not contain terms that are so general or close in meaning to the term being defined as to render the definition circular.** The definition must be written in easily understandable language. It must identify the objective standards or criteria according to which medical necessity determinations will be made. These standards or criteria must be set out with sufficient specificity to allow the covered person or the covered person's treating health care provider to determine with reasonable assurance whether a given intervention is medically necessary under the policy. For example, if the term "appropriate" or "cost-effective" is used in the definition, some indication must be given of what the standard of appropriateness or cost-effectiveness is.

The following medical necessity definition is provided as an example of a definition that would meet the requirements contained in this bulletin:

"An intervention is *medically necessary* if it is:

(a) recommended by the covered person's treating health care provider;

(b) a health intervention for the purpose of treating a medical condition;

(c) an appropriate level of service or supply, as determined by reference to potential benefits and harms to the patient;

(d) considered to be effective in improving health outcomes, as determined in the first instance by reference to scientific evidence, then by generally accepted standards of medical practice, or, lacking these, by expert opinion;

(e) cost-effective for this condition compared to alternative interventions with similar expected outcomes; and

(f) not solely for the covered person's convenience or the convenience of the covered person's family or physician."

In addition to defining medical necessity, a carrier may also want to provide an explanation of its role in making medical necessity determinations in the utilization review context. This may be done so long as the requirement that the carrier has determined an intervention to be medically necessary is not made a part of the definition of medical necessity. The following explanation of the carrier's role in making medical necessity determinations is provided as an example of an explanation that would not be in violation of the requirements contained in this bulletin:

> "An intervention will not automatically be considered medically necessary because it was prescribed by a treating physician or other health care provider. We may consult our medical director and/or independent medical specialists, peer review committees, or other health care professionals qualified to make a recommendation regarding the medical necessity of any service, supply or drug prescribed for a covered person."

Questions regarding this Bulletin should be addressed to the Compliance Manager, Maureen Hartsmith, at 603.271.2261