



The State of New Hampshire
Insurance Department
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Commissioner

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BULLETIN
Docket No.: INS No. 08-055-AB

To: All New Hampshire Licensed Health Insurance Companies, Health Maintenance Organizations, Fraternal Benefit Societies and Third Party Administrators

A handwritten signature in black ink, appearing to read "R. Sevigny".

From: Roger Sevigny

Date: September 16, 2008

Subject: Implementation of Chapter 389 of the laws of 2008 (SB 312-FN)

This bulletin is intended to address questions that have been raised regarding the implementation of SB 312-FN. This bill establishes a mandate for the treatment of obesity and requires "insurance coverage for the diseases and ailments caused by obesity and morbid obesity and treatment for such, including bariatric surgery, when determined to be medically necessary by a physician."

Two questions have been raised regarding this legislation. These questions are: 1) whether coverage is required only for diseases and ailments caused by or resulting from obesity or morbid obesity or whether the bill was intended to generally expand coverage for the treatment of obesity itself; and, 2) whether the legislation precludes a carrier from making its own medical necessity determination with respect to bariatric surgery.

The Department interprets the bill as requiring coverage for bariatric surgery when it is medically necessary for the treatment of the diseases and ailments caused by or resulting from obesity or morbid obesity and the surgery is in accordance with the patient qualification and treatment standards set forth by the American Society of Metabolic and Bariatric Surgery or the American College of Surgeons. The bill does not change current carrier coverage for the non-surgical treatment of obesity itself. In addition, the

Department interprets the bill as not foreclosing a carrier from making its own medical necessity determination with respect to services required to treat morbid obesity. However, for patients being prescribed to undergo bariatric surgery, the carrier must apply a medical necessity standard that makes use of patient qualification and treatment standards that are consistent with the patient qualification and treatment standards set forth by the American Society for Metabolic and Bariatric Surgery or the American College of Surgeons.

The Department's interpretation is based on several factors and is consistent with the conditions set forth in the bill. As adopted, the bill requires that carriers include treatment for bariatric surgery when three conditions are met: 1) the prescribing physician must issue a written order that treatment is medically necessary; 2) the physician's determination must be in accordance with the patient qualification and treatment standards set forth by the American Society for Metabolic and Bariatric Surgery or the American College of Surgeons; and 3) the recommended treatment must meet the carrier's medical necessity standard. The terms and conditions of the policy include the medical necessity standard set forth in the policy.

With regard to the extent of coverage provided in SB 312-FN, the language of the bill provides that coverage shall be offered for the "diseases and ailments caused by obesity and morbid obesity and treatment for such." The department does not interpret the phrase "treatment for such" as expanding coverage to include non-surgical treatment for the condition of obesity itself. Two factors support this construction. First, the fiscal note prepared for the bill did not interpret the bill as expanding coverage to include the treatment of obesity or morbid obesity itself; and second, the testimony offered during the legislative hearings did not address a broad expansion of coverage for the treatment of obesity itself. For these reasons, the Department believes that the language in the bill requiring "treatment for such" should be interpreted as referring to surgical treatment for the diseases and ailments caused by or resulting from obesity or morbid obesity, including bariatric surgery.

Finally, there is the question at what point after the effective date carriers would be required to amend coverage. The Department believes that the bill was not intended to change existing contracts. Therefore, upon the effective date, carriers would be required to implement the new coverage at renewal or at initial issuance.