The State of New Hampshire
Insurance Department

21 South Fruit Street, Suite 14
Concord, NH 03301
(603) 271-2261 Fax (603) 271-1406
TDD Access: Relay NH 1-800-735-2964

John Elias
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

BULLETIN
DOCKET NO. INS NO. 19-016-AB

TO: All Licensed Health Carriers

FROM: John Elias, Insurance Commissioner

DATE: July 25, 2019

RE: SB 11 – Coverage and Reimbursement for Emergency Room Boarding

Background

The New Hampshire Legislature passed SB 11 during the 2019 legislative session; among other things, the bill amended RSA 417-F, Coverage for Emergency Services, by inserting a new section 417-F:4, Reimbursement for Emergency Room Boarding:

> Following the completion of an involuntary admission certificate for a patient, the insurer shall pay the acute care hospital a per diem day rate required to board and care for the patient, to be contracted between the insurer and acute care hospital, for each day the insured is waiting in an acute care medical hospital located in the state for admission for psychiatric treatment at New Hampshire Hospital, a community-based designated receiving facility, or a voluntary admission. The day rate required to board and care for the patient may be billed for up to 21 consecutive days or discharge, whichever is sooner, and shall be renewed as needed for patient protection. The rate is deemed to cover all costs incurred by a hospital for the boarding and non-medical care of the insured and shall not be billed to the insured. This does not preclude a hospital from billing for other medically necessary services. Any qualified mental health worker employed by or contracted with the hospital, community mental health care center, or affiliate providing mental health services and supports to an insured in an emergency department in the hospital service areas while they are waiting for an inpatient or other psychiatric admission shall be reimbursed for those mental health services including diagnostic services by the insurer at the negotiated rate. No prior authorization shall be required by any insurer for mental health services deemed medically necessary provided in this setting under this section. This section shall apply to the Medicaid managed care organizations subject to contract and rate agreements between the state of New Hampshire and the managed care organizations. The reimbursement for emergency room board and care shall be incorporated into the capitated rate for managed care services.

This bulletin provides guidance for complying with new coverage and reimbursement requirements created under the new section.

Circumstances of expanded coverage. Section 417-F:4 expands required coverage and provider reimbursement for members:

A. Who are in an acute care hospital, awaiting admission on a voluntary basis for services to treat a mental health condition as a result of mental illness; or

B. When all of the following circumstances have been met:

1. The member is waiting to be admitted to the New Hampshire Hospital or a community-based designated receiving facility to treat a mental health condition that is the result of mental illness;
2. The hospital has completed an involuntary admission certificate; and
3. The involuntary admission certificate meets the criteria under RSA 135-C:27 and has not been rescinded under RSA 135-C:29-a.

SB 11 does not expand coverage or provider reimbursement requirements for emergency room boarding for an admission that does not meet the criteria listed above.

Contracted providers and reimbursement levels. RSA 417-F:4 requires carriers to *"pay the acute care hospital a per diem day rate required to board and care for the patient, to be contracted between the insurer and acute care hospital..."* Carriers shall include terms in their provider contract with the hospital that indicate a payment using a per diem rate method for patients waiting prior to an admission or transfer. The negotiated reimbursement rate shall be consistent with a commercially reasonable payment level.

What per diem includes. The legislation prohibits the per diem rate from being all inclusive, as the requirement *"does not preclude the hospital from billing for other medically necessary services."* The Department interprets this language to mean that not only may a hospital bill for services not included in the per diem rate, but that the hospital shall receive payment for these additional services insofar as they are medically necessary from the perspective of the treating provider.

The per diem rate is distinct from inpatient reimbursement, including case-based systems such as Diagnosis Related Groups that might otherwise include emergency room services prior to the admission.

The per diem allowed rate for the hospital may include member cost sharing liabilities consistent with the Internal Revenue System requirements for high deductible health plans.

Billing for additional mental health services. Professional mental health providers treating a member during the waiting period, and recognized through a professional services network participation agreement distinct from the carrier-hospital contract, shall be reimbursed separately, according the terms of the carrier-provider contract with the professional mental health care provider. Mental health professional services rendered by providers employed with the hospital and billed on a hospital claim form (e.g. billed under revenue codes 096X) shall be covered and reimbursed in addition to the per diem

rate, only when the existing carrier-hospital provider contract provides for payment of professional services more broadly than under the new requirement.

Services included during the waiting period shall be considered medically necessary and prior authorization for this coverage is prohibited.

Consecutive days of coverage. Additionally, the legislation provides that, *"the day rate required to board and care for the patient may be billed up to 21 consecutive days..."* The Department interprets this to be the equivalent of a room and board charge as typically billed on a hospital claim form (UB-04/CMS 1450/837I, or as updated). Coverage for each episode of emergency room boarding while waiting for an admission or transfer must include up to 21 consecutive days, and may be renewed as needed for patient protection. The carrier may require notification from the hospital when the length of stay exceeds 21 days, and coverage is not limited to any number of separate episodes. Notification from the hospital shall not be subject to carrier prior authorization requirements.

Application to major medical coverage. This new coverage requirement applies to "health coverage," as defined under RSA 420-G:2 IX. "Health coverage" under RSA 420-G:2 IX, means any hospital or medical expense incurred policy or certificate, nonprofit health services corporation subscriber contract, or health maintenance organization subscriber contract and any other health insurance plan or health benefit plan. Health coverage under RSA 420-G:2 IX does not include:
(a) Accident-only or disability income insurance.
(b) Coverage issued as a supplement to liability insurance.
(c) Liability insurance, including general liability insurance and automobile liability insurance.
(d) Workers' compensation or similar insurance.
(e) Automobile medical-payment insurance.
(f) Credit only insurance.
(g) Coverage for on-site medical clinics.
(h) Short-term, individual, nonrenewable medical, hospital, or major medical policies.
(i) Other similar insurance coverage, specified in rules, under which benefits for medical care are secondary or incidental to other insurance benefits.
(j) If offered separately:
(1) Limited scope dental or vision benefits.
(2) Long-term care, nursing home care, home health care, community-based care, or any combination thereof.
(3) Prescription drug benefits.
(4) Other similar, limited benefits as are specified in rules.
(k) If offered as independent, noncoordinated benefits:
(1) Specified disease or illness benefits.
(2) Hospital or surgical indemnity benefits.
(l) If offered as a separate insurance policy, Medicare supplemental health insurance, coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code, and similar supplemental coverage as specified in regulations.

Questions should be directed to Tyler Brannen at tyler.brannen@ins.nh.gov.