

Deborah R. Rivkin
Vice President, Government Affairs - Maryland

CareFirst BlueCross BlueShield
Mailstop CT10-04
1501 S. Clinton Street, Suite 700
Baltimore, MD 21224-5744
Tel. 410-528-7054
Fax 410-528-7981



November 7, 2017

VIA EMAIL (InsuranceRegReview.mia@maryland.gov)

Lisa Larson, Regulations Manager
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

Re: Draft Proposed Regulations COMAR 31.10.18 Denials of Coverage Based on Medical Necessity

Dear Ms. Larson:

Thank you for the opportunity to review and comment on revisions to COMAR 31.10.18.05 and .11 before they are published in the Maryland Register. We have reviewed the draft with our Utilization Review Team and Medical Director for both medical/surgical and behavioral health/substance abuse.

We are aware of the opioid crisis in Maryland and across the country. We commend the Administration for proposing these changes to bring awareness to the need for immediate medical attention to those suffering with addiction.

CareFirst BlueCross BlueShield and Magellan Health, CareFirst's delegate for utilization review for behavioral health/substance abuse, have consistently applied the existing standards of COMAR 31.10.18.05 and .11 to both medical/surgical and behavioral health/substance abuse. The new language is subjective and conflicts with existing statutory language.

According to Md. Code Ann., Ins. § 15-10B-06, a private review agent must make determinations for an emergency inpatient admission or admission "for the treatment of a mental, emotional, or substance abuse disorder" within two hours, and may not render an adverse decision as to an admission during the first 24 hours after admission if the patient is in "imminent danger to self or others."

For consistency with the statutory framework already in place to help those at risk of a psychiatric crisis or substance use disorder, we propose that the regulation be updated to reflect existing language. Please see our attached proposal.

Sincerely,

A handwritten signature in black ink that reads "Deborah R. Rivkin". The signature is written in a cursive style with a large, looped initial "D".

Enclosure

.05 Procedures for Emergency Cases.

A. An expedited review of an adverse decision in accordance with this regulation is required if the:

- (1) Adverse decision is rendered for health care services that are proposed but have not been delivered; and
- (2) Services are necessary to treat a condition or illness that, without immediate medical attention, would:

- (a) Seriously jeopardize the life or health of the member or the member's ability to regain maximum function, or
- (b) Cause the member to be in *imminent* danger to self or others[.]; or

(3) Adverse decision is rendered for an emergency inpatient admission, or an admission for the treatment of a mental, emotional, or substance abuse disorder.

B. The content of any written notice by a carrier of an adverse decision or grievance decision under this regulation shall comply with Regulation .04 of this chapter and Insurance Article, §15-10A-02(f) and (i), Annotated Code of Maryland.

Commented [MN1]: Deleted MIA's addition of:
*or
(c) Cause the member to continue using intoxicating substances in an imminently dangerous manner.*

.11 Demonstration of Compelling Reason to File Complaint.

A. A member, a member's representative, or a health care provider on behalf of a member may file a complaint without first exhausting the internal grievance process of a carrier if the complaint demonstrates to the satisfaction of the Commissioner a compelling reason to do so, including:

- (1) a showing that the potential delay in receipt of a health care service until after the member or health care provider exhausts the internal grievance process and obtains a final decision under the grievance process could result in

(a) loss of life, serious impairment to a bodily function,

(b) serious dysfunction of a bodily organ,

(c) or the member [remaining seriously mentally ill with symptoms that cause the member to be] is in *imminent* danger to self or others[.]; or

(2) An emergency inpatient admission, or an admission for the treatment of a mental, emotional, or substance abuse disorder.

B. In a case involving a retrospective denial, there is no compelling reason to allow a member, a member's representative, or a health care provider on behalf of a member to file a complaint without first exhausting the internal grievance process of a carrier.

Commented [MN2]: Deleted the MIA's addition of:
*or
(4) using intoxicating substances with symptoms that cause the member to be in danger to self or others[.]; or
(5) The member currently having severe withdrawal symptoms.
B. A member is considered to be in danger to self or others if the member is unable to function in activities of daily living or care for self without imminent dangerous consequences.*