



# North Dakota Insurance Department

Jon Godfread, Commissioner

## BULLETIN 2018-1

TO: Insurance Carriers offering Health Insurance Policies in North Dakota

FROM: Jon Godfread, Commissioner

A handwritten signature in blue ink, appearing to read "Jon Godfread".

DATE: July 10, 2018

SUBJECT: Coverage of Treatments for Autism Spectrum Disorder

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Pursuant to the authority granted to the Commissioner by N.D.C.C. § 26.1-02-29, the Insurance Department issues this Bulletin to notify all health insurance carriers choosing to cover Autism Spectrum Disorder that treatments for Autism Spectrum Disorder cannot be excluded from an insurance policy. All grandfathered and transitional health insurance policies regulated by the Department, including the individual, small group, and large group insured markets, must follow the guidance set forth in this Bulletin beginning no later than October 1, 2018. All non-grandfathered health insurance policies regulated by the Department including the individual, small group, and large group insured markets, and all self-funded Multiple Employer Welfare Arrangement health benefit plans regulated by the Department, must follow the guidance in this Bulletin beginning no later than January 1, 2019.

If a health insurance policy includes both medical/surgical benefits and mental health/substance use disorder benefits, under the Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") the financial requirements (such as deductibles and co-payments) and treatment limitations (such as the number of visits or days of coverage) that apply to mental health/substance use disorder benefits must be no more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits in a classification. Such limitations are known as quantitative treatment limitations ("QTLs").<sup>1</sup>

The MHPAEA also prohibits a health insurance policy from imposing a non-quantitative treatment limitation ("NQTL") with respect to mental health/substance use disorder benefits in any classification unless factors used in applying the NQTL to mental health/substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the factors used in applying the limitation with respect to substantially all medical/surgical benefits in the classification.<sup>2</sup> NQTLs are non-numerical limits on the scope or duration of benefits for treatment and include medical management standards such as

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<sup>1</sup> 45 CFR § 146.136 (a)-(c); [https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea\\_factsheet.html](https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html)

<sup>2</sup> 45 CFR § 146.136 (a)-(c); <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtl-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf>

preauthorization requirements limiting or excluding benefits based on medical necessity or medical appropriateness or based on whether the treatment is experimental or investigative.

Based on the foregoing law and principles, if an insurance carrier chooses to cover autism spectrum disorder and seeks to place QTLs or NQTLs on autism spectrum disorder benefits or treatments, it must show that a similar limitation exists regarding substantially all benefits and treatments on the medical/surgical portion of their insurance coverage within the same classification.

In addition, benefits for autism spectrum disorder may not be subject to any separate cost-sharing requirements or treatment limitations that only apply to mental health/substance use disorder benefits.<sup>3</sup>

In order to ensure compliance with this Bulletin, insurance carriers are hereby notified that exclusion of Applied Behavior Analysis (ABA) therapy to treat children with autism spectrum disorder on the basis that ABA therapy is experimental or investigative treatment will not be allowed by the Department. Professionally recognized treatment guidelines and a requisite number of randomized controlled trials support the use of ABA therapy to treat children with autism spectrum disorder.<sup>4</sup>

Nothing in this Bulletin should be construed to limit an insurance carrier from evaluating the medical necessity of treatments for autism spectrum disorder. Insurance carriers may establish a policy to periodically review the medical necessity of continuing autism spectrum disorder related treatments, as long as the standards for such reviews are comparable to and not more stringent than reviews conducted for substantially all medical/surgical services in the same classification.

When applying this Bulletin, "autism spectrum disorder" means any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).<sup>5</sup> In accordance with this guidance, "treatments for autism spectrum disorder" means evidence-based care and related equipment prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary, including but not limited to behavioral health treatment, pharmacy care, psychiatric care, psychological care, and therapeutic care.

If you have any questions regarding this Bulletin, please contact Insurance Commissioner Jon Godfread, Deputy Insurance Commissioner/General Counsel Jeff Ubben, or Product Filing Division Director Chrystal Bartuska at (701) 328-2440.

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<sup>3</sup>45 CFR § 146.136 (a)-(c) [https://www.cms.gov/cciiio/programs-and-initiatives/other-insurance-protections/mhpaea\\_factsheet.html](https://www.cms.gov/cciiio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html)

<sup>4</sup> <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-39-proposed.pdf>

<sup>5</sup> <https://www.psychiatry.org/psychiatrists/practice/dsm>