GUIDANCE REGARDING COURT ORDERED SERVICES FOR MENTAL HEALTH AND/OR SUBSTANCE USE DISORDER

Insurance Law § 4903(b)(2) and Public Health Law § 4903(2)(b) establish timeframes for insurers and HMOs ("health insurers") to make utilization review determinations regarding court ordered treatment. The following provides guidance on the requirements for court ordered treatment.

1. **Insurance Law § 4903(b)(2) and Public Health Law § 4903(2)(b) provide that when preauthorization is required, and an insured or insured's designee certifies that the insured is or may be subject to a court order for mental health or substance use disorder services, a preauthorization determination must be made within 72 hours of the health insurer's receipt of the request. Is there any extension available to the health insurer if additional information is necessary?**

   No. If a Certification of Court Ordered Services ("Certification") is submitted with a preauthorization request, the law requires the request to be determined within 72 hours regardless of whether the health insurer has all of the necessary information.

2. **Does the law require a health insurer to make a preauthorization determination for the court ordered services if the health insurer does not otherwise require preauthorization for substance use disorder services?**

   No, the law only applies to services that require preauthorization.

3. **Does submission of the Certification constitute a request for preauthorization?**

   No, the Certification should accompany a request for preauthorization. A request for preauthorization should be made in accordance with the terms of the insurance contract and the provider contract.

4. **What should a health insurer do if a Certification is received but a request for preauthorization is not received?**

   The health insurer should follow the requirements of 29 CFR 2560.503-1(c). This regulation provides that, in the case of a failure by a claimant or an authorized representative of a claimant to follow the health insurer's procedures for filing a pre-service claim, the health insurer shall notify the claimant or representative of the failure and the proper procedures to be followed in filing a claim for benefits. The notification shall be provided to the claimant or authorized representative, as appropriate, as soon as possible, but not later than 5 days (24 hours in the case of a failure to file a claim involving urgent care) following the failure. Notification may be oral, unless written notification is requested by the claimant or authorized representative.

5. **When does the 72 hour timeframe to make a determination start if a Certification is submitted without a preauthorization request and then the preauthorization request is subsequently submitted?**

The 72 hour timeframe starts upon the health insurer's receipt of the preauthorization request.

6. **When does the 72 hour timeframe to make a determination start if a Certification is submitted with or after a preauthorization request?**

   The 72 hour timeframe starts upon the health insurer's receipt of the Certification.

7. **Is there a template Certification that health insurers are required to use and where can it be found?**

   Yes, there is a template Certification and it is available on the DFS website at www.dfs.ny.gov. Health insurers should only modify the template Certification to indicate where the form should be sent and to include a contact number for questions. On the line "Send this form to the insured's provider and to the insurer" insert the insurer's name after "insurer" and insert "at" and include a fax number or address. On the line "For questions, contact the Department of Financial Services at 1-800-400-8882 or the health insurer" insert "at" and include the insurer's telephone number. Health insurers should post this Certification on their websites and also provide copies of the Certification to the insured, the insured's designee and the insured's provider upon request.

8. **May health insurers require the submission of a signed court order?**

   No. The Insurance Law and Public Health Law do not require that a court order be submitted in order for the health insurer to conduct the expedited review of mental health or substance use disorder services. Health insurers may request a copy of a court order, but may not require it.

9. **Are health insurers required to approve the services included in the court order?**

   No. Health insurers may still apply their utilization review procedures to determine whether the services are medically necessary, subject to the utilization review standards and requirements in Article 49 of the Insurance Law and Public Health Law.

10. **What should a health insurer do if the services ordered by the court are different from the services requested on preauthorization?**

    The health insurer should make a determination on the preauthorization request.

11. **The law requires a health insurer to provide written and telephonic notice of the preauthorization determination to the court "where feasible." Under what conditions is it "feasible" for a health insurer to provide such notice to the court?**

    It is "feasible" to provide written and telephonic notice of the preauthorization determination to the court if the Certification includes the telephone number and/or address of the court or the health insurer is otherwise aware of the name and contact information of the court that has issued or may issue the court order.

12. **Do the court ordered treatment requirements in Insurance Law § 4903(b)(2) and the Public Health Law § 4903(2)(b) apply to the Essential Plan?**

    Yes, the court ordered treatment requirements apply to the Essential Plan.

13. **How do HIPAA Privacy regulations and regulations pertaining to the confidentiality of substance use disorder records impact the law's requirement that a health insurer send the notice of the preauthorization determination to the insured's designee, where applicable, and to the court, where feasible?**

    A HIPAA authorization is not required for a health insurer to disclose information relating to mental health services to a designee or a court when such disclosure is required by law. However, for a health insurer to disclose a notice of the preauthorization determination related to substance use disorder services to a designee or court, the insurer may require the insured to complete an authorization form as required by 42 CFR Part 2.