

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF AN)
EMERGENCY ORDER TO PROTECT) **Docket No. 2023-0083**
ACCESS TO BEHAVIORAL HEALTH)
RESOURCES)
_____)

AMENDED EMERGENCY ORDER

THIS MATTER having come before the New Mexico Superintendent of Insurance (“Superintendent”) upon Executive Order 2023-132 issued by Governor Michelle Lujan Grisham on September 8, 2023, which was renewed in Executive Order 2023-136 on October 5, 2023 and in Executive Order 2023-141 on November 3, 2023, declaring a state of public health emergency due to drug abuse, under the Constitution and laws of New Mexico, including the All Hazard Emergency Management Act, NMSA 1978, §§ 12-10-1 through 12-10-10 (1959, as amended through 2007) and the Public Health Emergency Response Act, NMSA 1978, §§ 12-10A-1 through 12-10A-19 (1959, as amended through 2007).

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over this matter pursuant to the New Mexico Insurance Code, NMSA 1978, Sections 59A-1-1 et seq. and specifically NMSA 1978, Section 59A-2-8(A)(11) and (B).
2. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in executive Order 2023-132, a statewide public health emergency due to substance abuse, which was renewed in Executive Order 2023-136 on October 5, 2023, and in Executive Order 2023-141 on November 3, 2023.
3. Upon an order by the Governor based upon the invocation of a state of emergency under the All Hazard Emergency Management Act, [Chapter 12, Article 10A NMSA 1978], and the

Public Health Emergency Response Act [Chapter 12, Article 10A NMSA 1978], pursuant to NMSA 1978, Section 59A-2-8(A)(11), the Superintendent may “take those actions necessary to ensure access to insurance and the stability of insurance markets during the emergency[,]” including issuing emergency orders to address any or all of the following:

- a. grace periods for payment of insurance premiums and performance of other duties by insureds;
 - b. refund of premiums;
 - c. waiver of cost sharing or deductibles;
 - d. temporary postponement of cancellations and nonrenewals;
 - e. reporting requirements for claims; and
 - f. suspension of compliance with a statute, rule or contract, if strict compliance would prevent, hinder or delay necessary action in response to the emergency.
4. The Governor’s order details the devastating consequences of substance abuse throughout the state, including strain on healthcare resources, increased crime rates, homelessness, disrupted family services, and fatalities.
 5. The Superintendent annually reviews regulated insurance company networks for adequate access to behavioral health providers. While insurers document access to sufficient numbers of in-network providers across New Mexico, OSI still receives complaints about the accuracy of that information and delays in access to care.
 6. The Superintendent has requested insurers’ provide follow up reporting on behavioral health accessibility (see Bulletin 2023-021) and will be analyzing that data to ensure in practice availability of behavioral health benefits.

7. The Superintendent finds that social and economic burdens of substance addiction, including the accessibility and prevalence of potent synthetic opioids, create significant challenges for access to health care in a largely rural state, with a significant provider shortage.
8. The Superintendent finds it is necessary to issue this Emergency Order to protect access to insurance that the stability of the insurance markets during the emergency declared by the Governor's Order.

IT IS THEREFORE ORDERED that:

- A. All major medical health insurers regulated by the Office of Superintendent of Insurance shall cover out-of-network treatment for substance use disorders at the following in-network cost-sharing levels:
 - a. Outpatient services shall be covered at primary care visit cost-sharing levels;
 - b. Inpatient services, including facility fees, shall be covered at inpatient physician and surgical services cost-sharing levels;
 - c. Emergency care, including facility fees, shall be covered at zero-dollar cost-sharing levels;
 - d. Urgent care shall be covered at specialist visit cost-sharing levels.
 - e. This section does not apply to PPO plans, which already provide for coverage and cost-sharing of out-of-network benefits.
- B. Insurers shall not require prior authorization for any out-of-network care that would not otherwise require prior authorization for in-network care.
- C. This order shall equally apply to telehealth out-of-network treatment for substance use disorders, as mandated by NMSA 1978, Section 59A-23-7.12(A) and NMSA 1978, Section 59A-22-49.3A

- D. Nothing in this order shall require an insurer to cover benefits not otherwise covered under the plan. The services covered by this order are inclusive of the services outlined in Bulletin 2021-003.
- E. Insurers shall fully reimburse out-of-network treatment for substance use disorders at the usual, customary, and reasonable rate or at an agreed upon rate outlined in §13.10.22.8(E) NMAC. Where such information is unavailable, insurers shall use the Surprise Billing rate outlined in NMSA 1978, Section 59A-57A-13.
- F. Excluding emergency care, nothing in this order shall prevent an out-of-network provider from balance billing a patient for any amount not covered by the insurers' reimbursement payment and patient cost-sharing amount.
- G. Every insurer subject to this Order shall immediately suspend any prior authorization requirement relating to admission or transfer of an insured requiring detox, acute, or long-term in-patient care for the treatment of a substance use disorder.
- a. Insurers subject to this Order may require notification of admission or transfer to be provided within three calendar days of a patient's admission to a detox, acute, or long-term inpatient care for treatment of a substance use disorder.
 - b. Insurers may engage in care management functions, including utilization review, upon receiving such notice.
 - c. An insurer subject to this Order shall not deny payment for any care delivered to a patient admitted to a detox, acute, or long-term in-patient facility for treatment of a substance use disorder prior to receiving notice of the transfer, or during the first three calendar days of admission, whichever first occurs.

- H. Insurers shall provide written notice to their insureds of this change in benefit as soon as reasonably possible. This written notice shall explain what is covered under the amended order and provide instructions to insureds on how to submit out-of-network claims that includes a physical address and email address or web portal for claims submissions. The notice must be submitted to OSI, via SERFF, for review and approval no later than November 17, 2023. Each insurers' website shall prominently display notice of this order and instructions on these out-of-network claims submissions.
- a. Carriers who choose to utilize the original notices that were approved by OSI in accordance with the Behavioral Health Order issued on [September 19, 2023, are not required to submit new notices.
 - b. Carriers who choose to utilize the original notices are bound by the terms of those notices, and may not rely on the narrowed scope of the Amended Behavioral Health Order to limit the application of the notices sent to consumers.
- I. The Superintendent reserves the right to request insurer data or reporting on this order.
- J. This Emergency Order shall take effect immediately and shall remain in effect until Executive Order 2023-132 and any renewals are rescinded by the Governor.

ISSUED under seal of the New Mexico Office of Superintendent of Insurance at Santa Fe, New Mexico, this 8th day of November 2023.



ALICE T. KANE
Superintendent of Insurance

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 8th day of November 2023, I emailed the *Amended Emergency Order* which caused the parties to be served by electronic means, as more fully reflected on the eService recipients list for this matter.

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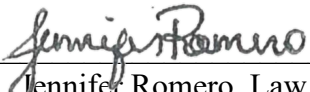
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