



State of New Jersey

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BULLETIN NO. 13-10

TO: ALL HEALTH INSURANCE COMPANIES, HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS AUTHORIZED TO ISSUE HEALTH BENEFITS PLANS IN NEW JERSEY

FROM: KENNETH E. KOBYSLOWSKI, COMMISSIONER

RE: NETWORK ACCESS AND ADEQUACY - RECONSTRUCTIVE BREAST SURGERY

P.L. 1997, c. 75 requires health carriers, including, hospital service corporations, medical service corporations, health service corporations, commercial insurers and health maintenance organizations, to provide insurance coverage for the costs associated with all stages of the reconstruction that may be necessary following breast cancer surgery, including symmetry operations on the opposite breast, in order to restore a woman's body to wholeness.

It has come to the Department's attention that there have been recurring instances of the inability of patients to obtain in-network benefits for the services of non-network surgeons performing breast reconstruction as part of the surgical procedure in which a mastectomy is performed. In some cases, carriers have been declining patient requests to use out-of-network surgeons, asserting the availability of in-network surgeons. However, the in-network surgeons frequently do not perform, or are not qualified to perform, the particular type of requested reconstructive surgery.

In other cases, in-network oncological surgeons may be practicing as part of a team which includes out-of-network reconstructive surgeons who could participate at the same surgical session in which the mastectomy is performed, thereby avoiding the need for the covered person to undergo a separate institutionalization and surgery for the breast reconstruction. Some carriers have been disapproving the use of the out-of-network reconstructive surgeons in such situations, which then requires the covered person to undergo a separate institutionalization and surgery in order for the reconstruction to be covered at the in-network level of benefits. As a result of such denials, covered persons have filed medical necessity appeals.

Some of the appeals reviewed by the independent utilization review organizations (IUROs) have resulted in reversals of these denials of authorizations to use the out-of-network surgeons for the reconstructive surgery. However, some covered persons may never appeal


these denials. The Department views this matter as a network access and adequacy issue and believes that covered persons should not have to file medical necessity appeals in order to receive these services at the in-network level of benefits where in-network breast reconstruction surgeons do not perform the procedure requested or are not associated with the team of network surgeons who perform the mastectomy.

New Jersey's Health Maintenance Organization (HMO) Act, codified at N.J.S.A. 26:2J-1 et seq., and Health Care Quality Act (HCQA), codified at N.J.S.A. 26:2S-1 et seq., and rules implementing the laws, provide protections to patients covered under health benefits plans by requiring carriers' health plans to meet minimum standards, including network access and adequacy standards for managed care plans. The purpose of this Bulletin is to remind carriers of covered persons' rights, and of their own obligations, under these plans relative to the provision of reconstructive breast surgery benefits:

- Plans are required to have a sufficient number of in-network specialists to assure access within 45 miles or one hour driving time, whichever is less, of 90 percent of covered persons within each county.
- Covered persons are to be afforded a choice of specialists among participating network providers, following an authorized referral, subject to their availability to accept new patients.
- If these standards cannot be met, plans must approve the use of out-of-network specialists.
- These standards require access to specialists who provide medically necessary specialty care. For example, if the necessary service is reconstructive microsurgery, plans must provide access to reconstructive micro surgeons or approve the use of out-of-network micro surgeons. Plans may not deny requests for the use of out-of-network providers who can provide services at the same surgery session if an in-network provider is not available to provide the services at the same surgery session either because they do not work with the surgeon who performs the mastectomy or they do not perform the required surgical procedure.

Questions regarding this Bulletin should be addressed to the following Department personnel: utilization management questions should be directed to Sylvia Allen-Ware at 609-777-9470 x50476 or via email at sylvia.allen-ware@dobi.state.nj.us; network adequacy questions should be directed to Holly Gaenzle at 609-292-5427 x50308 or via email at holly.gaenzle@dobi.state.nj.us. This Bulletin can be found on the Department's website at <http://www.state.nj.us/dobi/legsregs.htm>.

May 3, 2013
Date



Kenneth E. Kobylowski
Commissioner

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