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California Department of Insurance

Guidance AB 133:1

The Children and Youth Behavioral Health Initiative

December 22, 2023

The California Department of Insurance (CDI) issues this guidance¹ regarding the requirements set forth under California Insurance Code (CIC) section 10144.53.

Background

Assembly Bill 133 ((Committee on Budget), Stats. 2021, ch. 143, § 342) enacted section 10144.53 as a component of the Children and Youth Behavioral Health Initiative (CYBHI). Section 10144.53 applies to all disability insurers (insurers) that must provide coverage for medically necessary treatment of mental health and substance use disorders (behavioral health) pursuant to CIC sections 10144.5, 10144.51, and 10144.52.²

This guidance outlines when insurers must cover outpatient mental health and substance use disorder (behavioral health) treatment services provided to an insured student aged 25 years or younger (eligible student) at a schoolsite as required by section 10144.53. In addition, this guidance details requirements to cover behavioral health services identified by the California Department of Health Care Services (DHCS) in the Statewide Multi-Payer School-Linked Fee Schedule³ (Fee Schedule), as required by section 10144.53.

CDI reminds all disability insurers, including those providing grandfathered coverage, of their obligation to cover medically necessary behavioral health services consistent with

¹ This guidance is issued pursuant to CIC section 10144.53(d). Citations are to the California Insurance Code, unless otherwise noted.

² CIC section 10144.53 applies to disability insurance that provides hospital, medical, or surgical benefits, *i.e.*, health insurance, including student health insurance and specialized insurance that provides behavioral health benefits. However, dental-only and vision-only specialized health insurance is excluded per CIC section 10144.5(e).

³ The Statewide Multi-Payer School-Linked Fee Schedule is the fee-for-service reimbursement schedule referenced in CIC section 10144.53(a)(1). (See also Cal. Welf. & Inst. Code (WIC) section 5961.4(a).) This may also be called the CYBHI Fee Schedule or the DHCS CYBHI Fee Schedule.

the Insurance Code, regardless of whether the services are eligible Fee Schedule services.

I. Fee Schedule

Pursuant to Welfare and Institutions Code section 5961.4(a), DHCS must develop and maintain the Fee Schedule for medically necessary outpatient behavioral health treatment services provided to eligible students at schoolsites. Schoolsite behavioral health services covered by the Fee Schedule are those services provided or arranged by a participating local education agency (LEA)⁴ or public institution of higher education (IHE)⁵. The scope of services in the Fee Schedule was determined by DHCS to be appropriate as school-linked services for students of public schools, community colleges, and universities. Therefore, services identified in the Fee Schedule are required to be covered by section 10144.53.

Insurers are directed to comply with all current⁶ and future guidance and procedures promulgated by DHCS regarding the Fee Schedule. All services provided to an insured and billed from the Fee Schedule through the Third-Party Administrator (TPA) (see below), must be reimbursed, without cost sharing⁷ or prior authorization.⁸ Post claim review may be conducted to determine appropriate payment of the claim, but only to the extent permitted by section 10144.53.⁹

II. School-Linked Statewide Provider Network of Behavioral Health Counselors

Pursuant to Welfare and Institutions Code section 5961.4(b), DHCS must develop and maintain a school-linked statewide provider network of schoolsite behavioral health counselors (school-linked provider network), to deliver medically necessary behavioral health services to eligible students. DHCS has determined that for implementation of the Fee Schedule, eligible providers include LEAs and IHEs. Insurers shall consider LEAs and IHEs as providers with respect to billing and reimbursement under the Fee Schedule and CIC section 10144.53.

Each LEA/IHE provider shall be responsible for maintaining its own list of eligible schoolsite behavioral health counselors (SHBCs). SHBCs include health care providers¹⁰, as well as practitioners employed by or contracted with the LEA/IHE

⁴ Defined at CIC section 101044.53(b)(3).

⁵ Defined at CIC section 101044.53(b)(2).

⁶ Current guidance from DHCS is pending.

⁷ CIC section 10144.53(c)(7).

⁸ Except as expressly authorized by the Insurance Commissioner pursuant to CIC section 10144.53(c)(3).

⁹ Pursuant to CIC section 10144.53(c)(2) payment may be denied only if an "insurer reasonably determines that the services were provided to a student not covered by the insurer, were never performed, or were not provided by a health care provider appropriately licensed or authorized to provide the services".

¹⁰ Health care provider is defined in CIC section 10144.53(b)(1).

provider. Only those SHBCs that are eligible to provide each service listed in the Fee Schedule may deliver those services to an eligible student.

III. Third-Party Administrator

DHCS has determined that a TPA shall act as a clearinghouse for all Fee Schedule claims for reimbursement, billing of payers (including but not limited to insurers subject to this guidance), disbursements, and maintenance of the school-linked provider network, including the credentialing of SHBCs by LEA/IHE providers and the maintenance of an updated SHBC list. Insurers should reimburse only those Fee Schedule claims that are provided by the TPA and shall remit payment to the TPA for disbursement to the LEA/IHE provider.

DHCS has not yet designated the TPA. Once the TPA contract has been executed by DHCS, insurers must establish a relationship with the TPA as soon as possible. At that point, insurers must enter into the agreement, memorandum of understanding, or other arrangement(s), as directed by DHCS, that will establish a relationship between the insurer and the TPA by which claims for services will be processed.

IV. Timeline of Fee Schedule Implementation

DHCS is taking a phased approach to implementation of the Fee Schedule and school-linked provider network, and LEA/IHE providers will join the school-linked provider network and provide services under the Fee Schedule in staggered cohorts. As a result, the LEA/IHE providers eligible to participate in the Fee Schedule and school-linked provider network may vary based on geographic area during the phased-in implementation. However, it is anticipated that statewide implementation of the Fee Schedule and school-linked provider network will be achieved by January of 2025. Please see the DHCS CYBHI Statewide Multi-Payer School-Linked Fee Schedule [website](#)¹¹ for further information about the timing and the details of each cohort, including the participating LEA/IHE providers and their designated SHBCs.

Insurers must reimburse eligible schoolsite behavioral health claims for services rendered by LEA/IHE providers that are participating in the school-linked provider network to offer Fee Schedule services.

V. Information for Insureds

CDI may issue filing instructions at a future time regarding requirements and the availability of coverage in applicable policy forms for CYBHI-covered behavioral health services.

¹¹ The DHCS CYBHI Statewide Multi-Payer School-Linked Fee Schedule website can be accessed here: <https://www.dhcs.ca.gov/CYBHI/Pages/Fee-Schedule.aspx>.

VI. Additional Guidance

a. Network Adequacy

The school-linked provider network is distinct and separate from an individual insurer's network. The school-linked provider network is not to be used, by itself, to satisfy any network adequacy requirements otherwise applicable pursuant to CIC section 10133.5 and 10 Cal. Code Regs. section 2240, *et. seq.* However, if an SHBC is already in-network, or is included in the future, an SHBC's participation in the school-linked provider network does not disqualify that SHBC from also being an in-network provider.

b. Privacy and Confidentiality

Insurers are reminded of their obligations to maintain confidentiality and privacy for eligible students seeking or receiving schoolsite services. Further, insurers are advised to review the definition of "sensitive services"¹² under CIC section 791.02 and adhere to the steps set forth in section 791.29 to ensure protection of an insured's medical information for CYBHI-related services to the extent that they are "sensitive services." Insurers should note that failure to comply with these sections, including notice of confidential communications, will result in investigation and enforcement actions.

For eligibility verification purposes, the TPA may need to collect data about insureds from insurers. To facilitate data sharing and protect insureds confidentiality, pursuant to Health and Safety Code section 130290(f)(4), insurers are required to execute a data sharing agreement with the TPA.

c. Disputes, Complaints, and Grievances

Insured or provider disputes, complaints, or grievances regarding services provided under the Fee Schedule system shall be directed first to the TPA for resolution. If the TPA requires information or intervention by the insurer, it shall contact the insurer. Insurers shall refer and adhere to additional DHCS-issued instructions regarding disputes, complaints, and grievances.

d. Arranging for behavioral health services

An SHBC providing Fee Schedule services to an eligible student may contact the insurer to request that the student be seen by an in-network provider for medically necessary behavioral health services. If this occurs, the insurer shall contact the eligible student (or policyholder if the student has not yet reached the age of consent) to offer an appointment with in-network provider(s) that can provide services within applicable

¹² Section 791.02(ac) provides "Sensitive services' means all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient of any age at or above the minimum age specified for consenting to the service specified in the section."

geographic and timely access standards. If an in-network provider is unavailable to provide services within applicable geographic and timely access standards, the insurer shall arrange for an out-of-network provider to provide the services, consistent with section 10144.5(d) and 10 Cal. Code Regs. section 2240.1(e).

An eligible student is not obligated to transition from Fee Schedule services to in-network behavioral health services, nor is an eligible student prevented from using both Fee Schedule services and in-network behavioral health services concurrently.

e. High Deductible Health Plans

Section 10144.53 provides that services provided pursuant to its provisions shall not be subject to copayment, coinsurance, deductible, or any other form of cost sharing.¹³ However, high deductible health plans (HDHPs) that qualify for Health Savings Accounts (HSAs) under Internal Revenue Code (IRC) section 223 may not provide benefits for non-preventive services until the minimum annual self-only or family deductible is met.

In order that CIC section 10144.53 does not disqualify an HSA-qualified HDHP from meeting the requirements of the IRC or its implementing rules, CDI clarifies that insurers may apply the minimum annual deductible specified in IRS guidance¹⁴ to services covered under section 10144.53. Once the minimum annual self-only or family deductible is satisfied, an insurer shall cover CYBHI services in full without any cost sharing.

f. Claim Payment Deadlines

Insurers shall follow the applicable claim payment deadlines specified in sections 10123.13 and 10123.147, and any regulations promulgated thereunder.

g. DHCS Guidance and CYBHI Resources

This guidance supplements any existing and forthcoming DHCS guidance applicable to commercial health plans and insurers as a part of the CYBHI. Insurers subject to section 10144.53 must follow DHCS guidance on the Fee Schedule where such guidance is applicable to commercial plans.¹⁵ Insurers are directed to regularly check the DHCS CYBHI Statewide Multi-Payer School-Linked Fee Schedule website¹⁶ for updated guidance, as well as updates and amendments to the Fee Schedule.

¹³ CIC section 10144.53(c)(7).

¹⁴ For calendar year 2024, a “high deductible health plan” is defined as a health plan with an annual deductible that is not less than \$1,600 for self-only coverage or \$3,200 for family coverage (the minimum annual deductible). IRS Rev. Proc. [2023-23](#).

¹⁵ See FN 11, *supra*.

¹⁶ *Ibid*.

This guidance incorporates by reference current and future DHCS guidance and instructions regarding implementation of the Fee Schedule. Please refer to DHCS's more detailed instructions where they apply to commercial health plans and insurers.

VII. Questions

Please direct questions concerning this Guidance to:

Stesha Hodges, Assistant Chief Counsel/Health Equity and Access Office Chief,
at Stesha.Hodges@insurance.ca.gov, or

Sarah Sullivan, Attorney III, at Sarah.Sullivan@insurance.ca.gov.

Please direct questions related to the Fee Schedule to:

The DHCS School Based Services/Fee Schedule Team, at
DHCS.SBS@dhcs.ca.gov.