

TESTIMONY

Presented by: Rebecca Ternes
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Before: Human Services Committee
Representative Chuck Damschen, Chairman

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Good morning Chairman Damschen and members of the committee. My name is Rebecca Ternes and I am the Deputy Commissioner at the North Dakota Insurance Department.

I was asked to present information today on the effects of the implementation of the federal Affordable Care Act (ACA) in North Dakota, specifically relating to insurance coverage for behavioral health services and compliance with applicable state laws and Department rules.

It might be helpful to review a few provisions of federal and state law as background.

ACA Provisions

The ACA through the inclusion of Essential Health Benefits (EHB) requires individual and small group plans in and out of the Marketplace to offer items and services in 10 specific coverage areas without specifying the level of coverage required. One of those 10 areas is mental health and substance use disorder services, including behavioral health treatment.

The North Dakota benchmark plan recommended to the U.S. Department of Health and Human Services (HHS) Secretary for approval as the minimum benefit requirements was the Sanford Health Plan. It will be in place for all non-grandfathered small group

and individual plans in the state for policy years 2014 and 2015. We are awaiting information in the future from HHS on what will be required for 2016.

The ACA also extended the application of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) from large group health plans to apply to individual and small employer health insurance policies, qualified health plans and to the EHBs. Simply put, MHPAEA says that health insurance companies must treat mental health and substance use disorder benefits the same as medical/surgical benefits.

The final MHPAEA rule released in November explains the extension of parity through the ACA among other requirements. The final rule is to be applied to insurance plans or policy years beginning on or after July 1, 2014.

Note that neither the ACA nor MHPAEA changed the fact that health insurers may still require policyholders to meet prior authorization requirements for benefits to apply and that certain provider requirements may still exist. Also, policyholders still have to meet medical necessity requirements for coverage to apply.

North Dakota Century Code

The North Dakota Century Code also speaks to covered benefits for mental health and substance abuse. Specifically, there are three sections pertaining to the issue.

Section 26.1-36-08 covers treatment for substance abuse. This section mandates group health insurance policies and service contracts covering substance abuse treatment include certain benefits of the same type offered under the policy or contract for other illnesses, for inpatient treatment, treatment by partial hospitalization and outpatient treatment.

It is also noteworthy that Section 26.1-36-08 does not mandate that insurers provide residential treatment benefits for substance abuse treatment in any way. Instead,

Section 26.1-36-08.1 allows residential treatment benefits for substance abuse to be provided as an alternative to providing the benefits mandated by Section 26.1-36-08. However, the Legislature made clear during the passage of Section 26.1-36-08.1 during the 2003 session that residential treatment benefits for substance abuse are not an additional health insurance mandate under state law. Therefore, there is no mandate in state law requiring insurers to provide residential treatment benefits in policies covering substance abuse.

Section 26.1-36-09 deals with treatment for mental disorders. This section of the law mandates group health insurance policies and group health service contracts covering treatment for mental disorders include certain benefits of the same type offered under the policy or contract for other illnesses, for inpatient treatment, treatment by partial hospitalization, outpatient treatment and residential treatment (for individuals under 21 years of age) .

The ACA did require all state-mandated benefits that existed as of December 31, 2011, be included in the state's recommended EHB benchmark plan recommendation. There have been no changes to state laws or agency rules that impact these types of benefits since the ACA was enacted.

2014 Insurance Health Insurance Policies

All health insurers had to make changes to their plans and rating schedules because of the ACA. Not only did the market environment change significantly, but the federal regulation and requirements of their products were also dramatically altered. Health insurers responded in a variety of ways depending on a variety of business factors. All individual and small employer insurers still writing business had to add new plans, some altered existing plans, some closed existing policy blocks, and others terminated blocks of policies and/or pulled out of the North Dakota market altogether.

Companies have a right to make strategic changes and alter benefits as long as those changes are within state and federal laws and regulations.

The actual impact of plan changes to benefits will not be experienced until the new plans have been in place for some time. Should a policyholder or insured think a company is not providing benefits according to their policy or certificate of insurance, they should initiate an appeal process through the insurer. Depending on whether the policy is grandfathered or non-grandfathered, the final appeal mechanism may be different. However, both types of policies can result in an external appeal.

Finally, in preparation for this meeting, I asked our health insurance complaint investigator to provide me with the number of complaints for mental health and substance abuse benefits we have received in the past three years. There were none in 2011; five in 2012 with one of those from a provider that did not name specific patient cases; and two in 2013 with one from a provider that did not name specific patient cases. The majority of the patient complaints (four of five) were related to out-of-state treatment.

That concludes my testimony and I would be happy to take any questions at this time. Thank you.