STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

INTERIM SUPERINTENDENT OF INSURANCE
Jennifer A. Catechis

BULLETIN 2023-013

MAY 30, 2023

TO: ALL MANAGED HEALTH CARE PLANS SUBJECT TO 13.10.17 NMAC

RE: REASONABLE ACCESS TO OUT OF NETWORK PROVIDERS

It has come to the attention of the Superintendent that some carriers administratively deny coverage for all services rendered by an out of network provider, contrary to the requirements of NMSA 1978, §59A-57-4. These are violations of the Patient Protection Act, NMSA 1978, §59A-57-1 et seq.

This Bulletin serves as a reminder to managed health care plans of their obligations under the Patient Protection Act to provide "reasonably accessible health care services that are available in a timely manner." Pursuant to NMSA 1978, § 59A-57-4(B)(3), this requires coverage of out-of-network services when "medically necessary covered services are not reasonably available through participating provider." Timeliness is determined by the clinically appropriate timeframe for any individual service. Before a managed health care plan denies a referral to out-of-network care, such denial shall be reviewed by a New Mexico-licensed specialist similar to the type of specialist to whom a referral is requested. See NMSA 1978, § 61-6-6(K) and § 13.10.22.8(E) NMAC. Furthermore, "out of network emergency care is not subject to additional costs" in accordance with NMSA 1978, § 59A-57-4(B)(3)(d). The appropriateness of out-of-network emergency care is determined pursuant to NMSA 1978, § 59A-57-3(D) and § 13.10.21.8(D) NMAC.

Grievances related to denials of out-of-network care and prior authorization denials are adverse determinations, and shall be reviewed in accordance with the managed health care plan's procedure for adverse determinations grievances and the requirements of §§ 13.10.17.14 through 13.10.17.26 NMAC. These are not administrative grievances and processing them as such is a violation of the Patient Protection Act.

Any managed health care plan that violates the provisions of the Patient Protection Act and accompanying regulations is subject to enforcement actions to remedy those violations which include, but are not limited to, administrative penalties of up to $10,000 per violation, suspension of any certificate of authority or license issued under the Insurance Code, and private remedies available to both patients and providers in accordance with NMSA 1978, § 59A-57-9.

Please direct any questions concerning this guidance to cass.brulotte@osi.nm.gov.

ISSUED this 30th day of May, 2023.

JENNIFER A. CATECHIS
Interim Superintendent of Insurance