



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
BUREAU OF INSURANCE



Janet T. Mills
Governor

Anne L. Head
DPFR Commissioner

Robert L. Carey
Superintendent

Bulletin 478
Non-Formulary Behavioral Health Drug Shortages

In 2021, the Legislature enacted [An Act To Provide Greater Access to Treatment for Serious Mental Illness by Restricting Prescription Drug Utilization Management by an Insurance Carrier](#), which adds provisions to the Health Plan Improvement Act that prohibit insurance carriers from denying a prior authorization request or imposing a step therapy requirement for any medication on the carrier's prescription drug formulary that is prescribed to assess or treat an enrollee's serious mental illness.¹ "Serious mental illness" is defined as "a mental disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, that results in serious functional impairment that substantially interferes with or limits one or more major life activities."

The purpose of this bulletin is to clarify how these requirements apply in cases where a non-formulary drug is prescribed to assess or treat an enrollee's serious mental illness. A known or suspected serious mental illness is not, in and of itself, a sufficient basis for requiring the carrier to grant a formulary exception. However, if the drug qualifies for a formulary exception, it must be treated in the same manner as a formulary drug. In particular, if the treating provider would have prescribed a particular formulary drug to assess or treat a serious mental illness, but a non-formulary drug is prescribed in its place under an exception because a supply shortage makes the original drug unavailable, then the carrier must waive any prior authorization or step therapy requirement for the replacement drug.

June 12, 2024

Robert L. Carey
Superintendent of Insurance

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

¹ 24-A M.R.S. §§ [4304\(2-C\)](#) and [4320-N\(1\)\(D-1\)](#) & (6)(B)(6), enacted by P.L. 2021, ch. 345.