

SENATE FILE NO. SF0092

Medical necessity in insurance contracts.

Sponsored by: Senator(s) Sessions, Hastert, Job, Massie, Mockler, Scott and Von Flatern

A BILL

for

1 AN ACT relating to insurance; defining medical necessity;
2 setting requirements for analyzing insurance coverage and
3 benefit payments under a medical necessity standard;
4 setting requirements for denying payment or coverage;
5 allowing the insurance commissioner to request, collect and
6 analyze data; and providing for an effective date.

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8 *Be It Enacted by the Legislature of the State of Wyoming:*

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10 **Section 1** W.S. 26-40-201 is created to read:

11

ARTICLE 2

12

PAYMENT OF CLAIMS UNDER MEDICAL

13

NECESSITY STANDARD

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1 **26-40-201. Payment of claims under medical necessity**
2 **standard.**

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4 (a) If any disability insurance policy provides for
5 settlement of a claim for payment of medical services,
6 procedures or supplies provided by a health care provider
7 using a medical necessity or other similar basis the
8 insurer shall:

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10 (i) Define medical necessity or other similar
11 basis as "medical necessity" is defined in this chapter;

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13 (ii) Submit to the department upon request all
14 data upon which the insurer has based payment or nonpayment
15 of claims for medical services, procedures and supplies.
16 Such data shall be submitted upon request of the
17 commissioner. The commissioner's request shall specify the
18 types of medical services, procedures or supplies upon
19 which data is sought and the insurer shall be required to
20 submit data only for those types of services, procedures
21 and supplies specified;

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23 (iii) Provide to the claimant, in writing, a
24 complete explanation of the basis of settlement, if

1 requested by the claimant in writing, and maintain the
2 explanation in the claim file. If payment is denied
3 because the service, procedure or supply is not medically
4 necessary the explanation shall state the specific reason
5 why the medical service, procedure or supply is not
6 medically necessary. In such event, the explanation shall
7 attach the signed opinions of two (2) licensed physicians
8 in the same or similar general specialty as typically
9 manages the condition, service, procedure, or supply at
10 issue, at least one (1) of whom is not employed by the
11 insurer, stating their opinion that the service, procedure
12 or supply at issue is not medically necessary and the
13 specific bases for that opinion;

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15 (iv) Make all determinations whether a medical
16 service, procedure or supply is medically necessary based
17 only upon the factors stated in the definition of medical
18 necessity contained in W.S. 26-40-102(a)(iii).

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20 (b) If the commissioner, based either on a review of
21 the data submitted pursuant to subsection (a) of this
22 section or on the receipt of complaints from one (1) or
23 more insureds, has reason to suspect that a claim or one
24 (1) or more classes of claims is not being settled on the

1 basis provided by the policy and as required by this
2 section he may order the insurer to show cause why the
3 settlement or settlements should not be changed.

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5 (c) If the commissioner finds, after notice and
6 opportunity for hearing, that an insurer is not settling a
7 claim or one (1) or more classes of claims as required by
8 the policy and this section, he may order a different
9 settlement or settlements.

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11 (d) Data submitted to the department pursuant to this
12 section shall be confidential in nature and not available
13 for public inspection. Submitted data may be used by the
14 department for enforcement and regulatory purposes.

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16 (e) As used in this section, "medical necessity or
17 other similar basis" includes, but is not limited to,
18 "medically necessary," "medically necessary care" and
19 "medically necessary and appropriate". "Medical necessity
20 or other similar basis" includes all standards for
21 insurance coverage or payment which limit coverage or
22 payment to medical services, procedures or supplies which
23 are medically necessary, regardless of the policy language
24 used to establish the standard.

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2 **Section 2.** W.S. 26-13-124(a)(xiii), (xiv) and by
3 creating a new paragraph (xv) and 26-40-102(a) by creating
4 a new paragraph (iii) are amended to read:

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6 **26-13-124. Unfair claims settlement practices.**

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8 (a) A person is considered to be engaging in an
9 unfair method of competition and unfair and deceptive act
10 or practice in the business of insurance if that person
11 commits or performs with such frequency as to indicate a
12 general business practice any of the following unfair
13 claims settlement practices:

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15 (xiii) Failing to promptly settle claims, where
16 liability has become reasonably clear, under one (1)
17 portion of the insurance policy coverage in order to
18 influence settlements under other portions of the insurance
19 policy coverage;~~or~~

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21 (xiv) Failing to promptly provide a reasonable
22 explanation of the basis in the insurance policy in
23 relation to the facts or applicable law for denial of a
24 claim or for the offer of a compromise settlement;~~or~~ or

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(xv) Denying or failing to timely pay disability insurance claims for medically necessary services, procedures or supplies as required by W.S. 26-40-201.

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26-40-102. Definitions.

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(a) As used in this chapter:

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(iii) "Medical necessity," means:

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(A) A medical service, procedure or supply provided for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom and is a service, procedure or supply that:

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(I) A prudent physician would provide;

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(II) The omission of which could adversely affect or fail to maintain the insured's condition;

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(III) Is clinically appropriate in terms of type, frequency, extent, site and duration; and

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(IV) Is not primarily for the convenience of the patient, physician or other health care provider.

(B) A medical service, procedure or supply shall not be excluded from being a medical necessity under this section solely because the service, procedure or supply is not in common use where the safety and effectiveness of the service, procedure or supply is supported by scientific studies published in two (2) or more articles in peer reviewed medical journals;

(C) A medical service, procedure or supply provided for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom is a medical necessity where such service, procedure or supply has been approved by Medicare for use in the manner prescribed.

Section 3. This act is effective July 1, 2008.

(END)