



Ultra Health.

February 18, 2022

Via Email and Mail

Ryan Burt
General Counsel
Presbyterian Healthcare Services
9521 San Mateo Blvd. NE
Albuquerque, NM 87113-2237
Rburt2@phs.org

Re: Insurance Payments for Medical Cannabis

Dear Mr. Burt,

New Mexico Top Organics-Ultra Health is New Mexico's largest provider of medical cannabis. We write to you today to request information on how Presbyterian Healthcare Services plans to pay for medical cannabis without any cost sharing for people insured through Presbyterian, as it is required to do by NMSA 1978, Sections 59A-22-57, 59A-23-16, 59A-46-57, and 59A-47-51 (2021).

As the state's largest medical cannabis provider, New Mexico Top Organics-Ultra Health ("Ultra Health") constantly receives questions from qualified medical cannabis patient customers regarding how they can obtain insurance payments for their medical cannabis, because many medical cannabis patients struggle to afford medical cannabis on their own. In the course of researching our patients' questions, Ultra Health has discovered that New Mexico statute does now require insurers to pay, without cost sharing, for medical cannabis in some instances.

In 2021, the New Mexico Legislature passed Senate Bill 317, which was then signed into law by the governor with an effective date of January 1, 2022. Senate Bill 317 eliminated health insurance cost sharing for "behavioral health services." Various parts of Senate Bill 317 have been codified into NMSA 1978, Sections 59A-22-57, 59A-23-16, 59A-46-57, and 59A-47-51. These various sections apply to different types of health insurance, but all of them state that health insurers which "offer[] coverage of behavioral health services shall not impose cost sharing on those behavioral health services," and "behavioral health services" means "professional and ancillary services for the treatment, habilitation, prevention and identification of mental illnesses, substance abuse disorders and trauma spectrum disorders, including...all medications."

Section 59A-22-57 applies to "an individual or group health insurance policy, health care plan or certificate of health insurance" in New Mexico, Section 59A-23-16 applies to "a group or blanket health insurance policy, health care plan or certificate of health insurance" in New Mexico, Section 59A-46-57 applies to "an individual or group health maintenance organization contract" in New Mexico, and 59A-47-51 applies to "an individual or group health care plan" in New Mexico.

All of these statutory sections explicitly define “behavioral health services” as “professional and ancillary services for the treatment, habilitation, prevention and identification of mental illnesses, substance abuse disorders and trauma spectrum disorders, including...all medications.” Importantly, the statutes say “all medications.” The statutes do not limit the definition of behavioral health services to “medications on the insurer’s formulary” or “a six-month supply of medications,” or even “medications prescribed by a licensed physician.”

It is important to note that these statutes apply to health insurance that “offers coverage of” medications for treatment of behavioral health conditions. The *offering* is the most important part. If a health insurance plan merely *offers* behavioral health services, including “all medications,” then it cannot impose cost sharing on behavioral health services. The *offer* is the triggering event, and the *offering* triggers no-cost-sharing-coverage of behavioral health services. Thus, if the health insurer *offers* any kind of behavioral health coverage, then it must provide behavioral health services without cost sharing. These statutes became effective on January 1, 2022, which means the mandate to eliminate cost sharing is now imperative.

Now, of course the notion of insurers paying for medical cannabis may require specific decisions regarding which funds to use. Cannabis is obviously still illegal at the federal level, so programs that receive federal funding may need to segregate the funds used for medical cannabis and use only non-federal sources of money.

The notion of insurers paying for medical cannabis may also cause headaches regarding the nuts-and-bolts of payments. An insurer unfamiliar with medical cannabis may believe that cannabis dispensaries disorganized places operated by unprofessional staff and that such dispensaries could never be integrated with insurance payors.

Such beliefs would be easily dispelled by becoming acquainted with the modern medical cannabis dispensary system. Modern New Mexico dispensaries are bright, welcoming places located next to barbershops and banks. Many managers and executives in New Mexico’s medical cannabis system have actually worked in traditional healthcare systems and have familiarity with insurer practices. New Mexico has a robust licensing scheme that can ensure that insurers only pay for cannabis sold by licensed entities. New Mexico also mandates that medical cannabis purveyors use a tracking database called BioTrack, which means that the amount of cannabis sold can be accurately reported to payors. A number of professional industry websites, such as weedmaps.com and <https://mjbizdaily.com/>, even monitor the average price of cannabis in particular geographic areas, and so insurers can establish standardized payment rates, as they would for any other medication or service.

It would be best if insurers approached medical cannabis dispensaries like pharmacies: the patient comes in, obtains the cannabis, and then the dispensary requests payment from the insurer. A direct patient reimbursement model—where the patient pays and then seeks reimbursement from the insurer—would be more difficult since cannabis is an overwhelmingly cash-intensive business. Patients pay in cash most of the time, which makes tracing their individual payments more difficult.

February 18, 2022
Presbyterian

Ultra Health acknowledges that the idea of health insurers paying for medical cannabis may seem novel at first blush. However, as Ultra Health will discuss below, it is actually a rational, reasonable notion when considered in light of other New Mexico law. New Mexico already requires workers' compensation insurers to pay for medical cannabis, and New Mexico already treats medical cannabis the same as conventional prescription medications. The fact that health insurers should—and will—pay for medical cannabis is not revolutionary at this point. It is the next logical step, and it is a small step, not a giant leap.

Medical Cannabis Is a Behavioral Health Service and/or Medication

Medical cannabis is a behavioral health service and is a medication used to treat behavioral health disorders. This is not simply Ultra Health's personal belief; it is the consensus expressed by multiple New Mexico statutes and court decisions.

NMSA 1978, Section 26-2B-3(F) (2021) lists some of the “debilitating medical conditions” that can qualify a person for a medical cannabis registry identification card, and that list includes “posttraumatic stress disorder,” “severe anorexia,” and Parkinson's disease. The New Mexico Medical Cannabis Advisory Board, which is a panel of medical professionals organized under the Department of Health, has also approved Alzheimer's disease, autism spectrum disorder, Huntington's disease, Lewy body disease, obstructive sleep apnea, and opioid use disorder as qualifying conditions. The Board adds conditions to the list via a petition process; patients can petition the Board to add a specific condition to the qualifying-condition list, and the Board considers whether evidence exists demonstrating that cannabis has a beneficial effect on that condition.

The Department of Health's most recent report on medical cannabis patient statistics is attached. It shows the number of patients who have qualified by each condition. By far the largest category is PTSD, with 71,101 patients out of the total 130,345 patients. The fact that a patient may qualify via a PTSD diagnosis does not mean that the patient suffers *only* from PTSD. The PTSD-qualifying patient may also suffer from chronic pain or another condition, but may choose to qualify via the PTSD diagnosis because the medical research more robustly supports treating PTSD with medical cannabis. It is certainly Ultra Health's observation that medical cannabis patients have comorbidities that involve physical, emotional, and behavioral symptoms.

Opioid use disorder is a relatively new qualifying condition, and Ultra Health expects that category to grow significantly, given that other treatment options for opioid use—such as rehabilitation and counseling—are stressed beyond capacity. Autism spectrum disorder is also a newer qualifying condition that is likely to see growth in the future.

Both the New Mexico Legislature and the Medical Cannabis Advisory Board have concluded that medical cannabis is a legitimate treatment for several debilitating medical conditions that have a behavioral health aspect to them: PTSD, autism spectrum disorder, Alzheimer's, anorexia, opioid use disorder, and more.

Three New Mexico appellate court decisions have held that the workers' compensation system must allow the use of, and must compensate workers for, medical cannabis. Those

February 18, 2022
Presbyterian

decisions are *Lewis v. American General Media*, 2015-NMCA-090; *Vialpando v. Ben's Automotive Services*, 2014-NMCA-084; *Maez v. Riley Industries*, 2015-NMCA-049.

In *Vialpando*, the Court of Appeals affirmed a workers' compensation ruling that required a workers' compensation insurer to reimburse a worker for medical cannabis. 2014-NMCA-084, ¶ 1. The Workers' Compensation Act requires employers to provide an injured worker with "reasonable and necessary health care services from a healthcare provider." *Id.*, ¶ 6, quoting NMSA 1978, § 52-1-49(A). The Court of Appeals explained that the "only prerequisite is that the service be 'reasonable and necessary' for the worker's treatment. *Id.* When understood in conjunction with the regulations, Section 52-1-49 requires only that a health care provider have the responsibility for the provision of the reasonable and necessary services, not that each and every service must be provided by a health care provider." *Id.*, ¶ 10.

Vialpando also established that medical cannabis is handled in the exact same manner as prescription medications. "Instead of a written order from a health care provider, it requires the functional equivalent of a prescription." *Id.*, ¶ 12.

After the groundbreaking ruling in *Vialpando*, the latter two cases, *Lewis v. American General Media*, 2015-NMCA-090 and *Maez v. Riley Industries*, 2015-NMCA-049, addressed evidentiary issues for workers claiming reimbursements for their medical cannabis. In both cases, the Court of Appeals affirmed that medical cannabis is a reasonable and reimbursable treatment under the workers' compensation system.

NMSA 1978, Section 32A-3A-15 (2019), which is part of the Children's Code, also affirms that medical cannabis should be treated on par with conventional medications. Section 32A-3A-15(D) states, "For the purposes of medical care, including an organ transplant, a qualified patient's use of cannabis pursuant to the Lynn and Erin Compassionate Use Act shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not be considered to constitute the use of an illicit substance or otherwise disqualify a qualified patient from medical care." Here, the Legislature indicated its intent that medical cannabis should be considered equivalent to the use of any other medication.

In 2021, the Court of Appeals ruled that medical cannabis purchases are eligible for the "prescription" gross receipts tax deduction, in the case *Sacred Garden v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-038. Section 7-9-73.2 defines a gross receipts tax deduction for "receipts from the sale of prescription drugs." The Court held, "[m]edical marijuana [cannabis] dispensed pursuant to the Compassionate Use Act meets the criteria set forth in Section 7-9-73.2(B)." *Id.*, ¶ 15.

Only a few months after the Court of Appeals decision, the Legislature enshrined the Court's ruling in statute. The Legislature memorialized the Court's decision by amending Section 7-9-73.2(A) to read, "[r]eceipts from the sale of prescription drugs...and cannabis products that are sold in accordance with the Lynn and Erin Compassionate Use Act may be deducted from gross receipts and governmental gross receipts." This leaves no dispute as to the Legislature's intent that medical cannabis be treated equivalently to prescription medications.

February 18, 2022
Presbyterian

Despite the clarity of the Court of Appeals' opinion, the Taxation and Revenue Department did appeal *Sacred Garden v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-038. The Supreme Court has scheduled arguments in the case for February 28, 2022, and a decision is expected within a couple of months.

More and more health systems worldwide have recently embraced medical cannabis. In Canada, where insurers administer the single-payer system and provide supplemental coverage, some insurers pay for medical cannabis, as summarized at <https://canadahouseclinics.ca/resources/insurance-coverage-for-medical-cannabis/>. Canadian private trade union Unifor also pays for cannabis through its worker benefit program. <https://www.thegrowthop.com/cannabis-news/canadas-largest-private-sector-union-aims-to-include-medical-cannabis-coverage-in-collective-bargaining-agreements>. Colombia recently mandated that health insurers cover the costs of cannabis. <https://www.prnewswire.com/news-releases/mandatory-insurance-coverage-for-medical-cannabis-now-expands-to-more-than-50-million-colombians-301453283.html>. Health insurers in Germany have paid for medical cannabis for several years. <https://internationalcbc.com/german-health-insurance-providers-are-covering-cannabis/>. Some payors in Israel pay for medical cannabis, including the Ministry of Defense for servicepeople with PTSD. <https://www.herbalgram.org/resources/herbalgram/issues/97/table-of-contents/hg97-featcannabis/>

Behavioral Health Service Availability

Legally, Ultra Health provides behavioral health services and behavioral health medication to large numbers of qualified medical cannabis patients. Ultra Health can also say that functionally, it is unquestionably a behavioral health service provider.

As you know, the behavioral health system in New Mexico has largely collapsed and disappeared over the past decade, but the people who desperately need services have not disappeared. After their therapists and doctors lost contracts with insurers or Medicaid, the patients came to Ultra Health. After the dream of opioids became a nightmare, the patients came to Ultra Health. After enduring endless waits for treatment from the Veterans' Administration, the patients came to Ultra Health. After the covid pandemic shut down the Alcoholics Anonymous and Narcotics Anonymous meetings that provided vital community support, the patients came to Ultra Health.

Medical cannabis may not be perfect, but in fact, no prescription medication is perfect, and medical cannabis does provide relief to many individuals suffering from behavioral health problems, leading them to greater functionality and allowing them to participate in their own lives. Medical cannabis carries risk, as any covered medication does, but for the vast majority of medical cannabis users, the benefits outweigh the risks. More importantly, the risk-benefit profile of cannabis is more positive for most users than the risk-benefit profile of other substances, including many conventional pharmaceuticals. Many medical cannabis patients use cannabis *instead of* conventional pharmaceuticals, which means that insurers who pay for medical cannabis may otherwise be paying for conventional pharmaceuticals.

February 18, 2022
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As you know, the behavioral health crisis is not getting better, but shows signs of worsening. Every day, news stories abound with disturbed individuals harming themselves or others, and much of it is fueled by opioid abuse. At the same time, medical cannabis patients' ability to pay out-of-pocket is more and more precarious. Inflation has driven down the value of wages and benefits, and although Ultra Health is committed to lowering prices, Ultra Health also feels the effects of inflation. The result is that one stabilizing feature of medical cannabis patients' lives—their supply of cannabis—is suddenly becoming unstable. Once destabilized, those patients may return to the dangerous cycle of opioids, violence, and crime, all of which place enormous burdens on behavioral health systems.

At the same time, medical cannabis patients' ability to pay out-of-pocket is more and more precarious. Inflation has driven down the value of wages and benefits, and although Ultra Health is committed to lowering prices, Ultra Health also feels the effects of inflation. The result is that one stabilizing feature of medical cannabis patients' lives is suddenly becoming unstable. Once destabilized, those patients may return to the dangerous cycle of opioids, violence, and crime, all of which place enormous burdens on behavioral health systems.

The legal framework now exists for health insurers to formalize coverage systems for medical cannabis. Statutes mandate the elimination of cost sharing, and simultaneously, the medical cannabis provider network has become stronger and more professionalized. The laws reviewed above demand that insurers not impose cost-sharing on behavioral health services and medications, and as shown above, medical cannabis is a behavioral health service and/or medication. Therefore, insurers should act quickly to formalize their processes for ending cost sharing on medical cannabis.

Ultimately, each insurer operating in New Mexico must decide whether it will 1) follow the statutes and reimburse medical cannabis patients for cannabis or 2) attempt to wriggle out of paying for one of the last standing pillars of the behavioral health system.

We would appreciate your response to this matter by March 11, 2022, so that we may evaluate whether to pursue this issue in other forums. You may reach us at kristina@ultrahealth.com, duke@ultrahealth.com, or 255 Camino Don Tomas, Bernalillo, NM 87004. We are always willing to provide tours of our cultivation facility or retail locations.

Sincerely,

/s/ Kristina Caffrey
Kristina Caffrey
Chief Legal Officer
Ultra Health
kristina@ultrahealth.com
505-401-7847 (cell)

Medical Cannabis Program Patient Statistics January 2022

Active Patients: 130,345

Qualifying Condition Count

Alzheimer's Disease	75
Amyotrophic Lateral Sclerosis	28
Anorexia (severe)/Cachexia	325
Autism Spectrum Disorder	171
Cancer	6,499
Crohn's Disease	319
Damage to the nervous tissue of the spinal cord	278
Epilepsy	1350
Friedreich's Ataxia	4
Glaucoma	614
Hepatitis C Infection	127
HIV/AIDS	802
Hospice Care	355
Huntington's Disease	9
Inclusion Body Myositis	11
Inflammatory autoimmune-mediated arthritis	2,269
Intractable Nausea/Vomiting	579
Lewy Body Disease	1
Multiple Sclerosis	768
Obstructive Sleep Apnea	1,161
Opioid Use Disorder	859
Painful Peripheral Neuropathy	2,612
Parkinson's Disease	437
Post-Traumatic Stress Disorder	71,101
Severe Chronic Pain	39,235
Spasmodic Torticollis (Cervical Dystonia)	78
Spinal Muscular Atrophy	20
Ulcerative Colitis	295

*Data is as of 01/31/2022, adjustments may occur as data is reviewed and potentially further refined.

MEDICAL CANNABIS DIVISION

Physical Address: 1474 Rodeo RD Suite 200 Santa Fe, New Mexico • 87505
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 (505) 827-2321 • FAX: (505) 476-3025 • www.nmhealth.org

Patient Count by County

Bernalillo	43,439
Catron	235
Chaves	4,098
Cibola	1,471
Colfax	520
Curry	3,046
De Baca	112
Dona Ana	12,178
Eddy	3,681
Grant	2,369
Guadalupe	308
Harding	23
Hidalgo	215
Lea	3,170
Lincoln	2,184
Los Alamos	604
Luna	986
McKinley	1,251
Mora	330
Otero	4,679
Quay	958
Rio Arriba	2,429
Roosevelt	1,295
Sandoval	9,383
San Juan	2,717
San Miguel	2,498
Santa Fe	13,901
Sierra	1,889
Socorro	1,176
Taos	2,712
Torrance	907
Union	232
Valencia	4,680
Out of State	669
No Data	0

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