STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

Rule I-2013-01 (Revised)

GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

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Section 1. Purpose.

Under Vermont Law, a health plan shall apply member co-pays to mental health services and to medical services consistently in its health insurance policies/certificates. The member co-pay applicable to mental health and substance abuse services designated as "primary" when rendered by a mental health care provider shall be no greater than the member co-pay applicable to medical services rendered by a primary care provider. The member co-pay for "specialty" mental health and substance abuse services shall be no greater than the member co-pay applicable to specialty medical services and shall apply only to those mental health and substance abuse services not deemed "primary." The purpose of this regulation is to prescribe guidelines for distinguishing between "primary" and "specialty" mental health and substance abuse services.

Section 2. Authority.

This rule is adopted under the authority vested in the Commissioner of Financial Regulation ("Commissioner"), including but not limited to 8 V.S.A. § 15, 3 V.S.A. chapter 25, and Act 171 of 2012, Section 11e, which states: "No later than October 1, 2013, the commissioner of financial regulation shall adopt rules pursuant to 3 V.S.A.

chapter 25 establishing the guidelines for distinguishing between primary and specialty mental health services developed pursuant to Section 11c of this act, taking into account any recommendations received from the committees of jurisdiction."

Section 3. Legislative Mandate.

"A health insurance plan shall provide coverage for the treatment of a mental health condition and shall not establish any rate, term, or condition that places a greater burden on an insured for access to treatment for a mental health condition[1] than for access to treatment for other health conditions, including no greater co-payment for primary mental health care or services than the co-payment applicable to care or services provided by a primary care provider under an insured's policy and no greater co-payment for specialty mental health care or services than the co-payment applicable to care or services provided by a specialist provider under an insured's policy[.]" 8 V.S.A. § 4089b(c)(1) (effective January 1, 2014).

Under Act 171 of 2012, Section 11c, the Department of Financial Regulation ("Department"), in collaboration with a group of stakeholders, first compiled a list of mental health and substance abuse services, identified by procedure codes, and recommended to the Commissioner that these services be deemed "primary" mental health and substance abuse services for purposes of implementing 8 V.S.A. § 4089b(c)(1) on January 1, 2014. In the fall of 2023, the Department, in collaboration with stakeholders, reviewed the list of procedure codes and proposed additional procedure codes to be included. The list of mental health and substance abuse services with associated procedure codes compiled by the stakeholder group, together with updates, shall be published on the Department's website and are included as Appendix A and Appendix B of this rule (the "Primary Care Mental Health and Substance Abuse Procedure Codes").

Section 4. Mental Health and Substance Abuse Services Deemed to Be "Primary" and Therefore Subject to a Co-Pay No Greater Than the Co-Pay Applicable to Medical Services Offered by Primary Care Providers.

The list of services and related procedure codes (CPT/HCPCS) in Appendix A and B of this rule shall be deemed "primary" mental health and substance abuse services. The common elements underlying the selection of these "primary" mental health and substance abuse services include: (1) the most common or routine mental health and substance abuse services; (2) outpatient/office mental health and substance abuse services only; and (3) services provided to all persons regardless of age or gender.

On and after October 1, 2013 with respect to the procedure codes in Appendix A and on and after January 1, 2026 with respect to the additional procedure codes in Appendix B, each health insurance plan shall establish, maintain, administer, and update as required, a

[1] The definition of "mental health condition" includes conditions or disorders involving alcohol or substance abuse. 8 V.S.A. § 4089b.

list of mental health and substance abuse services consistent with those identified in "Primary Care Mental Health and Substance Abuse Procedure Codes" that shall be "primary" when rendered by a mental health care provider and for which the member co-pay shall be no greater than the co-pay applicable to medical services rendered by a primary care provider.

Section 5. Review of Services Deemed "Primary" Mental Health and Substance Abuse Services.

The Department in consultation with the Department of Mental Health shall convene a stakeholder group every five years, or earlier if requested by a stakeholder, to determine any appropriate changes to the services and related codes in "Primary Care Mental Health and Substance Abuse Procedure Codes." Any addition or deletion of services shall require amendment of this rule. The stakeholder group may be of similar composition to the group originally engaged in the compilation of "Primary Care Mental Health and Substance Abuse Procedure Codes."

This original group was comprised of stakeholders, providers, and staff within state agencies, including: the Department of Vermont Health Access, the University of Vermont/Fletcher Allen Health Care (now the University of Vermont Health Network), the Vermont Council of Developmental & Mental Health Agencies, the Vermont Department of Mental Health, the Vermont Division of Alcohol & Substance Abuse Programs (now the Vermont Department of Health, Division of Substance Use Programs), the Vermont Psychiatric Association, the Vermont Psychological Association, designated Mental Health Agencies, practicing licensed mental health counselors, licensed clinical social workers, and licensed master's level psychologists.

The stakeholder group shall be convened by June 1 of the review year and shall provide a recommendation to the Commissioner of the Department by August 31 of the review year. If the stakeholder group recommends changes to "Primary Care Mental Health and Substance Abuse Procedure Codes," the Commissioner may approve the changes. The "Primary Care Mental Health and Substance Abuse Procedure Codes" will be revised with any changes approved by the Commissioner to take effect the subsequent plan year.

Section 6. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 7. Effective Date.

This revision shall take effect on adoption, and shall apply to all health insurance plans issued, offered, or renewed on or after January 1, 2026.

APPENDIX A:
2013 Primary Care Mental Health & Substance Abuse Procedure Codes

Initial Psychiatric Evaluation

90791, Psychiatric diagnostic evaluation (no medical services);

90792, Psychiatric diagnostic evaluation with medical services (E/M new patient codes may be used in lieu of 90792)

Interactive psychiatric diagnostic evaluation: 90791 or 90792, with +90785 (interactive complexity add-on code)

Outpatient Psychotherapy

(Time is face-to-face with patient and/or family)

90832, Psychotherapy, 30 minutes

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90833, 30-minute psychotherapy add-on-code

90834, Psychotherapy 45 minutes

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90836, 45-minute psychotherapy add on-code

90837, Psychotherapy, 60 minutes

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90838, 60-minute psychotherapy add-on-code

Outpatient Interactive Psychotherapy

(Time is with patient and/or family)

90832, Psychotherapy, 30 minutes and +90785, interactive complexity add-on-code

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90833, 30-minute psychotherapy add-on-code, and +90785, interactive complexity add-on-code

90834, Psychotherapy, 45 minutes and +90785, interactive complexity add-on-code

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90836, 45-minute psychotherapy add-on-code, and +90785, interactive complexity add-on-code

90837, psychotherapy, 60 minutes and +90785, interactive complexity add-on-code

With medical evaluation and management services; appropriate outpatient E/M code (not selected on the basis of time), and +90838, 60-minute psychotherapy add-on-code, and +90785, interactive complexity add-on-code

Other Psychotherapy

90846, Family psychotherapy (without the patient present)

90847, Family psychotherapy (conjoint psychotherapy) (with patient present)

90853, Group psychotherapy (for other than multiple-family group), +90875, interactive complexity add-on

Interactive group psychotherapy use 90853 (for other than multiple-family group), +90875, interactive complexity

Other Psychiatric Services or Procedures

Pharmacologic management, including prescription, use, and review of medication with no more than minimal medical psychotherapy; use appropriate E/M code (Psychologists will use +90863)

HCPCS Codes for Substance Abuse Treatment

H0001, Alcohol and/or drug assessment

H0004, Behavioral health counseling and therapy, per 15 minutes

H0005, Alcohol and/or drug services; group counseling by a clinician

H0006, Alcohol and/or drug services; case management

H0015, Alcohol and/or drug services; intensive outpatient (treatment program that operates at least 3 hours/day and at least 3 days/week and is based on an individualized treatment plan), including assessment, counseling; crisis intervention, and activity therapies or education

H0020, Alcohol and/or drug services; methadone administration and/or service (provision of the drug by a licensed program)

APPENDIX B:
2024 Primary Care Mental Health & Substance Abuse Procedure Codes

Interprofessional Telephone/Internet/Electronic Health Record Consultation (Non Face to Face)

99446, Consulting physician or other qualified healthcare professional performs a 5–10-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99447, Consulting physician or other qualified healthcare professional performs a 11–20-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99448, Consulting physician or other qualified healthcare professional performs a 21–30-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99449, Consulting physician or other qualified healthcare professional performs a > 31-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99451, Consult without discussion usually involves electronic health record assessment and management service provided by a consultative physician, including a written report to the patient's treatment/requesting physician or other qualified health care professional 5 minutes or more of medical consultative time.

99452, Interprofessional telephone/internet/electronic health record referral service provided by a treating/requesting physician or other qualified health care professional, 30 minutes.

Peer Support Services

H0038, Self-help/peer services, per 15 minutes.