



Consumer Affairs and Business Regulation

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Bulletin 2013-06; Disclosure and Compliance Requirements for Carriers, and Process for Handling Complaints for Non-Compliance with Federal and State Mental Health and Substance Use Disorder Parity Laws; Issued May 31, 2013

BULLETIN 2013-06

TO: Consumers, Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc. and Health Maintenance Organizations Issuing or Renewing Insured Health Products in Massachusetts

FROM: Joseph G. Murphy, Commissioner of Insurance

DATE: May 31, 2013

RE: Disclosure and Compliance Requirements for Carriers, and Process for Handling Complaints for Non-Compliance with Federal and State Mental Health and Substance Use Disorder Parity Laws

Background

Pursuant to the authority of the Commissioner of Insurance ("Commissioner") under Chapter 224 of the Acts of 2012 and Massachusetts General Laws Chapter ("Chapter") 26, § 8K, the Division of Insurance ("Division") now issues this Bulletin to provide guidance to those carriers licensed under Chapters 175, 176A, 176B and 176G, including any commercial health insurer, Blue Cross and Blue Shield of Massachusetts, Inc. and Health Maintenance Organization that issues or renews insured products in Massachusetts (collectively, "Carriers"), regarding the enforcement of the federal and state mental health and substance use disorder parity laws, including any interim or final regulations, guidelines, sub-regulatory guidances, or related instructions that have been issued or promulgated by the federal or state authorities regarding such enforcement (collectively, the "Mental Health Parity Laws").

This Bulletin covers the following topics:

- The requirement that each Carrier provide notice to its subscribers detailing their rights under the Mental Health Parity Laws;
- The requirement that every Carrier certify and affirmatively demonstrate its compliance with the Mental Health Parity Laws; and
- The Division's process for handling any complaints concerning any Carrier's alleged non-compliance with the Mental Health Parity Laws.

Carrier Notice and Disclosure Requirements

Carriers shall provide each subscriber household with a written notice in a form approved by the Commissioner detailing in clear language the covered persons' rights under Mental Health Parity Laws, and the process by which an insured may file a complaint with the Division alleging a Carrier's noncompliance with Mental Health Parity Laws. Each Carrier must provide such a disclosure to each subscriber household prior to January 1, 2014, and thereafter to each newly enrolled subscriber household at the time of that subscriber's initial enrollment.

Carrier Certification and Reporting Requirements for Demonstration of Compliance with the Mental Health Parity Laws

On or before October 1, 2013, and thereafter on or before July 1 of any subsequent calendar year, each Carrier must review its administrative and other practices, including those delegated to subcontracting organizations, for compliance with the relevant provisions of the Mental Health Parity Laws, and must submit a certification to the Division signed by the Carrier's chief executive officer and chief medical officer that states that the Carrier has completed a comprehensive review of the administrative practices of the Carrier for the preceding calendar year for compliance with the provisions of the Mental Health Parity Laws (the "Certification").

If applicable, the Carrier shall state that it has determined that all of its administrative and other practices were in compliance with the Mental Health Parity Laws during the preceding calendar year. If the Carrier determines that any administrative or other practices were *not* in compliance with the Mental Health Parity Laws during the previous calendar year, however, then its Certification will identify which practices were in compliance and which practices were not in

compliance with the Mental Health Parity Laws, and the Carrier shall identify the steps that have been or are being taken to bring those non-conforming practices into compliance.

On or before October 1, 2013, and thereafter on or before July 1 of any subsequent calendar year, in support of its Certification that it is in full or partial compliance with the Mental Health Parity Laws, each Carrier shall submit the following information to the Division in order to demonstrate the Carrier's compliance with the Mental Health Parity Laws during the previous calendar year. In support of its Certification, each Carrier shall submit information regarding financial and treatment limitations, medical necessity criteria, and authorization processes that demonstrate the Carrier's compliance with the Mental Health Parity Laws, including but not limited to the following information:

1. An explanation of any differences in the Carrier's processes used to develop the mental health/substance use disorder criteria vs. the processes used to develop medical/surgical criteria;
2. An explanation of any differences in the ways that mental health/substance abuse disorder providers and medical/surgical providers are notified about the Carrier's criteria to determine the medical necessity of the provider's services;
3. An explanation of any differences in the processes the Carrier may require a mental health/substance abuse disorder provider to follow to request authorization for services and/or to provide information that demonstrates the medical necessity of a requested service when compared to the processes the Carrier requires for medical/surgical providers and the reasons why the processes may differ;
4. An analysis of the way in which the plan meets federal parity standards if there are any differences between processes, standards and criteria that apply to mental health/substance use disorder services when compared to processes, standards and criteria that apply to medical/surgical services;
5. A report differentiating between treatment for medical/surgical services and treatment for mental health/substance use disorder services, which sets forth the following information for the prior calendar year:
 - a. Number of times patients/providers requested authorization for services;
 - b. Number of services requested (e.g., inpatient days or outpatient visits);
 - c. Number of requests authorized;
 - d. Number of requests modified;
 - e. Number of requests denied;
 - f. Number of reduced or denied requests appealed through the internal appeals process;
 - g. Number of internally appealed requests approved;
 - h. Number of internally appealed requests denied;
 - i. Number of internally appealed requests sent for external appeal;
 - j. Number of externally appealed adverse determinations overturned; and
 - k. Number of externally appealed adverse determinations upheld.
6. An explanation of any differences in the standards for granting authorization for out-of-network services between those for mental health/substance use disorder services vs. those for medical/surgical services; and
7. For each plan offered, a list of any differences in cost-sharing features and benefit limitations that apply to mental health/substance use disorder services that may differ from cost-sharing features and limitations that apply to medical/surgical services along with an explanation of why the differences may be acceptable under federal standards.

8. *Complaints Concerning Non-Compliance With The Mental Health Parity Laws*

Complaints alleging a Carrier's noncompliance with the Mental Health Parity Laws may be submitted verbally or in writing to the Division's Consumer Services Section for review. A written submission may be made by using the Division's Insurance Complaint Form. A copy of the form may be requested by telephone or by mail, and form can also be found on the Division's webpage at:

<http://www.mass.gov/ocabr/insurance/consumer-safety/file-a-complaint/>

Consumer complaints regarding alleged non-compliance with the Mental Health Parity Laws also may be submitted by telephone to the Division's Consumer Services Section by calling (877) 563-4467 or (617) 521-7794. All complaints that are initially made verbally by telephone must be followed up by a written submission to the Consumer Services Section, which must include but is not limited to the following information requested on the Insurance Complaint Form: the complainant's name and address; the nature of complaint; and the complainant's signature authorizing the release of any information regarding the complaint to help the Division with its review of

the complaint. The Division will endeavor to resolve all consumer complaints regarding non-compliance with the Mental Health Parity Laws in a timely fashion.

If you have any questions about this Bulletin, please contact Kevin P. Beagan, Deputy Commissioner of the Health Care Access Bureau at (617) 521-7323 or kevin.beagan@state.ma.us or Nancy Schwartz, Director of the Bureau of Managed Care at (617) 521-7347 or nancy.schwartz@state.ma.us.

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