

STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. INS-17-0017

REGENCE BLUECROSS BLUESHIELD  
OF OREGON,

FINAL ORDER TO CEASE AND  
DESIST AND ORDER ASSESSING  
CIVIL PENALTIES, ENTERED BY  
CONSENT

Respondent.

WHEREAS, the Director of the Department of Consumer and Business Services for the State of Oregon (“*Director*”), acting in accordance with Oregon Revised Statutes (“*ORS*”) chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 (“*Insurance Code*”), has conducted an investigation of Regence BlueCross BlueShield of Oregon (“*Respondent*”) regarding violations of the Insurance Code; and

WHEREAS Respondent wishes to resolve this matter with the Director;

NOW THEREFORE, as evidenced by the signatures subscribed in this Order, Respondent hereby CONSENTS to entry of this Order upon the Director’s Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Director FINDS that:

1. Respondent is licensed by the Director, by and through the Division of Financial Regulation, previously known as the Insurance Division (collectively the “*Division*”), as a health care service contractor. Respondent’s National Association of Insurance Commissioners (“*NAIC*”) company number is 54933.

2. Respondent is the third party administrator for Pioneer Educators Health Trust (“*PEHT*”), an Oregon multiple employer welfare arrangement (“*MEWA*”), NAIC

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387





1 company number 12619. A MEWA is an arrangement where a group of employers pool  
2 their contributions in a self-contributing benefits plan for their employees. PEHT is a  
3 self-funded large group MEWA that, at relevant times, provided a health benefit plan to  
4 higher educational institutions located in Oregon, including the following: Lewis & Clark  
5 College; Corban University; George Fox University; Linfield College; Pacific University;  
6 Reed College; the University of Western States; and Willamette University (collectively  
7 the “*Member Institutions*”). PEHT provided benefits for approximately 1,700 employees  
8 of the Member Institutions.

9 3. Under a certain Administrative Services Contract between Respondent and  
10 PEHT, dated April 1, 2015 (the “*TPA Contract*”), PEHT delegated certain administrative  
11 duties to Respondent including, among other services, claims processing services and  
12 providing assistance in the drafting of a 2015 health benefit plan document for PEHT.  
13 However, the TPA Contract provides that PEHT is ultimately responsible for the creation  
14 of and benefits within the benefit plan document.

15 4. PEHT’s Plan year runs from April 1<sup>st</sup> to March 31<sup>st</sup> of each year. Thus,  
16 PEHT’s 2015 health benefit plan governed coverage for the period April 1, 2015 through  
17 March 31, 2016.

18 5. On November 14, 2014, the Division issued Oregon Insurance Division  
19 Bulletin INS 2014-2 (the “*Bulletin*”), explaining the requirements relating to health  
20 benefit plan coverage for autism spectrum disorder (“*ASD*”) and other pervasive  
21 developmental disorders (“*PDDs*”), including the treatment known as applied behavioral  
22 analysis (“*ABA*”). The Bulletin provided, in part:

23 An insurer may not apply a categorical exclusion (such as exclusions for  
24 developmental, social or educational therapies) that results in a denial of  
25 all ABA or other medically necessary treatment or otherwise results in the  
mandates<sup>1</sup> being effectively meaningless for ASD or PDDs.

26 <sup>1</sup> Referring to the following state and federal mental health mandates: Oregon Revised Statute (“*ORS*”)



1 The Oregon PDD statute [ORS 743A.190] requires a health benefit plan to  
2 cover, for a child enrolled in the plan who is under 18 years of age and  
3 who has been diagnosed with a pervasive developmental disorder, all  
4 medical services that are medically necessary and are otherwise covered  
5 under the plan. The statute includes, as medical services, rehabilitation  
6 services defined to include physical therapy, occupational therapy or  
7 speech therapy services. Therefore, the mandate for medical services  
8 requires at least some of both behavioral and physical services. ABA is a  
9 behavioral service and is included among “all medical services.”

10 An insurer’s denial of coverage on a basis prohibited by this bulletin may  
11 subject the insurer to enforcement measures for violation of the Oregon  
12 Insurance Code.

13 6. On or around October 1, 2014, prior to issuance of the Bulletin, Respondent  
14 delivered a recommended health benefit plan to PEHT for approval for the 2015 plan  
15 year. The 2015 health benefit plan recommended by Respondent contained a general  
16 exclusion for coverage of ABA therapy

17 7. Almost two months after issuance of the Bulletin, on or around January 6,  
18 2015, Respondent informed PEHT of the Bulletin and its guidance on the mandates  
19 related to coverage of ABA therapy. Respondent represented, however, that “these  
20 benefits are optional, and as a reference most of our self-funded groups are opting not to  
21 take them effective at their renewal.”

22 8. On or around February 5, 2015 PEHT approved the 2015 health benefit plan  
23 drafted by Respondent.

24 9. The 2015 PEHT Medical and Vision Plan (the “**2015 Plan**”), effective on  
25 April 1, 2015, included the following office visit limitation and general categorical  
26 exclusion applicable to ASD, PDD and ABA:

**NEURODEVELOPMENTAL THERAPY**

**Outpatient limit:** 25 visits per Claimant per Calendar Year for all

---

743A.190 – Oregon Mandatory Coverage for Minors with Pervasive Development Disorders (“**Oregon PDD**”); Enrolled Senate Bill 365 (2013 Legislative Session, 2013 Oregon Laws Chapter 771 (“**SB 365**”)); ORS 743A.168 – Oregon Mental Health Parity (“**Oregon MHP**”); 29 U.S.C. Sec. 1185a – federal Mental Health Parity and Addition Equity Act (“**MHPAEA**”).



1 outpatient neurodevelopmental therapy services.

2 The Plan covers physical therapy, occupational therapy or speech therapy  
3 services to restore or improve function, for a pervasive developmental  
4 disorder, for a Claimant age 17 and under. For the purpose of this benefit,  
5 “pervasive developmental disorder” means a neurological condition that  
6 includes Asperger’s syndrome, autism, developmental delay,  
7 developmental disability, or mental retardation.

8 **GENERAL EXCLUSIONS:** The following are the general exclusions  
9 from coverage under the Plan.

10 **Applied Behavioral Analysis treatment by any Provider for any  
11 condition**

12 10. With respect to the annual 25 visit limitation for neurodevelopmental therapy,  
13 the 2015 Plan did not impose the same or a similar annual visit limitation for  
14 substantially all (at least two –thirds) of the medical or surgical benefits covered under  
15 the 2015 Plan.

16 11. PEHT delivered the unapproved 2015 Plan to the Member Institutions for  
17 distribution to enrollees in the plan. The 2015 Plan was available to enrollees and the  
18 general public on the websites of at least three of the Member Institutions until  
19 approximately December 2016.

20 12. Respondent used the unapproved 2015 Plan to process claims between April  
21 1, 2015 and on or around September 30, 2015.

22 13. Respondent published the 2015 plan externally on the member portal on or  
23 around August 31, 2015.

24 **I. Denial of Preauthorization Requests for ABA Therapy**

25 14. The Oregon consumer identified herein as “*HS*” was an enrollee in the 2015  
26 Plan.

15. In or around July 2015, HS called Respondent and made a number of verbal  
preauthorization requests for coverage of ABA therapy for her minor dependent that had  
been diagnosed with ASD and prescribed ABA therapy as medically necessary treatment.  
In response to each such request, Respondent verbally represented to HS that ABA

1 therapy was not a covered benefit. Respondent further represented to HS that PEHT was  
2 exempt from the mandates for ABA therapy explained in the Bulletin.

3 16. On July 23, 2015, HS submitted a written preauthorization request to  
4 Respondent, via facsimile, seeking prior authorization for coverage of ABA therapy.

5 17. The 2015 Plan provides that responses to preauthorization requests will be  
6 provided, in writing, within 15 calendar days from receipt of the preauthorization request.

7 18. HS did not receive a written response to her July 23, 2015 preauthorization  
8 request within the 15 day timeframe provided for in the 2015 Plan, or by August 7, 2015.  
9 Accordingly, on August 18, 2015, HS mailed Respondent the same preauthorization  
10 request submitted on July 23<sup>rd</sup>, and again requested a written response to the same.

11 19. On or around August 19, 2015, Respondent mailed HS a letter denying her  
12 preauthorization request for coverage of ABA therapy. The denial letter stated that “your  
13 plan does not cover Applied Behavioral Analysis treatment. Please refer to Specific  
14 Exclusions in the current benefit book where Applied Behavioral Analysis treatment by  
15 any provider for any condition is listed as excluded from coverage. We are unable to  
16 provide preauthorization for services that are not covered.”

17 20. HS sought an appeal of her preauthorization request denial from Respondent.

18 21. On September 4, 2015 Respondent issued a letter denying HS’s request for an  
19 appeal, stating “we are unable to accept this appeal since preauthorization is not required  
20 for services that are not covered...According to page 29 of the Pioneer Educators Health  
21 Trust Summary Plan Description, ABA treatment by any provider for any condition is  
22 listed as a specific exclusion.”

23 22. On or around August 2, 2015, HS filed a complaint with the Division  
24 regarding the verbal preauthorization denials she received from Respondent and the  
25 general exclusion for ABA therapy coverage contained in the 2015 Plan.

26 ///



1 23. The Division contacted Respondent and PEHT regarding the complaint filed  
2 by HS, and advised that the 2015 Plan was not in compliance with state and federal  
3 mental health parity laws.

4 24. In responding to the HS complaint, Respondent represented to PEHT on  
5 September 9, 2015 that “PEHT as a self-funded MEWA has the right to exclude state  
6 mandates...ABA is [a choice]. The ABA therapy benefit in both Washington and Oregon  
7 only applies to health plans issued by a health insurer that are subject to state law, of  
8 which PEHT is not.”

9 25. Despite Respondent’s representations, on or around September 30, 2015,  
10 PEHT directed Respondent to include ABA therapy as a covered service. Upon direction  
11 of PEHT, Respondent promptly included ABA therapy as a covered service.

12 **II. Denial of ABA Therapy Claim**

13 26. The Oregon consumer identified herein as “**MM**” was an enrollee in the PEHT  
14 health benefit plan that was effective from April 1, 2014 through March 31, 2015 (the  
15 “**2014 Plan**”). The 2014 Plan did not include the same ABA exclusion or annual 25 visit  
16 limitation for neurodevelopmental therapy treatments of ASD that were improperly  
17 included in the 2015 Plan.

18 27. Respondent was the third party administrator for the 2014 Plan.

19 28. In October 2015, after PEHT directed Respondent to process post-Bulletin  
20 claims for ABA therapy as a covered service, MM submitted a claim to Respondent for  
21 coverage of ABA therapy for her minor dependent. The claim was for services received  
22 by MM’s dependent on or around March 18, 2015, after issuance of the Bulletin  
23 clarifying the ABA therapy coverage mandates.

24 29. Respondent denied the claim, despite the lack of a specific exclusion for ABA  
25 therapy in the 2014, and despite the mandates for ABA therapy discussed in the Bulletin.

26 ///



1 30. Following denial of MM’s claim, Respondent has acknowledged that PEHT is  
2 subject to the ABA therapy mandates discussed in the Bulletin. Respondent has failed,  
3 however, to reprocess or re-adjudicate MM’s claim for ABA therapy that Respondent  
4 improperly denied. Respondent did, however, approve subsequent claims for coverage of  
5 ABA therapy submitted by MM.

6 CONCLUSIONS OF LAW

7 The Director CONCLUDES that:

8 31. Respondent is a “carrier” under ORS 743B.005(5), and a third-party  
9 administrator under ORS 744.700 *et seq.*, and is subject to regulation by the Director.

10 32. Notwithstanding PEHT’s status as a self-funded large group MEWA, under  
11 ORS 750.333(1) PEHT is subject to various provisions of the Insurance Code, including  
12 but not limited to the requirements of 743A.168 (Oregon MHP) and ORS 743A.190  
13 (Oregon PDD).

14 33. Under ORS 743A.168, a group health insurance policy must provide coverage  
15 for treatment for mental health conditions at the same level as, and subject to limitations  
16 no more restrictive than, treatments for other medical or surgical conditions.

17 34. Under Oregon Administrative Rule (“OAR”) 836-053-1405(2)(c), if an  
18 insurer applies annual limits to treatment of mental health conditions, the limits must  
19 comply with the “predominantly equal” to and “substantially all” tests set forth in the  
20 MHPAEA and implementing regulations at 45 CFR 146.136 and 147.160.

21 35. Under MHPAEA, an annual visit limitation for the treatment of mental health  
22 conditions is prohibited unless an insurer can establish that the limitation is not more  
23 restrictive than the limitation that the insurer applies to substantially all (at least two –  
24 thirds) of medical or surgical benefits in the same classification. 29 U.S.C. Sec. 1185(a);  
25 29 CFR 2590.712.

26 ///

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387





1 36. Under ORS 743A.190, a health benefit plan must provide coverage for a child  
2 diagnosed with ASD all medically necessary services that are otherwise covered under  
3 the plan.

4 37. The annual office visit limitation for Neurodevelopmental Therapy (physical,  
5 occupational, and speech therapy) in the 2015 Plan, as more fully discussed in Paragraph  
6 9 above, violated ORS 743A.168 and OAR 836-053-1405(2)(c).

7 38. The general exclusion of coverage for ABA therapy in the 2015 Plan, as more  
8 fully discussed in Paragraph 9 above, violated ORS 743A.168.

9 39. Under ORS 746.075(2)(a), a person may not, in connection with the offer or  
10 sale of insurance, engage, directly or indirectly, in the making, issuing, circulating, or  
11 causing to be made, issued or circulated, any statement misrepresenting the terms of any  
12 policy issued or to be issued, of the benefits or advantages therein.

13 40. Respondent violated ORS 746.075(2)(a) when Respondent misrepresented to  
14 PEHT that the requirements for coverage of treatments relating to ASD and PDD  
15 diagnoses, including ABA therapy, were optional for PEHT, and thus that PEHT did not  
16 need to include coverage for such services in the 2015 Plan.

17 41. Under ORS 746.110, no person shall make, publish, disseminate, circulate, or  
18 place before the public, or cause, directly or indirectly, to be made, published,  
19 disseminated, circulated, or placed before the public...a statement containing any  
20 assertion, representation or statement with respect to the business of insurance or with  
21 respect to any person in the conduct of the insurance business, which is untrue, deceptive,  
22 or misleading.

23 42. Respondent violated ORS 746.110 when Respondent made the following  
24 untrue, deceptive, or misleading statements:

25 A. The statement made to PEHT on or around January 6, 2015, that the  
26 mandates for ABA therapy described in the Bulletin were optional benefits with respect





1 to PEHT, as a self-funded group plan;

2 B. The statement made to HS in or around July 2015 that PEHT was exempt  
3 from the mandates for ABA therapy described in the Bulletin; and

4 C. The statement made to PEHT on September 9, 2015 that PEHT had the  
5 right to exclude state mandates, that ABA was a choice, and that PEHT was not subject  
6 to state laws.

7 43. Under ORS 746.230(1), no person shall commit or perform any of the  
8 following unfair claim settlement practices, among others: (d) refusing to pay claims  
9 without conducting a reasonable investigation based on all available information; (f) not  
10 attempting, in good faith, to promptly and equitably settle claims in which liability has  
11 become reasonably clear.

12 44. Respondent violated ORS 746.230(1) (d) and (f) when it denied MM's claim  
13 for ABA therapy despite the lack of any basis for the denial in the 2014 Plan, and despite  
14 the clear guidance set forth in the Bulletin regarding ABA therapy mandates, and despite  
15 the direction from PEHT to approve claims for ABA therapy.

16 45. Under ORS 731.988(1), the Director may assess a civil penalty of up to  
17 \$10,000 against any person that violates a provision of the Insurance Code or any lawful  
18 rule or final order of the Director. Each violation is a separate offense.

## 19 ORDERS

20 Now therefore, the Director issues the following Orders:

21 46. As authorized by ORS 731.252(1), the Director ORDERS Respondent to  
22 CEASE AND DESIST from violating any provision of the Insurance Code or the  
23 administrative rules promulgated thereunder.

24 47. As authorized by ORS 731.988(1), the Director hereby assesses CIVIL  
25 PENALTIES against Respondent in the total amount of One Hundred Thousand Dollars  
26 (\$100,000), as follows:

1 A. A CIVIL PENALTY of Thirty Thousand Dollars (\$30,000) for violations  
2 of ORS 746.075(2)(a);

3 B. A CIVIL PENALTY of Forty Thousand Dollars (\$40,000) for violations  
4 of ORS 746.110; and

5 C. A CIVIL PENALTY of Thirty Thousand Dollars (\$30,000) for violations  
6 of ORS 746.230(1)(d) and (f).

7 48. The Director SUSPENDS the collection of \$50,000 of the total CIVIL  
8 PENALTY assessed above, so long as Respondent complies with all terms and  
9 conditions of this Order and all requirements of the Oregon Insurance Code and any  
10 administrative rules promulgated thereunder. If Respondent complies with the terms of  
11 this Order and the Director has not initiated an enforcement action for new violations of  
12 the Oregon Insurance Code during the three-year period from the effective date of this  
13 Order, the Director WAIVES the collection of the suspended CIVIL PENALTY assessed  
14 herein.

15 49. The \$50,000 CIVIL PENALTY assessed above that is not suspended is due  
16 and payable at the time this Order is returned to the Division.

17 50. This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that  
18 provision, entry of this Order in no way limits or prevents further remedies, sanctions, or  
19 actions which may be available to the Director under Oregon law to enforce this Order,  
20 for violations of this Order, for conduct or actions of Respondent that are not covered by  
21 this Order, or against any party not covered by this Order.

22 SO ORDERED this 25<sup>th</sup> day of May, 2017.

23 PATRICK M. ALLEN, Director  
24 Department of Consumer and Business Services

25 /s/ David Tatman  
26 David C. Tatman, Chief of Enforcement  
Division of Financial Regulation

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CONSENT TO ENTRY OF ORDER**

I, Angela Dowling, state that I am an officer of Regence BlueCross BlueShield of Oregon (“**Respondent**”), and that I am authorized to act on its behalf; that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of Respondent’s right to a hearing in this matter; that Respondent has been represented by counsel in this matter; that Respondent voluntarily and without any force or duress, consents to the entry of this Order, expressly waiving any right to a hearing in this matter; that Respondent executes this Order as a settlement of the matters referred to in the foregoing Order; that Respondent understands that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code by Respondent, and; that Respondent will fully comply with the terms and conditions stated herein.

Respondent understands that this Order is a public document.

By: /s/ Angela Dowling  
Signature

By: Angela Dowling  
Printed Name

Office Held: President

State of OREGON  
County of Multnomah

There appeared before me this 25 day of May, 2017, Angela Dowling and stated that he/she was and is an officer of Respondent, and that he/she is authorized and empowered to sign this Order on behalf of Respondent, and to bind it to the terms hereof.

Donna Lynn Toner, Comm. No. 939954  
Notary Public - State of Oregon

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387

