

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

In the Matter of:

Case No. INS-17-0016

PIONEER EDUCATORS HEALTH  
TRUST,

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 Pioneer Educators Health Trust ("**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. The Director, by and through the Division of Financial Regulation, previously known as the Insurance Division (collectively the "**Division**"), granted Respondent a Certificate of Authority to operate as an Oregon multiple employer welfare arrangement ("**MEWA**") on or around April 14, 2003. A MEWA is an arrangement where a group of employers pool their contributions in a self-contributing benefits plan for their

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





1 employees. Respondent’s National Association of Insurance Commissioners (“*NAIC*”)  
2 company number is 12619.

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

9 3. Respondent’s Plan year runs from April 1<sup>st</sup> to March 31<sup>st</sup> of each year. Thus,  
10 Respondent’s 2015 health benefit plan governed coverage for the period April 1, 2015  
11 through March 31, 2016.

12 4. Regence BlueCross BlueShield of Oregon (“*Regence*”), NAIC company  
13 number 54933, is the third party administrator for Respondent, pursuant to a certain  
14 Administrative Services Contract between Regence and Respondent, dated April 1, 2015  
15 (the “*TPA Contract*”). During the 2015 plan year, Respondent delegated certain  
16 administrative duties to Regence including, among other services, claims processing  
17 services and drafting and making recommendations for the 2015 health benefit plan  
18 documents. Under the TPA Contract, notwithstanding any services provided by Regence,  
19 Respondent is the plan administrator, the named fiduciary, and has the ultimate  
20 responsibility for sponsoring, amending, designing and terminating the health benefit  
21 plan, and complying with all applicable law as related to the plan.

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



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

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

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

16 6. On or around October 1, 2014, prior to issuance of the Bulletin, Regence  
17 delivered a recommended health benefit plan to Respondent for approval for the 2015  
18 plan year. The plan specifically excluded coverage for ABA therapy.

19 7. Following issuance of the Bulletin, on or around January 6, 2015, Regence  
20 advised Respondent that the ASD and ABA mandates set forth in the Bulletin did not  
21 apply to Respondent, given its status as a MEWA. Accordingly, on or around February 5,  
22 2015, Respondent approved the plan recommended by Regence.

23 8. Respondent’s 2015 Medical and Vision Plan (the “**2015 Plan**”), effective on  
24 April 1, 2015, included the following office visit limitation and general categorical  
exclusion applicable to ASD, PDD and ABA:

**NEURODEVELOPMENTAL THERAPY**

**Outpatient limit:** 25 visits per Claimant per Calendar Year for all  
outpatient neurodevelopmental therapy services.

The Plan covers physical therapy, occupational therapy or speech therapy

<sup>1</sup> Referring to the following state and federal mental health mandates: Oregon Revised Statute (“**ORS**”) 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 services to restore or improve function, for a pervasive developmental  
2 disorder, for a Claimant age 17 and under. For the purpose of this benefit,  
3 “pervasive developmental disorder” means a neurological condition that  
4 includes Asperger’s syndrome, autism, developmental delay,  
5 developmental disability, or mental retardation.

6  
7 **GENERAL EXCLUSIONS:** The following are the general exclusions  
8 from coverage under the Plan.

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

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

15 10. Respondent did not submit the 2015 Plan to the Division for approval prior to  
16 its distribution to Member Institutions and use by Regence for claims processing.

17 11. The unapproved 2015 Plan was used by Regence to process claims between  
18 April 1, 2015 and on or around September 30, 2015.

19 12. Respondent delivered the unapproved 2015 Plan to the Member Institutions  
20 for distribution to enrollees in the plan. The 2015 Plan was available to enrollees and the  
21 general public on the websites of at least three of the Member Institutions until  
22 approximately December 2016.

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

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

26 14. In or around July 2015, HS made a number of verbal preauthorization requests  
to Regence, seeking prior authorization 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, Regence verbally represented to  
HS that ABA therapy was not a covered benefit. Regence failed to provide a denial of the

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





1 preauthorization requests in writing, as requested by HS. Regence further represented to  
2 HS that Respondent was exempt from the mandates for ABA therapy explained in the  
3 Bulletin.

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

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

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

12 18. On or around August 19, 2015, Regence responded to HS's preauthorization  
13 request with a denial letter. The denial letter did not include any information relating to  
14 the grievance and appeal process, the process for seeking assistance from the Division  
15 concerning the denial, or the contact information for the Division.

16 19. Notwithstanding, HS sought an appeal of her preauthorization request denial  
17 from Regence.

18 20. On September 4, 2015 Regence 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 21. On or around August 2, 2015, HS filed a complaint with the Division  
24 regarding the verbal preauthorization denials she received from Respondent, through  
25 Regence, and the general exclusion for ABA therapy coverage contained in the 2015  
26 Plan.



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

4 23. Following correspondence with the Division, on or around September 30,  
5 2015, Respondent directed Regence to include ABA therapy as a covered service under  
6 the 2015 Plan, retroactive to April 1, 2015. On or around October 13, 2015, Respondent  
7 internally approved an amended 2015 Plan, removing the ABA therapy exclusion (the  
8 “*Amended 2015 Plan*”). Regence began using the Amended 2015 Plan to process  
9 preauthorization requests and claims for ABA therapy beginning in October 2015.

10 24. Respondent, through Regence, granted HS’s preauthorization request for ABA  
11 therapy on or around November 18, 2015, almost four months after HS made the initial  
12 request for preauthorization of ABA therapy for her minor dependent.

13 25. On or around November 4, 2015, Respondent provided the Amended 2015  
14 Plan to the Member Institutions, explaining that the amended plan removed “the  
15 Exclusion of Applied Behavioral Analysis treatment as required by state law effective  
16 4/1/15.” Respondent requested that the Member Institutions replace all posted or printed  
17 plan documents for the 2015 Plan with the Amended 2015 Plan. At least three of the  
18 Member Institutions failed to remove the 2015 Plan containing the ABA exclusion from  
19 their websites until December 2016. However, all claims and preauthorization requests  
20 for ABA therapy received on or after October 1, 2015 were processed according to the  
21 Amended 2015 Plan.

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

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

1 improperly included in the 2015 Plan.

2 27. In October 2015, MM submitted a claim to Regence for coverage of ABA  
3 therapy for her minor dependent. The claim was for services received by MM's  
4 dependent on or around March 18, 2015, after issuance of the Bulletin clarifying the  
5 ABA therapy coverage mandates.

6 28. Regence denied the claim, despite the lack of a specific exclusion for ABA  
7 therapy in the 2014, and despite the mandates for ABA therapy discussed in the Bulletin.

8 29. On September 21, 2015, following the Division's discovery of the mental  
9 health parity compliance issues identified in the 2015 Plan, Respondent represented to the  
10 Division that it would identify other consumers that may have been similarly impacted  
11 and take appropriate action to remedy the harm. Despite this representation, MM's claim  
12 for ABA therapy was improperly denied and was never reprocessed or re-adjudicated.

13 30. Regence did approve subsequent claims for coverage of ABA therapy  
14 submitted by MM.

#### 15 CONCLUSIONS OF LAW

16 The Director CONCLUDES that:

17 31. Respondent is a "carrier" that offered a "health benefit plan" to Oregon  
18 consumers, as those terms are defined by ORS 743B.005, and is subject to regulation by  
19 the Director.

20 32. Under ORS 750.333(1), Respondent is subject to the requirements of ORS  
21 743A.168, 742.003, 743B.250, 746.230 and 731.988.

22 33. Under ORS 744.740, and notwithstanding Respondent's use of Regence as its  
23 third party administrator, Respondent is responsible for determining the benefits and  
24 claims payment procedures applicable to the health plan provided to its Member  
25 Institutions, and is solely responsible for providing competent administration of its  
26 programs.





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

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

8 36. Under MHPAEA, an annual visit limitation for the treatment of mental health  
9 conditions is prohibited unless an insurer can establish that the limitation is not more  
10 restrictive than the limitation that the insurer applies to substantially all (at least two –  
11 thirds) of medical or surgical benefits in the same classification. 29 U.S.C. Sec. 1185(a);  
12 29 CFR 2590.712.

13 37. The annual office visit limitation for Neurodevelopmental Therapy (physical,  
14 occupational, and speech therapy) in Respondent’s 2015 Plan, as more fully discussed in  
15 Paragraph 8 above, violated ORS 743A.168 and OAR 836-053-1405(2)(c).

16 38. The general exclusion of coverage for ABA therapy in Respondent’s 2015  
17 Plan, as more fully discussed in Paragraph 8 above, violated ORS 743A.168.

18 39. Under ORS 742.003(1), a health benefit plan policy form must be filed with  
19 and approved by the Director before it is delivered or issued for delivery in Oregon.

20 40. Respondent violated ORS 742.003(1) when it issued the 2015 Plan and  
21 delivered it to the Member Institutions for distribution to the approximate 1,700 enrollees  
22 in the plan before it was filed, let alone approved, by the Director.

23 41. Respondent violated ORS 743A.168 when it denied HS’s preauthorization  
24 request for ABA therapy.

25 42. Under ORS 743B.001(c), an “adverse benefit determination” includes an  
26 insurer’s denial of a health care service that is based on a network exclusion, annual



1 benefit limit, or other limitation on otherwise covered services.

2 43. Respondent's denial of HS's request for preauthorization of ABA therapy was  
3 an adverse benefit determination.

4 44. Under ORS 743B.250(2) and (4) (renumbered from ORS 743.804) an insurer  
5 must establish procedures for grievances, appeals and external reviews, and must provide  
6 notice of such procedures to an enrollee that is notified of an adverse benefit  
7 determination and files a grievance or appeal.

8 45. Under OAR 836-053-1110, a written decision by an insurer in response to a  
9 grievance must prominently disclose the following information: (1) that the enrollee has a  
10 right to file a complaint or seek other assistance from the Division; and (2) the contact  
11 information for the Division.

12 46. Respondent violated ORS 743B.250(2) when it failed to establish procedures  
13 relating to denials of ABA therapy that allowed HS to file a grievance or appeal, or seek  
14 an external review of the adverse benefit determination denying coverage for ABA  
15 therapy.

16 47. Respondent violated ORS 743B.250(4) and OAR 836-053-1110 when it  
17 issued an adverse benefit determination to HS and failed to include the required  
18 information concerning grievances, appeals, external review, and assistance from the  
19 Division.

20 48. Respondent violated ORS 743A.168 when it denied MM's claim for ABA  
21 therapy.

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

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97101-3881  
Telephone: (503) 378-4387



1 50. Respondent violated ORS 746.230(1) (d) and (f) when it denied MM’s claim  
2 for ABA therapy despite the lack of any basis for the denial in the 2014 Plan, and despite  
3 the clear guidance set forth in the Bulletin regarding ABA therapy mandates.

4 51. Under ORS 731.988(1), the Director may assess a civil penalty of up to  
5 \$10,000 against any person that violates a provision of the Insurance Code or any lawful  
6 rule or final order of the Director. Each violation is a separate offense.

7 **ORDERS**

8 Now therefore, the Director issues the following Orders:

9 52. As authorized by ORS 731.252(1), the Director ORDERS Respondent to  
10 CEASE AND DESIST from violating any provision of the Insurance Code or the  
11 administrative rules promulgated thereunder.

12 53. As authorized by ORS 731.988(1), the Director hereby assesses CIVIL  
13 PENALTIES against Respondent in the total amount of One Hundred Thousand Dollars  
14 (\$100,000), as follows:

15 A. A CIVIL PENALTY of Twenty Thousand Dollars (\$20,000) for violations  
16 of ORS 743A.168 and OAR 836-053-1405(2)(c) with respect to the annual office visit  
17 limitation for Neurodevelopmental Therapy in Respondent’s 2015 Plan;

18 B. A CIVIL PENALTY of Twenty Thousand Dollars (\$20,000) for violations  
19 of ORS 743A.168 with respect to the general exclusion of coverage for ABA therapy in  
20 Respondent’s 2015 Plan;

21 C. A CIVIL PENALTY of Twenty Thousand Dollars (\$20,000) for violations  
22 of ORS 742.003(1), resulting from Respondent’s issuance and distribution of the 2015  
23 Plan without having filed and received approval for the form from the Director;

24 D. A CIVIL PENALTY of Twenty Thousand Dollars (\$20,000) for violations  
25 of ORS 743A.168, 743B.250(2), 743B.250(4) and OAR 836-053-1110 with respect to  
26 Respondent’s denial of HS’s preauthorization request for ABA therapy;

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



1 E. A CIVIL PENALTY of Twenty Thousand Dollars (\$20,000) for violations  
2 of ORS 743A.168 and ORS 746.230(1)(d) and (f) with respect to Respondent’s denial of  
3 MM’s claim for ABA therapy.

4 54. The Director SUSPENDS the collection of the total \$100,000 CIVIL  
5 PENALTY assessed above, so long as Respondent complies with all terms and  
6 conditions of this Consent Order and all requirements of the Oregon Insurance Code. If  
7 Respondent complies with the terms of this Consent Order and the Director has not  
8 initiated an enforcement action for new violations of the Oregon Insurance Code during  
9 the period from the effective date of this Consent Order through March 31, 2020, the  
10 Director WAIVES the collection of the suspended CIVIL PENALTY assessed herein.

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

16  
17 SO ORDERED this 3<sup>rd</sup> day of January, 2019.

18 CAMERON C. SMITH, Director  
19 Department of Consumer and Business Services

20  
21 /s/ Dorothy Bean  
22 Dorothy Bean, Chief of Enforcement  
23 Division of Financial Regulation  
24  
25  
26

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, Alan Finn, state that I am an officer of Pioneer Educators Health Trust ("**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/ Alan Finn  
Signature  
By: Alan Finn  
Printed Name  
Office Held: Chair

State of OREGON  
County of Multnomah

There appeared before me this 30<sup>th</sup> day of November, 2018, Alan Finn, 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.

/s/ Bilegee Walker  
Notary Public - State of Oregon

Approved as to form:

/s/ Greg Hitchcock 11/30/2018  
Greg K. Hitchcock, OSB No. 853972 Date  
Attorney for Respondent

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

