



Oregon

John A. Kitzhaber, MD, Governor

Department of Consumer and Business Services

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To All Persons Interested in Mental Health Parity in Oregon:

Today, the Insurance Division of the Department of Consumer and Business Services issued two bulletins that clarify the division's understanding of the requirement that health insurers including health care service contractors, in Oregon provide coverage of mental health conditions. The first bulletin, INS 2014-1 relates to mental health parity and the division's expectations about how insurers will provide benefits generally for all mental health and nervous conditions. The second bulletin, INS 2014-2 provides more specific information about expectations related to a particular mental health condition, autism spectrum disorder (ASD). This bulletin also includes information about coverage of treatment for ASD known as applied behavior analysis (ABA).

To provide immediate clarification for recent and ongoing cases, these bulletins apply to claims related to a mental or nervous condition submitted to carriers on or after August 8, 2014, which is the date the U.S. District Court for the District of Oregon adjudicated the legal arguments in the *A.F. v. Providence* lawsuit. The division expects that all such claims submitted to carriers on or after that date will be handled by insurers in a manner that conforms to the expectations of these bulletins. The division continues to analyze its approach to enforcement for claims related to a mental or nervous condition submitted prior to August 8, 2014, and this analysis will include collection and evaluation of additional data and information regarding claims practices and licensure issues.

The bulletins look at the interrelationship of three statutes and rules and regulations adopted by state and federal agencies to implement the provisions of these laws: ORS 743A.168, Oregon's mental health parity statute; ORS 743A.190, related to pervasive development disability; and the Paul Wellstone and Pete Domenici Mental Health Parity and Addition Equity Act, 29 U.S.C. 1185a (MHPAEA). Of particular concern is the use of blanket exclusions that effectively negate the requirements of the statutory mental health parity mandates that have been in operation since these statutes were last amended in 2005, 2007, and 2008 respectively.

In addition to these bulletins, the division is providing a Q & A that answers specific questions that have been asked about the division's position as set out in the bulletins. For additional information about legal questions related to the bulletins, the division is furnishing a legal opinion written by the Oregon Department of Justice.

In order to assure that insurers are compliant with division's expectations under these laws as set forth in the bulletins, the division will examine any contract language that includes blanket or categorical exclusions. The division will contact insurers if changes are required. For existing

contracts and for plans issued for the 2015 plan year, insurers are directed to administer the plans consistent with the law as explained in the bulletins. Basically, an insurer may not interpret a blanket or categorical exclusion so as to deny all claims for services that may be medically necessary and mandated to be covered in parity by one of the statutes mentioned above, regardless of the contract language. An insurer also must recognize the definition of “mental health condition” as defined in the rule on the basis of either the DSM IV or the DSM 5, regardless of any contract language that specifies only one or the other.

In addition to issuing these bulletins, the division has adopted a temporary change to Oregon’s mental health parity rule to include references to the DSM 5 in defining a mental health condition. This change will provide clarity in the rule for providers and insurers during the period of transition from use of the DSM IV to complete transition to the DSM 5. This technical update of the rule takes effect immediately and will continue in effect for up to 180 days or until a permanent rule is adopted. The division will begin a permanent rulemaking process immediately to examine all of the rules related to mental health parity and pervasive developmental disability to determine whether permanent changes are needed to further clarify the interpretations of the bulletins. During that process, the change to include the DSM 5 references will also be made permanent.

Questions about this letter related to 2014 or 2015 plans should be directed to Annette Boyce, Manager of the Rates and Forms Section. Questions about review of claims and benefit denials should be directed to Brian Fordham, Manager of Market Regulation Section.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Cali', followed by a period.

Laura N. Cali, FCAS, MAAA
Insurance Commissioner