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OHIC Releases First of Four Market Conduct Exams for Behavioral Health Parity

BCBSRI being proactive, some changes already underway

CRANSTON, R.I. (September 17, 2018) - The Office of the Health Insurance Commissioner (OHIC) has released the first of four reports from its Market Conduct Examinations of the major commercial health insurers operating in the state. The reports measure compliance with laws and regulations relating to coverage of mental health and substance use disorder benefits. Blue Cross and Blue Shield of Rhode Island's (BCBSRI) is the first report to be completed. Market conduct examinations of UnitedHealthcare, Neighborhood Health Plan of Rhode Island and Tufts Health Plan are underway.

A market conduct exam involves a detailed review of insurer records. The exam process includes a review of a random sample of case records to assess compliance with statutory and regulatory requirements.

For the BCBSRI examination, OHIC reviewed a random sample of 444 cases, most from 2014. BCBSRI processes for approving coverage of services—known as utilization review—were found to be non-compliant. According to the report, OHIC's examiners found BCBSRI's utilization review criteria to be "clinically inappropriate"; that different utilization review staff "reached very different conclusions based on similar facts and clinical circumstances"; that BCBSRI "conducted frequent, short-term reviews of coverage...without an objective or clinical basis"; that documentation of utilization review criteria was "inadequate"; and that utilization review procedures were "unreasonable and inequitable" and "did not properly consider patients' welfare and safety."

The examiners also found BCBSRI's practices for prior authorization of prescription drugs used to treat behavioral health conditions "led to impeded or delayed care or potential impeded or delayed care."

The report includes recommendations for BCBSRI to correct non-compliant practices and orders the insurer to submit a proposed Plan of Correction to OHIC. OHIC must approve the plan before it can be implemented. The report acknowledges BCBSRI was cooperative and offered innovative solutions in response to the examination's findings. In addition to proposing investments in behavioral health system services, BCBSRI volunteered to eliminate its current process for approving coverage of in-network behavioral health services and replace it with administrative procedures

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intended to expedite the provision of needed patient care. In lieu of a penalty, BCBSRI will make \$5 million in behavioral health system infrastructure payments—\$1 million per year over the next five years—to a fund created by OHIC at the Rhode Island Foundation. The fund will be used to improve “timely access to needed care and treatment for individuals with mental health and substance use disorder conditions.” The creation of that fund was announced earlier this month. This fall, the RI Foundation will begin soliciting proposals to support services targeted at prevention and early intervention programs.

OHIC began its Market Conduct Examination for Behavioral Health Parity in January 2015. The examination includes all four of Rhode Island’s major commercial health insurers: Blue Cross and Blue Shield of RI, UnitedHealthcare, Neighborhood Health Plan of Rhode Island, and Tufts Health Plan.

The examination of BCBSRI was conducted by Linda Johnson, OHIC Operations Director, former OHIC General Counsel Herbert W. Olson, Esq, and other OHIC staff. For clinical review, OHIC was assisted by behavioral health clinicians from the Law and Psychiatry Service at Massachusetts General Hospital.

Throughout the examination process, OHIC has been working with all four insurers to address some systemic issues as they have arisen. OHIC’s review of insurer coverage documents has already led to the elimination of several exclusions of coverage for behavioral health services.

In May 2017, all four commercial insurers agreed to end the practice of requiring prior authorizations for opioid use disorder medications, such as buprenorphine and Suboxone. As of January 2019, all the health plans will adjust the co-payments charged to patients for behavioral health counseling and medication maintenance to be more affordable, and comparable to primary care visits.

The full report is available on [OHIC’s website](#).

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