



Florida Psychological Association

August 10, 2011

The Honorable Kevin M. McCarty
Insurance Commissioner
Florida Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399

The Honorable Jeff Atwater
Chief Financial Officer
Florida Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399

Dear Gentlemen,

The Florida Psychological Association became aware that Blue Cross Blue Shield (BCBS) has decided to carve out coverage of behavioral and mental health services to their partner company called New Directions Behavioral Health, LLC (ND), based out of Kansas. BCBS is terminating all current mental health provider contracts, and ND is inviting these same providers to apply to serve on their panel, with no guarantee of acceptance. We reached out to New Directions and had conversations about the upcoming transition. We requested that I be sent a copy of any letters sent to psychologists about the new terms so that I can help members with transition issues, but have received no communication from them. I received a copy of the termination letter and standard contract from a member, which are enclosed.

We have discussed this situation with staff in the Legal and Regulatory Affairs office of the American Psychological Association Practice Organization (APAPO), and we share many grave concerns with some terms of the new ND contract and the time pressure for psychologists to consider it. We are writing to seek guidance and intervention from your agencies, since these changes impact your constituents. Time is of the essence, due to the ambiguous timeframe in which providers are required to respond.

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The communications from ND and BCBS are vague about timing - both letters are dated simply "July 2011" and give providers 15 and 30 days respectively to respond to their communication. By some interpretation, for many of our members, this Friday would seem to be the deadline for responding. Moreover, it is unclear whether ND's 15-day timeframe is actually a hard deadline after which psychologists will be unable to switch to the new company. This is an unreasonable timeframe, given the material and unusual changes to contract terms. Providers must be allowed ample time to review these documents with their financial and legal advisors. Many providers may not have even seen these letters, due to vacation schedules over the summer.

We are concerned that this short timeframe is designed to scare psychologists into jumping quickly to accept the unfavorable new ND contract before they have had time to consider its significant implications. The contract, with attachments, is 28 pages long.

In light of the significant concerns raised below, we urge you to immediately ask or order BCBS (and ND, to the extent that you have jurisdiction over it) to give Florida psychologists at least 30 more days to decide whether to accept the ND contract.

Both FPA and APAPO have several concerns regarding the contract terms. Here are some of the more egregious examples:

1. BCBS is requiring psychologists to notify their patients of BCBS's decision to terminate them from the network. Insurance coverage is an agreement between BCBS and its customers; therefore, the shifting of this burden of responsibility is inappropriate and suspect. BCBS has the responsibility of notifying its customers of any changes to policies and should be held accountable for this communication.
2. Sections 7.2 and 7.7 at pages 16 and 17 of the contract from ND specifically prohibit providers from referring their BCBS-covered patients to a non-network provider. This provision puts psychologists at risk of violating their ethics code, which requires them to put the welfare of their patients in high regard. This also suggests an attempt by the company to restrain free trade, by shutting out those who do not serve on their panels. This requirement is in blatant disregard of the medical needs of the patient.
3. Section 7.6 similarly restricts a provider's right to practice by prohibiting him or her from treating ANY Floridian with BCBS insurance if the provider terminates the relationship with the company, including situations where the psychologist leaves because ND later exercises its broad discretion to cut rates further. This section arguably requires psychologists to abandon their patients, which is in direct violation of their ethics code. A broader concern is the impact on Floridians' access to quality mental health care. If a large number of Florida psychologists sign up with ND but then are driven away by poor treatment, this will create a large pool of psychologists who are contractually forbidden to serve those BCBS insureds who would like to

pay privately for care. APAPO is not aware of such an extreme provision in other provider contracts nationally.

4. The reimbursement schedule released by ND represents a 30% or more cut in rates. This is one of the largest rate cuts for psychologists that APAPO has seen nationally in the last 15 years. Access to mental health services in this state is difficult enough, and this rate cut potentially exacerbates an already overburdened system.
5. The contract states that the governing law shall be that of the State of Missouri. Contracts with Florida providers providing services to Florida residents insured by a Florida Blue Cross Blue Shield company should be under the jurisdiction of Florida law.

These points represent just a few of our concerns over the process and the future of health coverage in Florida. We are concerned that this arrangement potentially violates the Interim Final Rule implementing the Wellstone and Domenici Mental Health Parity and Addiction Equity Act of 2008 because these substantial and/or unusual changes are being applied to BCBS' mental health services, but not its medical and surgical services. More broadly, we are concerned about the rights of patients, and the rights of the mental health professionals who serve them.

We look forward to your response with guidance as to how to proceed.

Sincerely,



Connie Galietti, JD
Executive Director
Florida Psychological Association

Enclosures

cc: V. Anthony Marino, Vice President, Network Development, BCBS-FL
Garth Smith, Director, Network Operations, New Directions Behavioral Health
The Honorable Debbie Wasserman Schultz, United States Congress
Shirley Higuchi, Esquire, Legal and Regulatory Affairs, American Psychological Association
Alan Nessman, Esquire, Legal and Regulatory Affairs, American Psychological Association