

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor



AL REDMER, JR.
Commissioner

NANCY GRODIN
Deputy Commissioner

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October 30, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
REGULAR MAIL

Evergreen Health Cooperative, Inc.
Attn: Carol Mandel
3000 Falls Road, Suite 1
Baltimore, MD 21211

Re: *Maryland Insurance Administration v. Evergreen Health Cooperative, Inc.*
Case No.: MIA-2015-10-033

Dear Ms. Mandel:

The Maryland Insurance Commissioner has entered an Order taking disciplinary action against your company. A copy of the Order is attached and is self-explanatory. This Order is subject to your right to request a hearing as set forth on the last page of the Order.

Please include the above case number on all future correspondence to the administration.

Sincerely,

A handwritten signature in cursive script that reads "Melanie Gross".

Melanie Gross

Executive Assistant to the Deputy Commissioner

Enclosure

cc: Al Redmer, Jr., Commissioner
Victoria August, Associate Commissioner
Lisa Hall, Deputy Counsel
Megan Mason, Chief Market Conduct Examiner

MARYLAND INSURANCE ADMINISTRATION *
200 ST. PAUL PLACE, SUITE 2700 *
BALTIMORE, MARYLAND 21202 *

BEFORE THE
INSURANCE COMMISSIONER

vs. *

EVERGREEN HEALTH COOPERATIVE, INC. *
3000 FALLS ROAD, STE. 1 *
BALTIMORE, MD 21211 *

INVESTIGATION NO.:
MCLH-7-2015-I

NAIC# 15090 *

ORDER NO.: MIA-2015-10-033

ORDER

This Order is entered by the Maryland Insurance Administration (“the Administration”) against Evergreen Health Cooperative, Inc. (“Respondent”) pursuant to the authority granted in §§ 2-108 and 2-204 of the Insurance Article (“Insurance Article”), as well as §§ 19-729 and 19-730 of the Health-General Article, Md. Code Ann. (2011 Repl. Vol. & Supp.) (“Health-General Article”) by the Insurance Commissioner for the State of Maryland (“the Commissioner”).

I. Facts

(1) Respondent currently holds a Certificate of Authority from the Administration to act as a health maintenance organization in the State.

(2) The Respondent offers Qualified Health Plans through the Maryland Health Benefit Exchange.

(3) A survey was sent out in August 2014 to the Respondent regarding individual and small group plan compliance with the Mental Health Parity and Addiction Equity Act (“MHPAEA”) Final Rule which was published November 13, 2013.¹ After receiving the survey response from the Respondent, the Administration opened

¹ See Federal Register, Volume 78, No. 219, published November 13, 2013

investigation MCLH-7-2015-I to gather the additional information necessary to determine compliance with the federal rule.

II. Findings

(4) When questioned about the number of in-network providers of mental health and substance use benefits with the different plans offered by the Respondent, the Administration found that there are no in-network psychiatrists, psychologists, licensed clinical social workers, or certified professional counselors in Garrett County. The Administration notes that 45 CFR 156.230 provides network adequacy standards for all Qualified Health Plans offered by the Respondent. Section 45 CFR 156.230 provides in pertinent part:

(a) General requirement. A QHP issuer must ensure that the provider network of each of its QHPs, as available to all enrollees, meets the following standards—

(2) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay;

(5) The Administration requested the factors Respondent used to calculate the reimbursement rates for providers of mental health and substance use disorder benefits and those of providers of medical/surgical benefits. The Respondent acknowledged that the mental health and substance use disorder network is managed through a separate vendor who contracts with providers directly at rates negotiated and agreed to between the provider and the vendor. Consequently, the reimbursement rates to medical providers are very uniform and generally set at a specific percentage of the Medicare rate. However, the reimbursement rates for providers of mental health and substance use disorder benefits vary widely according to CPT code and provider type. There is no evidence that Respondent used the same factors when setting rates

between the providers of mental health and substance use disorders and providers of medical/surgical benefits.

(6) Additionally, these two separate vendors perform credentialing of providers for the Respondent using two separate methodologies with no coordination to ensure that standards are applied no more stringently on the behavioral health side. There is no evidence that Respondent used the same factors when credentialing providers of mental health and substance use disorders and providers of medical/surgical benefits. The Administration finds that these two practices constitute a violation of § 45 CFR 146.136 (c)(4) which provides in pertinent part:

(i) General rule. A group health plan (or health insurance coverage) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.

(ii) Illustrative list of nonquantitative treatment limitations. Nonquantitative treatment limitations include—

...
(D) Standards for provider admission to participate in a network, including reimbursement rates;

(7) A violation of § 45 CFR 146.136(c)(4) is also a violation of § 31-116(a)(2)(i) and (d)(3) which reads:

(a) The essential health benefits required under § 1302(a) of the Affordable Care Act:

(2) notwithstanding any other benefits mandated by State law, shall be the benefits required in:

(i) subject to subsection (f) of this section, all individual health benefit plans and health benefit plans offered to small employers, except for grandfathered health plans, as defined in the Affordable Care Act, offered outside the Exchange;

(d) In selecting the State benchmark plan, the Maryland Health Care Reform Coordinating Council shall:

(3) select a plan that complies with all requirements of this title and the Affordable Care Act, the federal Mental Health Parity and Addiction Equity Act of 2008, and any other federal laws, regulations, policies, or guidance applicable to state benchmark plans and essential health benefits.

(8) In addition to all other relevant sections of the Insurance Article and the Health-General Article, the Administration relies on the following pertinent sections in finding the Respondent violated federal and state insurance laws:

(a) § 45 CFR 147.160 Parity in mental health and substance use disorder benefits.

(a) In general. The provisions of § 146.136 of this subchapter apply to health insurance coverage offered by health insurance issuer in the individual market in the same manner and to the same extent as such provisions apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the large group market.

(b) § 19-730, Health-General Article, Annotated Code of Maryland.

(a) If any person violates any provision of § 19-729 of this subtitle, the Commissioner may:

(1) Issue an administrative order that requires the health maintenance organization to:

(i) Cease inappropriate conduct or practices by it or any of the personnel employed or associated with it;

(ii) Fulfill its contractual obligations;

(iii) Provide a service that has been denied improperly;

(iv) Take appropriate steps to restore its ability to provide a service that is provided under a contract;

(v) Cease the enrollment of any additional enrollees except newborn children or other newly acquired dependents of existing enrollees; or

(vi) Cease any advertising or solicitation;

(2) In addition to suspending or revoking a certificate of authority:

(i) Impose a penalty of not less than \$100, but not more than \$125,000 for each violation;

II. Sanctions

(9) By the facts and violations stated above, Respondent's Certificate of Authority is subject to suspension or revocation, and/or the imposition of an administrative penalty and/or restitution.

III. Other Provisions

(10) For the purposes of the Administration and for any subsequent administrative or civil proceedings concerning Respondent, whether related or unrelated to the foregoing paragraphs, and with regard to requests for information about Respondent made under the Maryland Public Information Act, or properly made by governmental agencies, this Order will be kept and maintained in the regular course of business by the Administration. For the purposes of the business of the Administration, the records and publications of the Administration will reflect this Order.

(11) Nothing herein shall be deemed a waiver of the Commissioner's right to proceed in an administrative action or civil action for violations not specifically identified in this Order, including, but not limited to, specific consumer complaints received by the Administration, nor shall anything herein be deemed a waiver of the right of the Respondent to contest other proceedings by the Administration. This Order shall not be construed to resolve or preclude any potential or pending civil, administrative, or criminal action or prosecution by any other person, entity or governmental authority, including, but not limited to, the Insurance Fraud Division of the Administration, regarding any conduct by Respondent including the conduct that is the subject of this Order.

(12) This Order shall be effective upon signing by the Commissioner or his designee, and is a Final Order of the Commissioner under § 19-730 of the Health-General Article.

(13) Failure to comply with the terms of this Order may subject Respondent to further legal and/or administrative action.

WHEREFORE, for the reasons set forth above, and subject to your right to request a hearing, it is this 25th day of October, 2015, **ORDERED** that:

- A. Within ninety (90) days of the date of this Order, Respondent shall identify the numeric goal of in-network providers of mental health and substance use disorder benefits by population of members in Garrett County and provide documentation to ensure the network is adequate for the Respondent's members.
- B. Respondent shall provide a written update to the Administration of the percentage of goal met in Paragraph A, six (6) months from the effective date of this Order.
- C. The Respondent shall provide documentation of changes to the methodology for provider credentialing and reimbursement to comply with the law within ninety (90) days of the effective date of this Order.

ALFRED W. REDMER, JR.
INSURANCE COMMISSIONER



By: Victoria August
Associate Commissioner
Compliance & Enforcement

RIGHT TO REQUEST A HEARING

Any person aggrieved by this Order has the right to request a hearing. A request for a hearing must be made in writing and received by the Maryland Insurance Administration within thirty (30) days of the date of this Order. The request must be addressed to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202. Attention: Hearings and Appeals Coordinator. Failure to request a hearing in a timely fashion, or to appear at a scheduled hearing, will result in a waiver of your right to contest the Commissioner's action, and the Order will be final on the effective date. If a hearing is requested within ten (10) days of the date of the letter accompanying this Order, the effective date of the Order will be stayed until the matter is adjudicated. Should an aggrieved party request a hearing, the hearing officer may reduce, increase, or affirm the penalty amount sought by the Commissioner.