



## Summary of the New York Attorney General’s Assurance of Discontinuance with Excellus

### Introduction

On March 18, 2015, the New York State Office of the Attorney General (“OAG”) [announced](#) an [Assurance of Discontinuance](#)—similar to a settlement agreement—with Excellus Health Plan, which is part of the Blue Cross Blue Shield Association. Through the Assurance of Discontinuance (“Assurance”), the OAG found Excellus had violated both state and federal laws that require insurers to provide mental health and substance use disorder (“MH/SUD”) benefits equally with other medical and surgical benefits. Among other things, the Assurance of Discontinuance requires Excellus—which has 1.5 million members and is upstate New York’s largest health plan—to cover residential treatment for MH and SUD and to reform its procedures for evaluating MH/SUD treatment claims. This document provides background information on the federal parity law, a summary of the provisions of the Assurance, and next steps for providers and others.

### Background: Federal Parity Law

In 2008, the Mental Health Parity and Addiction Equity Act (“federal parity law”) was signed into law, requiring health insurers who choose to provide mental health and substance use disorder benefits to provide them equally—or at parity—with medical and surgical benefits. Final regulations implementing the 2008 law were released at the end of 2013, and became effective for insurance plan years beginning on or after July 1, 2014. The [Legal Action Center](#) (“LAC”) worked successfully with the substance use disorder and mental health fields toward the passage of the federal parity law, and has worked as a co-leader of the [Coalition for Whole Health](#) to ensure that the law is implemented effectively.

The Affordable Care Act (“ACA”), passed in 2010, extends the requirements of the federal parity law to individual and small group health plans. LAC and the Coalition for Whole Health have worked to ensure robust coverage of mental health and substance use disorder benefits under the ACA.

New York also has a state parity law that requires health insurers who choose to provide mental health and substance use disorder benefits to provide them equally with medical and surgical benefits.

### Highlights: NY OAG and Excellus Assurance of Discontinuance

The OAG’s investigation found widespread violations of both the state and federal parity laws, as well as the ACA, by Excellus. Among other things, the investigation revealed that Excellus denied inpatient SUD treatment services *seven times* as often as inpatient medical services. Under the Assurance, Excellus is required to provide notice of a new appeal right to 3,300 members whose

requests for inpatient SUD treatment the company denied between 2011 and 2014. Specifically, the OAG found that Excellus:

- Applied more rigorous and frequent utilization review to inpatient SUD treatment than to inpatient medical/surgical treatment
- Required individuals to “fail twice” at outpatient SUD treatment within the past year before they could access inpatient SUD treatment, even though it did not require individuals to “fail twice” before accessing inpatient medical/surgical treatment
- Often applied its behavioral health medical necessity criteria incorrectly
- Denied coverage for inpatient SUD treatment more than twice as often as it denied inpatient medical/surgical treatment; a number of these SUD denials appeared to be “arbitrary and wrongly decided”
- Failed to cover residential treatment for behavioral health conditions until July 2014
- Denied outpatient MH/SUD services at higher rates than outpatient medical/surgical services
- Enacting policies with the effect of limiting MH/SUD provider networks without similar restrictions being placed on medical/surgical benefits
- Disproportionately estimated savings from denials of MH/SUD claims as compared with denials of medical/surgical claims
- Imposed higher co-pays for outpatient MH/SUD services than for outpatient medical/surgical benefits
- Issued denial letters for MH/SUD coverage that were so generic they blocked meaningful appeal, and that often included inaccuracies; in contrast, adverse determination letters for medical/surgical benefits were found to have member-specific details and explanations about why the applicable medical necessity criteria wasn’t met
- Issued MH/SUD denial letters suggesting that members attend support groups in lieu of the requested treatment, while not making similar suggestions in medical/surgical denial letters

Under the Assurance, Excellus will:

- Provide notice of a new appeal right to 3,300 members whose requests for inpatient substance use disorder rehabilitation and residential treatment it denied from 2011 through 2014. These members will get an opportunity to file an independent appeal, if they paid out of pocket for the treatment that Excellus denied, and did not previously file an external appeal. The estimated value of Excellus's denial of these individuals' requests is up to \$9 million.
- Cover residential treatment and make available lists of facilities at which individuals may receive such care, subject to a determination of medical necessity and applicable in-

network requirements. Excellus has also agreed to reform its claims process for MH/SUD coverage, in particular for SUD benefits, by:

- Not imposing any preauthorization or concurrent review requirements for routine outpatient behavioral health services (i.e., psychotherapy and medication management);
  - Covering partial hospitalization and intensive outpatient ("IOP") treatment for MH/SUD conditions;
  - Not requiring that members demonstrate a substantial impairment in their ability to function in a major life activity in order to receive coverage for MH/SUD care;
  - Removing the requirement that members "fail" SUD treatment before qualifying for inpatient SUD treatment;
  - Conducting full and fair reviews for services that require preauthorization, such as inpatient SUD treatment;
  - Posting its MH/SUD medical necessity criteria on a website, to improve the transparency of the review process;
  - Applying the primary care co-payment amount to all routine outpatient behavioral services for all standard individual and small group products offered on the New York Health Benefit Exchange, the New York State of Health (the "Exchange");
  - Providing detailed, accurate oral and written explanations for denied claims, so that members can exercise their appeal rights; and
  - Employing in-house Behavioral Health Advocates, who will supply members and providers with assistance and information regarding claims denials, appeals, and in-network treatment facilities and providers in the member's service area.
- Excellus will also post parity disclosures on its website, provide additional training to its staff, file regular compliance reports with the OAG, and pay \$500,000 to the OAG.

### What's Next

The agreement with Excellus is the fifth reached by the OAG since last year enforcing the federal and state parity laws, and stems from a broader and ongoing investigation into health insurance companies' compliance with the laws. Previous Assurances were reached with [Cigna](#), [MVP Health Care](#), and [Emblem Health](#).

The OAG has made clear that it is committed to enforcing both New York State and federal parity laws. When health insurers violate parity laws, they create very real barriers to treatment for people with mental health and substance use disorders, often leading to grave consequences for patients and their families.

Providers or patients in New York State who are concerned that their rights under the state or federal parity laws are being violated are encouraged to call the [OAG's Health Care Bureau](#) Helpline at 1-800-428-9071. Providers and patients can also contact the [New York State Department of Financial Services](#), New York Department of Health, U.S. Department of Labor, U.S. Department of Health and Human Services, or U.S. Department of the Treasury to report violations of the federal parity law. Finally, when appealing adverse decisions by health insurers that seem to violate the parity laws, providers and patients should consider citing to the ValueOptions Assurance—as

well as the Assurances with Cigna, MVP, and Emblem—to demonstrate what types of policies and practices have been found to be illegal.