DEPARTMENT OF FINANCIAL REGULATION

Vermont Insurance Division

REGULATION I – 2013 – 01

Guidelines for Distinguishing Between Primary and Specialty Mental Health and Substance Abuse Services

SECTION 1. PURPOSE

Under Vermont Law, a health plan shall apply member co-pays to mental health services and to medical services consistently in its health insurance policies/certificates. The member co-pay applicable to mental health and substance abuse services designated as "primary" when rendered by a mental health care provider shall be no greater than the member co-pay applicable to medical services rendered by a primary care provider. The member co-pay for "specialty" mental health and substance abuse services shall be no greater than the member co-pay applicable to specialty medical services and shall apply only to those mental health and substance abuse services not deemed "primary." The purpose of this regulation is to prescribe guidelines for distinguishing between "primary" and "specialty" mental health and substance abuse services.

SECTION 2. AUTHORITY

This rule is issued pursuant to the authority vested in the Commissioner of Financial Regulation ("Commissioner"), including but not limited to 8 V.S.A. § 15, 3 V.S.A. chapter 25, and Act 171 of 2012, Section 11e, which states: "No later than October 1, 2013, the commissioner of financial regulation shall adopt rules pursuant to 3 V.S.A. chapter 25 establishing the guidelines for distinguishing between primary and specialty mental health

services developed pursuant to Section 11c of this act, taking into account any recommendations received from the committees of jurisdiction."

SECTION 3. LEGISLATIVE MANDATE

"A health insurance plan shall provide coverage for the treatment of a mental health condition and shall not establish any rate, term, or condition that places a greater burden on an insured for access to treatment for a mental health condition[1] than for access to treatment for other health conditions, including no greater co-payment for primary mental health care or services than the co-payment applicable to care or services provided by a primary care provider under an insured's policy and no greater co-payment for specialty mental health care or services than the co-payment applicable to care or services provided by a specialist provider under an insured's policy[.]" 8 V.S.A. § 4089b(c)(1)(effective January 1, 2014).

Pursuant to Act 171 of 2012, Section 11c, the Department of Financial Regulation ("Department"), in collaboration with a group of stakeholders, compiled a list of mental health and substance abuse services, identified by procedure codes, and recommended to the Commissioner that these services be deemed "primary" mental health and substance abuse services for purposes of implementing 8 V.S.A. § 4089b(c)(1) on January 1, 2014. The list of mental health and substance abuse services with associated procedure codes compiled by the stakeholder group titled "Primary Care Mental Health and Substance Abuse Procedure Codes" shall be published on the Department's website.

SECTION 4. MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES DEEMED TO BE "PRIMARY" AND THEREFORE SUBJECT TO A CO-PAY NO GREATER THAN

[1] The definition of "mental health condition" includes conditions or disorders involving alcohol or substance abuse. 8 V.S.A. § 4089b.

THE CO-PAY APPLICABLE TO MEDICAL SERVICES OFFERED BY PRIMARY CARE PROVIDERS.

The list of services and related procedure codes (CPT/HCPCS) in "Primary Care Mental Health and Substance Abuse Procedure Codes" shall be deemed "primary" mental health and substance abuse services. The common elements underlying the selection of these "primary" mental health and substance abuse services include: (1) the most common or routine mental health and substance abuse services; (2) outpatient/office mental health and substance abuse services only; and (3) services provided to all persons regardless of age or gender.

On and after October 1, 2013, each health insurance plan shall establish, maintain, administer, and update as required, a list of mental health and substance abuse services consistent with those identified in "Primary Care Mental Health and Substance Abuse Procedure Codes" that shall be "primary" when rendered by a mental health care provider and for which the member co-pay shall be no greater than the co-pay applicable to medical services rendered by a primary care provider.

SECTION 5. BIENNIAL REVIEW OF SERVICES DEEMED "PRIMARY" MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

The Department in consultation with the Department of Mental Health shall convene a stakeholder group every two years to determine any appropriate changes to the services and related codes in "Primary Care Mental Health and Substance Abuse Procedure Codes." Any addition or deletion of services shall require amendment of this rule. The stakeholder group may be of similar composition to the group originally engaged in the compilation of "Primary Care Mental Health and Substance Abuse Procedure Codes." This group was comprised of stakeholders, providers, and staff within state agencies, including: the Department of Vermont

Health Access, the University of Vermont/Fletcher Allen Health Care, the Vermont Council of Developmental & Mental Health Agencies, the Vermont Department of Mental Health, the Vermont Division of Alcohol & Substance Abuse Programs, the Vermont Psychiatric Association, the Vermont Psychological Association, designated Mental Health Agencies, practicing licensed mental health counselors, licensed clinical social workers, and licensed master's level psychologists.

The initial review of "Primary Care Mental Health and Substance Abuse Procedure Codes" shall occur in 2015 and reviews shall then be conducted every two years thereafter. The stakeholder group shall be convened by June 1 of the review year and shall provide a recommendation to the Commissioner of the Department by August 31 of the review year. If the stakeholder group recommends changes to "Primary Care Mental Health and Substance Abuse Procedure Codes," the Commissioner may approve the changes, in which case "Primary Care Mental Health and Substance Abuse Procedure Codes" will be updated and a Bulletin will be issued by October 1 of the review year to take effect January 1 of the following year.

SECTION 6. EFFECTIVE DATE

This rule shall take effect on October 1, 2013, and shall apply to all health insurance plans issued, offered, or renewed on or after January 1, 2014.