



April 29, 2016

VIA ELECTRONIC MAIL

Eric T. Schneiderman
Attorney General
The Capitol
Albany, NY 12224-0341

Dear Mr. Schneiderman,

The New York State Association of Neuropsychology (NYSAN) and the coalition of the Inter Organizational Practice Committee (IOPC),¹ are contacting you with consumer and patient protection concerns regarding Cigna's medical coverage policy for neuropsychological testing (the Policy). The Policy – aimed at claims managers and health care providers rather than consumers – creates a hidden exclusion for neuropsychological assessment for two important disability conditions:

1. Psychiatric conditions, as defined by Cigna
2. Autism spectrum disorder

¹ NYSAN is a professional organization created to foster and promote the science and practice of clinical neuropsychology in the state of New York. IOPC is a coalition of the American Academy of Clinical Neuropsychology (AACN), the Society for Clinical Neuropsychology/Division 40 of the American Psychological Association, the National Academy of Neuropsychology (NAN), the American Board of Professional Neuropsychology (ABN), and the American Psychological Practice Organization (APAPO) tasked with coordinating national neuropsychology advocacy efforts, and representing thousands of neuropsychologists in the United States.

New York and federal laws protect patients with these conditions.

Cigna's benefits descriptions for consumers make broad promises of coverage for neuropsychological assessment (NPA) and do not exclude NPA for the conditions listed above (the Two Conditions). From reading the benefits descriptions, a reasonable consumer would believe that NPA recommended by his/her physician or neuropsychologist for the Two Conditions to assess the cognitive impacts of those conditions would be covered, and medically necessary as defined by Cigna.

But while the benefits descriptions assure consumers of such coverage, the Policy secretly takes it away. By stating that these services are not covered, the Policy discourages neuropsychologists from submitting such claims and directs the claims department to reject any claims that are submitted.

IOPC attempted to resolve these issues in a protracted series of communications with Cigna. Cigna first argued that NPA for the Two Conditions are not covered because they are primarily educational and not medically necessary. It later explained that medical necessity is the sole justification. We have provided ample evidence of medical necessity (summarized in Appendix B).

In addition, IOPC believes that:

1. Exclusion of NPA for all psychiatric conditions is in violation of New York and federal mental health parity laws; and
2. Exclusion of NPA for autism spectrum disorder violates New York Insurance Law mandating autism coverage.

We ask you to investigate our concerns and take action if you agree with our analysis. We appreciate that you have been a true champion of parity, and more generally of the rights of health insurance consumers.

A. Cigna's Promises of Coverage

New York law requires health insurers to provide consumers with a written description of health care benefits and exclusions. ISC Article 32 § 3217. We obtained detailed benefits descriptions from two New York plans.²

As detailed in Appendix A, while the two plans' benefits descriptions are structured very differently, both would lead a reasonable consumer to believe that NPA for the Two Conditions was covered.³

² We tried to obtain benefits descriptions for additional Cigna plans by having Cigna insureds request them from their employers and/or Cigna, but the insureds were unable to obtain them.

³ The Policy (which takes this coverage away) is not included with the benefits documents provided to consumers and is not written for consumers. It *could* be found by a consumer searching Cigna's website, but it is a technical document clearly aimed at clinicians, see, e.g., p. 8 "Resch et al. (2013) conducted a cross-sectional cohort study of 91 healthy subjects to document test-retest reliability for the ImPACT neuropsychological test battery using two different clinically relevant time intervals." The core first 3 pages of the Policy are found in Appendix C. Entire document at:

https://cignaforhcp.cigna.com/public/content/pdf/coveragePolicies/medical/mm_0258_coveragepositioncriteria_neuropsychological_testing.pdf.

B. The Policy’s Hidden Exclusion of NPA for all “Psychiatric Conditions” violates New York and federal mental health parity laws

Although both plans promise consumers mental health coverage, the Policy creates a hidden limitation that all NPA is excluded for “Psychiatric conditions, e.g., psychotic disorders, anxiety disorders, substance abuse, personality disorders, mood disorders.”

Cigna bars all NPA coverage for patients with psychiatric conditions based on the blanket and unsupported assertion that NPA for all of the conditions is not medically necessary. None of the over 100 pieces of literature/research cited in the Policy appear to pertain to the medical necessity of NPA for psychiatric conditions. Yet, as detailed in Appendix B, it is widely accepted that NPA is necessary to guide the treatment of consumers with many psychiatric conditions, such as schizophrenia and bipolar disorder.

The blanket exclusion appears to be a blatant violation of New York’s mental health parity law, Timothy’s Law (N.Y. Ins. Law §§ 3221(l)(5)(A); 4303(g)(1)) as well as the federal parity law, the Mental Health Parity & Addiction Equity Act of 2008 (MHPAEA) as implemented by the Final Rule 78 FR 68239 (November 13, 2013). Timothy’s law mandates broad-based coverage for the diagnosis and treatment of mental disorders at least equal to the coverage provided for other health conditions. MHPAEA requires that non-quantitative limitations a plan imposes on mental health care must be comparable to those imposed on medical care. Clearly the Policy’s exclusion of NPA coverage for all psychiatric conditions is not a “comparable” limitation; the Policy excludes NPA for only a few medical conditions, while excluding NPA for all mental health/substance abuse conditions that are subject to protection under Timothy’s Law and MHPAEA.

C. The Policy’s Hidden Exclusion of NPA for Autism Spectrum Disorders violates New York law mandating Autism coverage

Section 3216(25) of New York’s Insurance Law requires that policies such as Cigna’s providing comprehensive medical coverage must also provide “coverage for the screening, diagnosis and treatment of autism spectrum disorder.” Subsection (C)(ix) defines such treatment as including

the following care . . . prescribed or ordered for an individual diagnosed with autism spectrum disorder by a licensed physician or a licensed psychologist: . . . (3) psychological care.

“Psychological care” is further defined at C(vii) as “direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.”

Under this law, NPA prescribed or ordered by a licensed physician or psychologist and provided by a licensed neuropsychologist must be covered by plans (like the Brookhaven and Episcopal plans) that provide comprehensive medical coverage.

Cigna has not explained its claim that NPA for autism spectrum disorders is not medically necessary. Nor has it refuted IOPC’s explanation that NPA is frequently necessary to determine, for example whether various therapies for autism patients are appropriate or viable in light of a variety of cognitive deficits associated with autism. (See Appendix B, Section 2 for further detail)

But even if Cigna had made such arguments, Section 3216(25) does not appear to let plans use medical necessity arguments to evade the mandate to provide autism coverage. Cigna must cover them as long as the services are prescribed or ordered by a licensed physician or psychologist and provided by a neuropsychologist who is a licensed psychologist. Thus, Cigna's hidden exclusion of NPA for consumers with autism spectrum disorders violates New York Insurance law and should not be permitted in plans covering New York residents.

Conclusion

We ask your office to investigate our concerns about Cigna's hidden limitations on coverage for NPA for consumers with psychiatric conditions and autism spectrum disorders. If your review finds that these hidden limitations deceive consumers and/or violate New York and federal law, we urge you to issue an order prohibiting Cigna from imposing these limitations on New York residents. Cigna covers over 170,000 New York residents.

We note that Cigna's neuropsychological coverage policy is due for revision this July and we hope that your involvement in this matter will result in a correction to the Policy. As is our practice, we have attempted to resolve this issue by communicating directly with Cigna; but our protracted discussions with them have led us to believe that continued efforts would be futile because our concerns have fallen on deaf ears. For example, Cigna's responses to our parity arguments simply make no sense. In January 2014, your office was able to resolve parity issues with Cigna regarding coverage for eating disorders. We hope that you can achieve the same success with our parity and autism coverage concerns.

Unfortunately, it appears that Cigna has not reformed in other respects. On January 21, 2016, the federal Centers for Medicare & Medicaid Services (CMS) [suspended all marketing and enrollment of Medicare beneficiaries into several Cigna Medicare Advantage Plans](#) under Parts C and D, noting Cigna's "longstanding history of noncompliance." In its summary, it found that "Violations resulted in enrollees experiencing delays or denials in receiving medical services and prescription drugs, and increased out of pocket costs for medical services and prescription drugs." Although not directly on point with the issues we are bringing to your attention, we believe that this serious action by CMS underscores the company's lack of respect for patient care and the laws protecting patients, which is at the heart of our concerns.

We hope you can assist in our efforts to give New York consumers access to promised and needed neuropsychological services.

Respectfully submitted on behalf of the undersigned organizations,



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Appendix A: Cigna's Promises of Coverage

Appendix B: The Medical Necessity of NPA for the Two Disorders

Appendix C: The core section of Cigna's medical coverage policy for neuropsychological testing (the Policy) pp. 1- 3.

Appendices D and E: Brookhaven Science Associates and Episcopal Church plans

APPENDIX A
Cigna's Promises of Coverage

The following demonstrates that a reasonable consumer reviewing either of the two plans that we obtained would reasonably assume that NPA for the Two Disorders was covered by Cigna. The two plans are for Brookhaven Science Associates, LLC, and Episcopal Church Medical Trust (PDFs of these plan documents are found at Appendices D and E).

1. Brookhaven Science Associates, LLC

Brookhaven Science Associates was established for the sole purpose of managing and operating Brookhaven National Laboratory in Upton, NY.

The list of "Covered Expenses" begins on page 24 of the plan document. Included in the list is charges made by a "Physician or a Psychologist for professional services."⁴ Neuropsychologists are a type of psychologist and NPA provided by them is obviously a professional service.

"Exclusions, Expenses Not Covered and General Limitations" are listed at pages 35-37. The detailed list of roughly 40 exclusions does not include exclusions relevant to NPA for the Two Conditions.

"Medically Necessary/Medical Necessity" is defined in the Glossary on page 61. The part of that definition understandable to consumers is that the service must be "required to diagnose or treat an illness, injury, disease or its symptoms." A consumer would reasonably expect this to be met if he/she was referred to a neuropsychologist for NPA for their psychiatric or autism condition in order to: (1) aid in diagnosis, (2) determine the impact of his/her disability on cognitive functioning, and (3) guide treatment and management of these disorders. The scope of practice in New York permits psychologists to independently diagnose these psychological disorders.⁵ NPA is appropriate to aid in diagnosing and in treating psychiatric disorders. Differentiating dementia from depression is a common example. However, the diagnosis of many other psychiatric disorders can be aided by neuropsychological assessment. These include: depression and anxiety associated with stroke, head injury, tumors, epilepsy, Tourette syndrome, and many other neurological conditions. Furthermore, understanding brain-behavior relationships adds a unique perspective to traditional psychiatric presentations that can have value in driving more effective approaches to treatment.

⁴ Covered Expenses can be found pp. 24-31. Charges by a Physician or Psychologist for professional services appears on page 25.

⁵ The other elements of the definition would be much harder for the average consumer to assess: That the care be: 1) in accordance with generally accepted standards of medical practice; 2) clinically appropriate in terms of type, frequency, extent, site and duration; 3) not primarily for the convenience of the patient, physician or other health care provider; and 4) rendered in the least intensive setting that is appropriate for the delivery of the services and supplies. Where applicable, the Medical Director may compare the cost-effectiveness of alternative services, settings or supplies when determining least intensive setting.

(Emphasis added). A consumer would also reasonably expect the other bulleted requirements would be met if his/her physician referred them to a neuropsychologist for NPA.

2. Episcopal Church Medical Trust

This plan is maintained by Church Pension Group Services Corporation, 19 East 34th Street, New York, NY 10016.

This benefits description takes the consumer through a less direct route, but leads to the same reasonable expectation that NPA for the Two Conditions is covered.

A consumer might start with the definition of “covered services:”

[H]ealth services **provided for the purpose of** preventing, **diagnosing or treating a sickness, injury, mental illness, substance abuse, or their symptoms.** A covered health service is a healthcare service or supply described in the coverage section as a covered health service, **which is not excluded in the Exclusions and Limitations section**, including experimental or investigational Services and unproven services.

Glossary, pp. 96-97 (emphasis added). NPA for the Two Conditions is a health service provided for diagnosing or guiding the treatment of sickness or mental illness - autism spectrum disorders and psychiatric conditions.⁶

Similarly, a consumer would find that NPA recommended by his/her physician meets the core of the plan’s medical necessity definition:

healthcare services that a Physician, exercising prudent clinical judgment, would provide to a **patient for the purpose of** preventing, **evaluating, diagnosing or treating an illness, injury, disease or its symptoms:**

Glossary, p. 99 (emphasis added).⁷

Turning to the Coverage for Outpatient Care section, the consumer would find coverage for “[c]onsultation requested by the attending physician for advice on an illness or injury.” (p. 40.) NPA

⁶ Some may consider the terms “sickness” or “mental illness” outdated and clinically inappropriate with reference to autism. Nonetheless this is the terminology that a consumer would expect to encompass autism, and these are the types of terms that health insurance policies typically apply to autism spectrum disorders.

⁷ A consumer probably would not be in a position to determine whether the other requirements of the medical necessity definition are met, but could reasonably assume that his/her physician and neuropsychologist would not be recommending NPA services that did not meet these requirements:

(a) in accordance with generally accepted standards of medical practice; (b) clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the patient’s illness, injury or disease; and (c) not primarily for the convenience of the patient, physician, or other healthcare provider, and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient’s illness, injury or disease. For these purposes, “generally accepted standards of medical practice” means standards that are based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community, Physician Specialty Society recommendations and the views of Physicians practicing in relevant clinical areas and any other relevant factors.

for the two disorders is almost always consultation, requested by the attending physician, for advice on the treatment guidance.

A consumer might also look in Chapter 7 on mental health benefits, because psychologists are generally viewed as mental health professionals, or if the consumer were seeking NPA for psychiatric disorders. In that chapter, NPA is only mentioned in the list of exclusions, but that mention reads not as an exclusion, but as a cross reference sending the consumer to look for any relevant coverage and exclusions for medical coverage. The 12th bullet states only the following:

Neuro-psych testing (see Medical Benefit)

Sending the consumer to the medical benefit description is fairly logical on Cigna's part because NPA assesses the cognitive impacts of medical conditions such as stroke, dementia, head injury, and other neurological disorders. The problem is that there is no section titled "medical benefit." A consumer might realize that the "Coverage" section at pp. 39-59 is primarily about medical benefits. Looking there, the consumer would find coverage under the above-quoted provision at p. 39 for outpatient consultation requested by the attending physician. Alternatively, a consumer might look to the six pages of Medical Exclusions and Limitations in Chapter 6 – which do not exclude NPA for the Two Conditions. A review of these sections would lead a consumer to conclude that NPA is covered and not excluded under the medical benefit.

APPENDIX B
The Medical Necessity of NPA for the Two Disorders

Psychiatric Conditions

It is widely accepted in the health care field that neuropsychological assessment (NPA) is necessary to guide the treatment of consumers with many psychiatric conditions. For example, schizophrenia carries common and frequently severe cognitive impairments that act as barriers to patients' ability to communicate effectively with their treating professionals, understand, remember, and execute treatment protocols, and benefit from therapeutic interventions. NPA is often critical to understanding the unique and potentially disabling cognitive deficits associated with the schizophrenia disease process that interfere with effective treatment. Without that understanding those barriers to treatment cannot be addressed. Due to the common, cognitively-based deficits of insight for patients with schizophrenia, less expensive methods for making this determination, such as a clinical interview, are not available. This is also true for many other psychiatric conditions, depending on the severity and specific expression of the disease course.

As another example, Bipolar disorder likewise carries common cognitive impairments that interfere with patients' ability to manage their illness, communicate effectively with clinicians, and respond to therapeutic interventions. As with schizophrenia, NPA is not medically necessary to diagnose Bipolar disorder, but it is often necessary to understanding (and thereby reducing) cognitive barriers to effective disease management. As with schizophrenia, less costly methods of making this determination, such as a clinical interview, are not available.

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Autism Spectrum Disorder (ASD)

Specific cognitive profiles and deficits are strongly associated with autism. Language impairments are widespread, sometimes resulting in significant overall language delay and sometimes preferentially affecting semantics and pragmatics while sparing syntax and phonology. Memory, especially verbal memory, is frequently impaired. Social cognition is usually impaired. A variety of attentional deficits are common. Executive function deficits are almost universal. Intellectual disability is a frequent comorbid condition, as are sensory and motor dysfunction.

NPA focusing on these areas of frequent impairment will dictate whether the patient's condition warrants, and his/her mental status allows benefit, from social skills training, speech/language therapy, cognitive-behavioral therapy, behavioral management, occupational therapy and physical therapy. NPA also determines whether a referral for psychopharmacological consultation is warranted, and therefore is needed to make recommendations for a program of care specific to the patient's needs. Follow-up evaluation of these areas of functioning will determine the success of treatment and the rate of improvement, if any, and dictate appropriate adjustments to treatment. In addition, individuals with ASD are at risk for other medical complications, such as seizure disorders, and NPA is sometimes requested by physicians to determine whether their mental status is undergoing a decline. Having access to intervention of the appropriate type and intensity can make an extremely significant difference to treatment response and ultimate outcome.

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