John S Conniff, PLLC
A Pacific Northwest Law Firm
P.O. Box 7933
Tacoma, Washington 98417
Tel. (253) 759-7767
john@conniff.com / www.conniff.com

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Via email

Leslie A. Krier, AIE, FLMI
Chief Market Conduct Examiner
Office of the Insurance Commissioner

Leslie,

The Washington State Chiropractic Association (WSCA) has asked me to follow up on a complaint against Regence and the carrier's attempt to impose a "pre-authorization" requirement upon chiropractic care as outlined in the carrier's July 1, 2013 letter to health care practitioners. In part, the letter from Regence states:

> "Effective for dates of service on or after October 1, failure to obtain pre-authorization for the above services [chiropractic care] by the servicing provider will result in claim non-payment and will become provider liability. Regence members may not be balanced billed." (Regence Letter S518 1550 MM#2240)

The proposed utilization review standard and prior authorization requirement was brought to your attention on June 25, 2013 by Lori Grassi, Executive Director of the WSCA. You replied promptly the same day after your discussion with Regence.

After reviewing the relevant information, you advised Ms. Grassi of the following:

> "This change will affect only the pre-authorization steps for physical medicine, no matter who the provider is. Physical medicine is physical therapy, occupational therapy, speech therapy, chiropractic, acupuncture and massage services as well as some spinal procedures. It doesn't change the referral process as outlined in the RCW's…
>
> [I]f you or your members find situations that are not compatible with the above or in which you feel that any company is not complying with our laws, please let me know. We will be happy to investigate those situations. Regence will notify us when they are planning on making this change, and we will closely follow the implementation."

I thank you for the prompt review and want to accept your invitation and report that chiropractors believe, as do I, that the Regence proposal would violate state law should the carrier be permitted to implement the policy cited above. While Regence describes the coverage standard as applicable to all "physical medicine," the policy directly violates state statutes and OIC rules.

No carrier may impose a prior authorization requirement upon access to all chiropractic care. Under the state's "Access to appropriate health services" statute:

> "(5) Each carrier shall provide enrollees with direct access to the participating chiropractor of the enrollee's choice for covered chiropractic health ***care without the necessity of prior referral***. Nothing in this subsection shall prevent carriers from

> restricting enrollees to seeing only providers who have signed participating provider agreements or from utilizing other managed care and cost containment techniques and processes. For purposes of this subsection, "covered chiropractic health care" means covered benefits and limitations related to chiropractic health services as stated in the plan's medical coverage agreement, with the exception of any provisions related to prior referral for services." [Emphasis added, RCW 48.43.515]

The agency rule implementing this statute similarly provides for direct patient access without prior referral (WAC 284-43-251).

I understand the difference between a "referral" to see a particular type of provider and "prior authorization" for a particular treatment such as surgery. However, my understanding of the English language suggests that "prior authorization" for all of the services of a particular type of licensed provider is the same as a "prior referral." If I tell you that you don't need a referral to see a chiropractor but you can't get any care without my permission, what's the difference?

Moreover, while physicians may be bothered by the need for prior authorization of spinal procedures, Regence is proposing prior authorization for all health services provided by entire licensed professions, i.e., Massage, Acupuncture, Chiropractic care, and Physical, occupational and speech therapy. How does this approach satisfy the requirements of WAC 284-43-205 prohibiting unreasonable restrictions placed upon an entire profession?

Federal health care reform also prohibits such broad discriminatory coverage standards:

> …to the extent an item or service is a covered benefit under the plan or coverage, and consistent with *reasonable medical management techniques specified under the plan with respect to the frequency, method, treatment or setting for an item or service*, a plan or issuer shall not discriminate based on a provider's license or certification, to the extent the provider is acting within the scope of the provider's license or certification under applicable state law. [Emphasis added, HHS FAQs 4/29/2013]

Even if these statutes were insufficient to challenge the Regence proposal as illegal, I do not know how the proposed standard results in chiropractic care being provided "*on the same basis as any other care*" as mandated by RCW 48.44.310. The Regence standard requires patients to get a second opinion from a vendor's UR employee for every service performed by a chiropractor. To my knowledge, that standard is not "on the same basis as any other care."

I do not think state law permits Regence to adopt such a discriminatory practice and respectfully request that the OIC review and prohibit this standard that targets certain professions.

Sincerely,

John S Conniff
Attorney

Cc. Jim Odiorne, Chief Deputy Insurance Commissioner