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COMMISSIONER OF INSURANCE

Bulletin No. 2003-11

To: Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts (BCBSMA), and Health Maintenance Organizations

From: Elizabeth Childs, Commissioner of Mental Health Elizabeth Childs
Julianne M. Bowler, Commissioner of Insurance Julianne M Bowler

Re: Intermediate Care as part of Mental Health Parity Benefits

Date: October 29, 2003

The purpose of this bulletin to clarify the expectations of the Division of Insurance and Department of Mental Health regarding "intermediate care," which is one of the levels of behavioral health services mandated by St. 2000, c. 80 ("Chapter 80"), An Act Relative to Mental Health Benefits, as addressed in Bulletin 00-06. As you are aware, Chapter 80, in part, amends the following Massachusetts mandated benefit statutes: M.G.L. c. 175, §§47B and 108E; M.G.L. c. 176A, §8A; M.G.L. c. 176B, §4A; and M.G.L. c. 176G, §§4 and 4B and applies to all insured health plans issued or renewed within or without the Commonwealth on or after January 1, 2002.

As was noted in Bulletin 00-06, benefits mandated by Chapter 80 must consist of a range of medically necessary inpatient, intermediate and outpatient services to take place in the least restrictive clinically appropriate setting. Chapter 80 defines those services as follows:

- **Inpatient services** may be provided in a general hospital licensed to provide services mandated by Chapter 80, a facility under the direction and supervision of the Department of Mental Health, or a private mental hospital licensed by the Department of Mental Health or substance abuse facility licensed by the Department of Public Health.
- **Intermediate services** include, but are not limited to, Level III community-based detoxification, acute residential treatment, partial hospitalization, day treatment and crisis stabilization licensed or approved by the Department of Public Health or the Department of Mental Health.
- **Outpatient services** may be provided in a licensed hospital, a mental health or substance abuse clinic licensed by the Department of Public Health, a public community mental

> health center, a professional office, or home-based services, and must be provided by one of the following licensed mental health professionals acting within the scope of his or her license: a licensed physician who specializes in the practice of psychiatry, a licensed psychologist, a licensed independent clinical social worker, a licensed mental health counselor, or a licensed nurse mental health clinical specialist.

It has come to the Division of Insurance's attention that certain carriers have specifically excluded coverage for "residential services" within their evidences of coverage. While no statute requires coverage for custodial residential services, Chapter 80 mandates carriers to provide intermediate care services for the medically necessary treatment of behavioral disorders in the least restrictive clinically appropriate setting. The Division of Insurance and Department of Mental Health would consider blanket exclusions for residential services to not be permitted under Chapter 80.

The Division will consider carriers to be in compliance with the mandate for intermediate behavioral health services if they provide access to medically necessary intermediate care services in all clinically appropriate settings. Although there is no specific state license for "intermediate care," carriers are to cover medically necessary and clinically appropriate intermediate care, including that which might be provided in a residential setting. Carriers that provide or arrange for intermediate care through network arrangements must either contract with facilities that provide medically necessary intermediate care in the range of clinically appropriate settings or provide benefits at the in-network level for care delivered outside the network where in-network providers are not available.

Any questions regarding this bulletin or Chapter 80 may be directed to the Division of Insurance, Bureau of Managed Care at (617) 521-7372.