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**BULLETIN 2016-05**

TO: Commercial Health Insurers; Blue Cross Blue Shield of Massachusetts, Inc.; and Health Maintenance Organizations Offering or Renewing Insured Health Products in the Merged Market in Massachusetts

FROM: Daniel R. Judson, Commissioner of Insurance 

DATE: July 6, 2016

RE: Federal Requirement that Carriers Cover Certain Lactation Services without Any Consumer Cost-Sharing

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The Division of Insurance (“Division”) issues this Bulletin to inform Commercial Health Insurers, Blue Cross Blue Shield of Massachusetts, Inc. and Health Maintenance Organizations (“Carriers”) about a document prepared jointly by the federal Departments of Health and Human Services, Labor, and the Treasury (collectively, “Departments”) regarding coverage for lactation support and counseling within preventive health care services under the federal Patient Protection and Affordable Care Act (“ACA”). The Departments released *FAQs about Affordable Care Act Implementation Part XXIX* on October 23, 2015.<sup>1</sup>

**Federal Rules for Preventive Health Care Services**

Section 2713 of the Public Health Service Act, as amended by the ACA, and its implementing regulations relating to the coverage of preventive health care services require that non-grandfathered insured health plans in the individual and group markets provide benefits, without cost-sharing (*i.e.*, copayments, coinsurance or deductibles) for certain preventive items and services listed in the current recommendations of the United States Preventive Services Task Force, the Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices, and in specific guidelines supported by the Health Resources and Services Administration (“HRSA”).

**Coverage for Lactation Support and Counseling (*or* Lactation Services)**

Among the HRSA guidelines are specific guidelines associated with lactation support, supplies and counseling. Carriers must cover comprehensive prenatal and postnatal lactation support, counseling and equipment purchase and/or rental as preventive care services, but may use reasonable medical management techniques to control costs and promote efficient delivery of care.

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<sup>1</sup> FAQ Set XXIX, issued October 23, 2015, is available at <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-XXIX.pdf>.

In accordance with 45 CFR §147.130(a)(2), if a lactation item or service is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is the delivery of such lactation item or service, then a Carrier *may not* impose cost-sharing requirements with respect to the office visit. If a lactation item or service is not billed separately (or is not traced as individual encounter data separately) from an office visit and the primary purpose of the office visit is not the delivery of the lactation item or service, then a Carrier *may* impose cost-sharing requirements with respect to the office visit.

In FAQ Part XXIX, the Departments clarify that coverage for comprehensive prenatal and postnatal lactation support, supplies, and counseling includes lactation counseling as long as the service is performed by a provider acting within the scope of his or her license or certification under applicable state law. Carriers may limit coverage without cost-sharing to a network of providers. However, if a Carrier does not have providers in its network who can provide lactation counseling services, then the Carrier must cover the items or service when performed by an out-of-network provider and not impose cost-sharing with respect to the lactation items or services. Moreover, coverage for lactation support services and items without cost-sharing must extend for the duration of the breastfeeding, and it may not be limited to services provided on an in-patient basis.

According to FAQ Part XXIX, Carriers must provide information to covered persons about lactation counseling providers available under the Carriers' plans. In order to update their managed care accreditation files, Carriers will need to submit information to the Division that identifies the lactation counseling providers within their networks or that explains that services provided for lactation counseling will be covered by non-network providers without cost-sharing until a Carrier has established contracts to include an adequate number of lactation counseling providers within its networks.

Carriers should amend their certificates of coverage and member material, as necessary, to ensure compliance with the Departments' requirements for coverage of these preventive health care services without cost-sharing.

If you have any questions about this Bulletin, please contact Kevin Beagan at 617-521-7323 or [Kevin.beagan@state.ma.us](mailto:Kevin.beagan@state.ma.us).