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July 5, 2016

D. Scott White
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Re: **Interpretive Opinion No. 03-16, Applicability of Tenn. Code Ann. § 56-6-705(a)(10) Regarding Visits Under the Minimum Standards of Utilization Review Agents**

Dear Mr. White,

The Insurance Division ("Division") of the Tennessee Department of Commerce and Insurance is in receipt of the request for an interpretive opinion regarding the applicability of standards set forth for utilization review under Tennessee Code Annotated ("Tenn. Code Ann.") § 56-6-705. Specifically, you asked what is considered to be a "visit" or a "visit to a particular provider" and also, what constitutes "outpatient mental health and chemical dependency care" under the provisions of Tenn. Code Ann. § 56-6-705.

Nowhere in the utilization review statutes or otherwise in the Tennessee Insurance Law is "visit" defined. Absent statutory guidance as to the meaning of the term visit, the healthcare policy in question should be consulted to determine if it contains a provision as to the definition of the term visit. That said, after a review of policies on file with the Division, it is likely such a healthcare policy will not define the term. Considering this lack of guidance, it is imperative to look to the plain language meaning of the word. Merriam-Webster provides a definition of visit as "to go to see or stay at (a place) for a particular purpose" and also, with respect to medical treatment, as "to go see (a doctor, dentist, etc.)".[1] In light of the plain language meaning of the term visit, and the spirit of the utilization review statutes, a visit could be regarded as any separate appointment, either in person or through a telehealth encounter,[2] during which healthcare services, which include diagnosis or treatment of medical conditions, are rendered.

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[1] www.merriam-webster.com/dictionary/visit
[2] *See* Tenn. Code Ann. § 56-7-1002 (2015).

Applying this definition to your inquiry, whether an encounter will be considered a visit under Tenn. Code Ann. § 56-6-705(a)(10) is a factual determination. Pursuant to policy requirements, a patient must register for outpatient mental health and chemical dependency care and, after such registration, the patient is entitled to, with some exception, twelve (12) visits to a provider for such care. Tenn. Code Ann. § 56-6-705(a)(10)(A) (2015). A patient shall be authorized for twelve (12) additional visits, pending utilization review approval, as recommended by the treatment plan. § 56-6-705(a)(10)(D). You provided three factual scenarios with respect to how these sections may be applied.

First, you described a situation where a patient requests an intensive outpatient care program for chemical dependency treatment from an out-of-network provider and the carrier negotiates a single-case contract for a specified number of visits, and you asked whether these out-of-network visits qualify as a visit pursuant to Tenn. Code Ann. § 56-6-705(a)(10). Tenn. Code Ann. § 56-6-705(a)(10)(a) directs patients to register for such outpatient mental health and dependency treatment "pursuant to the requirements of the policy or contract." It appears that whether such a registration, and the automatic twelve (12) visits, would apply to care by an out-of-network provider would depend on the directives for registration for such treatment under the policy. For instance, if the policy requires registration for treatment only contemplated on an in-network basis, then an out-of-network provider would fall outside the purview of the policy requirements and the statute would thus be inapplicable. Conversely, if the policy is silent as to in-network verses out-of-network treatment for mental health or dependency registration, it is possible the statute would be applicable to all instances of treatment.

Next, you asked whether a request for authorization for neuropsychological testing related to an Alzheimer's disease diagnosis or follow-up falls under the visit requirement contemplated by Tenn. Code Ann. § 56-6-705(a)(10). Considering the definition of visit provided above, whether such testing qualifies as a visit would be dependent on whether the testing is done for the purpose of diagnosis. For example, a referral by one physician for testing to be completed by another physician or specialist is a separate visit from the visit during which the referral was made. Conversely, testing which occurs during a visit with a physician, or so sufficiently related to such visit as to not require an additional copayment, is not considered a separate visit, regardless of whether the tests relate to one another for the purposes of diagnosis or treatment. Essentially, whether testing is likely to be considered a visit pursuant to Tenn. Code Ann. § 56-6-705(a)(10) is highly dependent upon the facts surrounding such testing.

Lastly, you inquired as to the applicability of the visit requirements in the instance of a contract under which applied behavioral analysis services are expressly covered, and the treatment of an autism spectrum disorder diagnosis where such services are provided on a "per hour" basis rather than a "per visit" basis. Provided the applied behavioral analysis services are administered on an outpatient basis, they presumably would fall under outpatient mental health care. If these services do fall under the dictates of the statutes, an hourly assessment of services would conflict with the visit assessments contemplated by the statute. In order to reconcile this disconnect, either the applied behavioral analysis services should be assessed on a per visit basis going forward, or a reasonably equivalent amount of hours should be established in the policy to equate to one (1) visit (e.g. four (4) hours equates to one (1) visit).

Absent controlling language in the Tennessee Insurance Law or a policy as to the definition of a "visit," the construct of the utilization review requirements in Tenn. Code Ann. § 56-6-705(a)(10) can be ambiguous. Applying a reasonable definition, which incorporates the plain meaning of the word, such as is provided above, and applying such definition on a case-by-case basis appears to be the most reasonable solution to this ambiguity. Additionally, notwithstanding the guidance herein, these visit limitations for mental health treatment are permissible, provided treatment for mental health is applied in a manner no less favorable than a medical benefit under the policy's provisions.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This letter expresses the Division's position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation relating to Tenn. Code Ann. § 56-6-705(a)(10) and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance, or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Mr. Scott White could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.

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