

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

16-0505A

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

TUFTS ASSOCIATED HEALTH PLANS, INC.

Defendant.



**ASSURANCE OF DISCONTINUANCE
PURSUANT TO G.L. CHAPTER 93A, § 5**

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through the Office of the Attorney General, conducted an investigation into certain acts and practices of Tufts Associated Health Plans, Inc. and its affiliates Tufts Associated Health Maintenance Organization, Inc., Tufts Benefits Administrators, Inc., Total Health Plan, Inc., and Tufts Insurance Company (collectively, THP²). THP cooperated with the investigation.

2. In lieu of litigation, the Office of the Attorney General and THP agree to enter this Assurance of Discontinuance (“Assurance”) on the terms and conditions contained herein, pursuant to G.L c. 93A, § 5.

3. The Office of the Attorney General and THP voluntarily enter into this Assurance.

II. DEFINITIONS

4. “Applied Behavior Analysis” or “ABA therapy” shall have the same meaning as

defined in M.G.L. c. 175, § 47AA.

5. “Autism Spectrum Disorder” or “ASD” shall have the same meaning as defined in M.G.L. c. 175 § 47AA.

6. “Member” shall mean an individual who is enrolled in a THP health insurance plan.

7. “THP” or “Defendant” means Tufts Associated Health Plans, Inc., Tufts Associated Health Maintenance Organization, Inc., Tufts Benefit Administrators, Inc., Total Health Plan, Inc., Tufts Insurance Company, and any of their successors, assigns, divisions, units, subdivisions, officers, directors, agents, servants, and/or employees.

8. “Effective Date” means the date this Assurance of Discontinuance is filed with the Clerk of the Superior Court for Suffolk County.

III. ALLEGED VIOLATIONS

9. The Commonwealth contends that the Defendant violated M.G.L. c. 93A; Chapter 207 of the Acts of 2010, An Act Relative to Insurance Coverage for Autism; and Chapter 256 of the Acts of 2008, An Act Relative to Mental Health Benefits by:

- a. Implementing policies, procedures, and guidelines that unlawfully inhibit access to ABA therapy for Members with ASD; and
- b. Unfairly denying coverage of ABA therapy for Members with ASD.

Defendant denies the allegations and admits to no violation of the above-referenced statutes or to any other state or federal law in connection with execution of this Assurance.

IV. ASSURANCES

A. Parental Presence

10. THP shall not introduce or reintroduce any policies, procedures, or guidelines

requiring parental presence at ABA therapy sessions.

11. Within forty-five (45) days after the Effective Date, THP shall have completed a review of all claims or requests for ABA therapy submitted by or on behalf of its Members that it denied between July 2013 and the Effective Date. If THP discovers, as a result of that review, that it denied any of those claims based solely on the lack of “parental presence,” as articulated in its July 2013 ‘Medical Necessity Guidelines: ABA (Applied Behavioral Analysis) Therapy and Habilitative Services for Autism Spectrum Disorders – MA Products,’ THP shall pay those claims or requests in accordance with the remaining provisions of the Member’s contract, except any provisions limiting the time within which claims may be made, adding interest as required by Massachusetts law.

12. Within forty-five (45) days after the Effective Date, THP shall pay to each Member identified in paragraph 11, an amount equal to the amount paid out-of-pocket for ABA therapy related to a denial identified in paragraph 11. THP shall make each such payment to the Member by check payable to the Member and sent by first-class mail to each Member along with a letter, approved by the Office of the Attorney General, explaining why the letter and check are being sent. Each such check shall be valid for at least 90 days from the date of issuance. THP shall make reasonable efforts to identify the recipient’s correct mailing address and resend such mailing if necessary. THP shall provide copies of each letter to the Office of the Attorney General within thirty (30) days after they are sent to Members.

13. Within sixty (60) days after the Effective Date, THP shall provide the Office of the Attorney General with documentation of the review described in paragraph 11, including documents that identify relevant claims or requests and the results of the review of those claims or requests. The documentation shall show the full name and address of each Member whose

claim or request was reprocessed in accordance with paragraphs 11-12, the date(s) of service, the name of the provider, the charge for the service, the procedure code, the reason for the denial, the amount of any payment initially made on the claim, and the amount of any payment made after reprocessing.

14. Within sixty (60) days after the Effective Date, THP shall create and administer a claims process, approved by the Office of the Attorney General, whereby, any Member who paid for ABA therapy services out of pocket but did not submit a claim or request for ABA therapy may do so if the Member, in good faith, did not originally submit the claim or request due to the parental presence requirement. THP will process the claims and pay for treatment in accordance with the remaining provisions of the Member's contract, including a review for medical necessity based on THP's criteria then in effect with the exception of parental presence (or the daycare/preschool exception as discussed further in Section B., below), except any provisions limiting the time within which claims shall be made, adding interest as required by Massachusetts law. THP may only conduct a medical necessity review if one was not conducted when the Member originally submitted a claim or request for ABA therapy, or if no claim or request was previously submitted. Members shall have a minimum of three hundred sixty-five (365) days from the Effective Date to submit a claim to THP. THP shall provide evidence of all such approvals or denials of payment to the Office of the Attorney General within thirty (30) days after they were made to Members.

15. Within forty-five (45) days after the Effective Date, THP shall have completed a review to determine whether any ABA providers were required to refund or voluntarily refunded payments to THP, between July 2013 and the Effective Date. If THP discovers, as a result of that review, that it required refunds or that an ABA provider voluntarily refunded payments

based on the lack of “parental presence,” as articulated in its July 2013 ‘Medical Necessity Guidelines: ABA (Applied Behavioral Analysis) Therapy and Habilitative Services for Autism Spectrum Disorders – MA Products,’ THP shall pay those providers in accordance with the remaining provisions of the Provider’s contract, except any provisions limiting the time within which claims may be made, adding interest as required by Massachusetts law.

16. Within forty-five (45) days after the Effective Date, THP shall pay to each provider identified in paragraph 15, an amount equal to the amount refunded to THP. THP shall make each such payment to the provider by check payable to the provider and sent by first-class mail to each provider along with a letter, approved by the Office of the Attorney General, explaining why the letter and check are being sent. Each such check shall be valid for at least ninety (90) days from the date of issuance. THP shall make reasonable efforts to identify the recipient’s correct mailing address and resend such mailing if necessary. THP shall provide copies of each letter to the Office of the Attorney General within thirty (30) days after they are sent to providers.

17. Within sixty (60) days after the Effective Date, THP shall provide the Office of the Attorney General with documentation of the review described in paragraphs 15-16, including documents that identify the full name and address of each provider who was reimbursed, the name of the Member who received services, the date(s) of service, the charge for the service, the procedure code, the reason for the denial (if applicable), the amount of any payment initially made on the claim, and the amount of any payment made after reprocessing.

18. Within sixty (60) days after the Effective Date, THP shall create and administer a claims process, approved by the Office of the Attorney General, whereby, any ABA provider who was required to refund or voluntarily refunded payment to THP as a result of the “parental

presence” requirement, may request a return of the refunded monies, with proper documentation. Providers shall have a minimum of three hundred sixty-five (365) days from the Effective Date to submit a claim to THP. THP shall provide evidence of all such approvals or payment to the Office of the Attorney General within ten (10) days after they were made to providers.

19. For any notice letter and check required by this Assurance, THP shall send another notice letter and check to any Member or provider for whom the U.S. Postal Service provides a forwarding address, but to whom the U.S. Postal Service does not forward the notice. THP shall also retain an address research firm, which may be an on-line service, to seek an updated address for any Member or provider whose notice letter and check is returned by the U.S. Postal Service without a forwarding address. If the address research firm determines a new mailing address for any of those individuals within ninety (90) days after THP receives the returned notice letter and check, THP shall send another notice letter and check to the new address.

20. Within one hundred twenty (120) days after the Effective Date, THP shall submit to the Office of the Attorney General a report signed by a corporate officer attesting to the total dollar amount of all checks issued in accordance with this Assurance that were cashed or deposited. THP shall provide supplementary reports to the Office of the Attorney General every one hundred twenty (120) days until the claims process expires.

21. Within fifteen (15) days of the Effective Date, THP will provide notice of this Assurance conspicuously on the homepage of THP’s website and by first-class mail to all of its ABA providers and any Member who has previously requested coverage for any ASD-related service.

B. Settings for ABA Therapy

22. THP shall revise its policies, procedures, and guidelines to reflect that ABA therapy is covered in daycare and preschool settings (assuming other criteria are met). THP shall not introduce or reintroduce any policies, procedures, or guidelines excluding coverage of ABA therapy in daycare and preschool settings.

23. As of the Effective Date, THP shall not deny claims or requests for coverage of ABA therapy because said therapy occurred in a daycare or preschool setting.

24. Within forty-five (45) days after the Effective Date, THP shall have completed a review of all claims or requests for ABA therapy submitted by or on behalf of its Members that it denied between January 1, 2011 and the Effective Date. If THP discovers, as a result of that review, that it denied any of those claims solely because the ABA therapy took place in a daycare or preschool setting, as articulated in its March 2014 'Medical Necessity Guidelines: ABA (Applied Behavioral Analysis) Therapy and Habilitative Services for Autism Spectrum Disorders – MA Products,' THP shall pay those claims or requests in accordance with the remaining provisions of the Member's contract, except any provisions limiting the time within which claims may be made, adding interest as required by Massachusetts law.

25. Within forty-five (45) days after the Effective Date, THP shall pay to each Member identified in paragraph 24, an amount equal to the amount paid out-of-pocket for ABA therapy. THP shall make each such payment to the Member by check payable to the Member and sent by first-class mail to each Member along with a letter, approved by the Office of the Attorney General, explaining why the letter and check are being sent. Each such check shall be valid for at least 90 days from the date of issuance. THP shall make reasonable efforts to identify the recipient's correct mailing address and resend such mailing. THP shall provide copies of each letter to the Office of the Attorney General within thirty (30) days after they are

sent to the Members.

26. Within sixty (60) days after the Effective Date, THP shall have provided the Office of the Attorney General with documentation of the review described in paragraph 24, including documents that identify relevant claims or requests and the results of the review of those claims or requests. The documentation shall show the full name and address of each Member whose claim or request was reprocessed in accordance with paragraph 24-25, the date(s) of service, the name of the provider, the charge for the service, the procedure code, the reason for the denial, the amount of any payment initially made on the claim, and the amount of any payment made after reprocessing.

27. Within sixty (60) days after the Effective Date, THP shall create and administer a claims process, approved by the Office of the Attorney General, whereby, any Member who paid for ABA therapy services out of pocket but did not submit a claim or request for ABA therapy may do so if, in good faith, the Member did not submit the claim or request due to the daycare or preschool setting restriction. THP will process the claim and pay for treatment in accordance with the remaining provisions of the Member's contract, including a review for medical necessity based on THP's criteria then in effect with the exception of the daycare/preschool exception (or the parental presence requirement as discussed in Section A., above), except any provisions limiting the time within which claims shall be made, adding interest as required by Massachusetts law. THP may only conduct a medical necessity review if one was not conducted when the Member originally submitted a claim or request for ABA therapy, or if no claim or request was previously submitted. Members shall have a minimum of three hundred sixty-five (365) days from the Effective Date to submit a claim to THP. THP shall provide evidence of all such approvals or denials of payment to the Office of the Attorney General within thirty (30)

days after they were made to Members.

28. Within forty-five (45) days after the Effective Date, THP shall have completed a review to determine whether any ABA providers were required to refund payments to THP, between January 1, 2011 and the Effective Date. If THP discovers, as a result of that review, that it required refunds because ABA therapy occurred in a daycare or preschool setting, as articulated in its March 2014 'Medical Necessity Guidelines: ABA (Applied Behavioral Analysis) Therapy and Habilitative Services for Autism Spectrum Disorders – MA Products,' THP shall pay those providers in accordance with the remaining provisions of the Provider's contract, except any provisions limiting the time within which claims may be made, adding interest as required by Massachusetts law.

29. Within forty-five (45) days after the Effective Date, THP shall pay to each provider identified in paragraph 28, an amount equal to the amount refunded to THP. THP shall make each such payment to the provider by check payable to the provider and sent by first-class mail to each provider along with a letter, approved by the Office of the Attorney General, explaining why the letter and check are being sent. Each such check shall be valid for at least ninety (90) days from the date of issuance. THP shall make reasonable efforts to identify the recipient's correct mailing address and resend such mailing. THP shall provide copies of each letter to the Office of the Attorney General within thirty (30) days after they are sent to providers.

30. Within sixty (60) days after the Effective Date, THP shall have provided the Office of the Attorney General with documentation of the review described in paragraphs 28-29, including documents that identify the full name and address of each provider who was reimbursed, the name of the Member who received services, the date(s) of service, the charge for

the service, the procedure code, the reason for the denial, the amount of any payment initially made on the claim, and the amount of any payment made after reprocessing.

31. Within sixty (60) days after the Effective Date, THP shall create and administer a claims process, approved by the Office of the Attorney General, whereby, any ABA provider who was required to refund THP for payment as a result of the restriction on ABA therapy in a daycare or preschool setting may request a return of the refunded monies, with proper documentation. Providers shall have a minimum of three hundred sixty-five (365) days from the Effective Date to submit a claim to THP. THP shall provide evidence of all such approvals or payment to the Office of the Attorney General within ten (10) days after they were made to providers.

32. For any notice letter and check required by this Assurance, THP shall send another notice letter and check to any Member or provider for whom the U.S. Postal Service provides a forwarding address, but to whom the U.S. Postal Service does not forward the notice. THP shall also retain an address research firm, which may be an on-line service, to seek an updated address for any Member or provider whose notice letter and check is returned by the U.S. Postal Service without a forwarding address. If the address research firm determines a new mailing address for any of those providers within ninety (90) days after THP receives the returned notice letter, THP shall send another notice letter and check to the new address.

33. Within one hundred twenty (120) days after the Effective Date, THP shall submit to the Office of the Attorney General a report signed by a corporate officer attesting to the total dollar amount of all checks issued in accordance with this Assurance that were cashed or deposited. THP shall provide supplementary reports to the Office of the Attorney General every one hundred twenty (120) days until the claims period expires.

C. Payment to the Commonwealth

34. Within ten (10) days after the Effective Date, THP shall pay a total of \$90,000 to the Office of the Attorney General, and such payment shall comprise: (i) \$5,000 to the Commonwealth as civil penalties; (ii) \$20,000 as attorney's fees and costs; and (iii) \$65,000 to be distributed by the Office of the Attorney General, at her sole discretion, to fund a *cy pres* distribution to one or more political subdivisions of the Commonwealth or to a state agency or program, a non-profit corporation and/or a charitable organization, with the express condition that the funds be used by the recipient to fund efforts directed to improve care and treatment related to autism, or if an appropriate recipient cannot be located, to fund efforts directed to improve care and treatment related to behavioral health. The payment shall be made by electronic funds transfer to the Commonwealth to an account identified by the Office of the Attorney General or by check made payable to "The Commonwealth of Massachusetts." Said check shall be delivered by hand delivery or certified mail return receipt requested, to Shannon Choy-Seymour, Assistant Attorney General, Office of the Attorney General, Health Care Division, One Ashburton Place, 18th floor, Boston, MA 02108.

D. General Provisions

35. In consideration of Defendant's promises contained herein, the Office of the Attorney General shall not proceed with or institute a civil action or proceeding pursuant to G.L. c. 93A against THP, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, multiple damages, attorney's fees, or costs, for any acts or practices, prior to the Effective Date, based on the allegations stated in paragraph 9 of the Assurance (that THP implemented policies, procedures, and guidelines that unlawfully inhibited

access to ABA therapy for Members with ASD and unfairly denied coverage of ABA therapy for Members with ASD). This Assurance does not resolve and shall not be deemed a waiver of any other actual or potential claims the Office of the Attorney General may have against the Defendant. It does not resolve any claims by any party other than the Office of the Attorney General. This Assurance similarly does not resolve any actual or potential claims by the Office of the Attorney General against any other parties.

36. This Assurance represents the entire agreement between the Office of the Attorney General and the Defendant concerning the matters addressed herein. It supersedes any prior agreement, understandings, or stipulations between the parties regarding the subject matter hereof.

37. This Assurance shall be binding on the Defendant, as well as its agents, servants, employees, successors, and assigns.

38. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

39. This Assurance shall be filed in the Superior Court of Suffolk County. The Superior Court of Suffolk County has and shall retain jurisdiction over this Assurance.

40. This Assurance shall not relieve the Defendant of any obligation to comply with all applicable federal, state, and local laws and regulations.

41. Except for purposes of its enforcement, no part of this Assurance shall be construed or admitted into evidence as an admission of liability by THP or any of its respective parent corporations, subsidiaries, affiliates, officers, directors, employees, predecessors, successors, insurers, or assigns, in any other proceeding.

42. By virtue of the provisions of G.L. c. 93A, § 5, any violation of the terms of this

Assurance by the Defendant, their agents, servants, employees, successors, and assigns after the date of this Assurance shall constitute prima facie evidence of a violation of G.L. c. 93A, § 2, in any civil action or proceeding commenced by the Office of the Attorney General.

43. The Defendant shall comply with all reasonable inquiries and requests from the Office of the Attorney General regarding the implementation of the terms contained within this Assurance.

44. The Defendant hereby accepts the terms and conditions of this Assurance and waives any right to challenge it in any action or proceeding.

45. Any notices or communications required to be transmitted between the Office of the Attorney General and the Defendant pursuant to this Assurance shall be provided in writing by first-class mail, postage prepaid, and by electronic mail to the parties as follows, unless otherwise agreed in writing.

If to the Office of the Attorney General:

Shannon Choy-Seymour
Assistant Attorney General
Health Care Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200, ext. 2918
Shannon.Choy-Seymour@state.ma.us

If to THP:

Mary O'Toole Mahoney, Esq.
General Counsel
Tufts Health Plan
705 Mount Auburn Street
Watertown, MA 02472
(617) 972-9400
Mary_Mahoney@tufts-health.com

46. The undersigned, Mary O'Toole Mahoney, General Counsel of THP, represents that she is duly authorized to execute this Assurance on behalf of THP and to bind THP to all applicable provisions of the Assurance, and that on behalf of THP she voluntarily enters into this Assurance.

TUFTS ASSOCIATED HEALTH PLANS, INC., TUFTS ASSOCIATED HEALTH MAINTENANCE ORGANIZATION, INC., TUFTS BENEFITS ADMINISTRATORS, INC., TOTAL HEALTH PLAN, INC., AND TUFTS INSURANCE COMPANY

By: Mary O'Toole Mahoney

Mary O'Toole Mahoney, Esq.
General Counsel

Date: 2/11/16

COMMONWEALTH OF MASSACHUSETTS

ATTORNEY GENERAL MAURA HEALEY

By: Shannon Choy-Seymour

Shannon Choy-Seymour (BBO# 663245)
Assistant Attorney General
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Phone: (617) 727-2200, ext. 2918
Email: Shannon.Choy-Seymour@state.ma.us

Date: 2/16/16