

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

IN RE:)
BLUE CROSS AND BLUE SHIELD OF)
VERMONT (NAIC #53295), MVP HEALTH)
CARE (MVP) (NAIC # 95521), and CIGNA) **Docket No. 22-008-I**
(NAIC # 67369))

CONSENT ORDER

WHEREAS, the Vermont Department of Financial Regulation (the “Department”) conducted an audit (the “Department Audit”) of fully insured health plans offered by Blue Cross and Blue Shield of Vermont (BCBSVT), MVP Health Care (MVP), and CIGNA (collectively the “Insurers”) to check compliance with the contraceptive mandate enacted by the Affordable Care Act (“ACA”) and the Vermont legislature; and

WHEREAS, under the ACA, non-grandfathered health plans and health insurance issuers must cover each contraceptive method approved by the Food and Drug Administration, contraceptive counseling, and sterilization procedures to prevent unintended pregnancy without member cost-sharing.¹ In addition, federal regulations require plans and issuers to cover “items and services that are integral” to providing required contraceptive services without member cost-share; and

WHEREAS, Vermont law builds on the ACA, requiring health plans subject to the State’s jurisdiction to cover voluntary sterilization for men (to the extent that it would not disqualify a high-deductible health plan from eligibility for a health savings account) and a 12-month supply of prescribed contraceptives without member cost-share; and

¹ See 42 U.S.C. § 300gg-13(a)(4); Centers for Medicare and Medicaid Services, FAQs About Affordable Care Act Implementation Part 54, at 2 (July 28, 2022), available at <https://www.cms.gov/files/document/faqs-part-54.pdf>.

WHEREAS: the Department consulted federal and state officials, as well as an obstetrics and gynecology practitioner (“OBGYN”), to identify the items and services that are integral to providing contraceptive services and are therefore covered by the mandate (“Covered Services”); and

WHEREAS, as part of the Department Audit, the Department audited claims for the period October 1, 2017 (the effective date of the Vermont mandate) through December 31, 2021; and

WHEREAS, the Department found that none of the fully insured plans were compliant with the mandate; and

WHEREAS the Department and the Insurers agreed to resolve the matter by making restitution to members who were charged cost-share for Covered Services; and by agreeing on actions the Insurers must take to correct the issues identified by the Department Audit; and

WHEREAS this Order serves to memorialize the findings of the Department Audit, the Corrective Actions to be taken by each of the Insurers (the “Corrective Actions”), and to resolve all violations identified herein.

FINDINGS OF FACT

The findings below are applicable to all fully insured plans offered by the Insurers.

1. The Department found that none of the insured plans were fully compliant with the mandate, but it did not find that the Insurers acted with intent to contravene the mandate.
2. The Department found that the claims inappropriately processed to include cost share to the member were generally the result of coding, differing interpretations of the mandate, and claims processing system limitations.

3. The Department found that the major categories of claims inappropriately processed with cost share were for the following services:

- Sterilizations for women: miscellaneous ancillary services were taking cost share, including anesthesia, medical supplies, and drugs;
- Pregnancy tests related to contraceptive services;
- Contraceptive office visits, including counseling;
- Ultrasounds associated with contraceptive services;
- Contraceptive injections;
- Sexually transmitted infection agent detection tests; and,
- Sterilizations for men (Vermont specific mandate).

CORRECTIVE ACTIONS

The following Corrective Actions² are applicable to all Insurers:

1. Each Insurer shall make restitution, with interest at the rate provided under 9 V.S.A. § 41a, to members for the cost share applied to the claims identified by the Department in the Department Audit.

2. Each Insurer shall conduct a self-audit (a “Self-Audit”) of contraceptive claims incurred since January 1, 2022, to the time all Corrective Actions have been implemented to identify claims outside the scope of the Department Audit for which cost-share was applied to Covered Services.

3. Each Insurer shall conduct quarterly Self-Audits to ensure that the Corrective Actions are working as intended. The results of each Self- Audit shall be reported to the Department within 30 days following the end of the run-out period for each quarter. For example, auditing of Q1 incurred claims would begin at end of Q2 to allow for run-out of Q1

² As part of the Department Audit and pursuant to market conduct examination authority, the Department and each Insurer discussed and documented in Management Letter the issues specific to that Insurer and the Corrective Actions needed to address those issues. The Management Letters are confidential pursuant to 8 V.S.A. § 23, but the Corrective Actions more broadly are described herein.

claims reporting and adjustments. The Self-Audit report for Q1 would be due 45 days after the end of Q2. Quarterly Self-Audits shall continue until the Corrective Actions are shown to be working as intended.

4. For all claims identified by the Insurer Self-Audits where cost-share was applied to Covered Services, the Insurers will make restitution to the members, with interest, if applicable.

5. To account for possible errors in identifying claims, or for claims outside the scope of the Department Audit, each Insurer will make restitution to any member who contacts the Insurer with evidence that the member paid cost-share for a Covered Service, and for which the claim was not already identified.

6. Each Insurer will implement the specific changes to processes and procedures to allow contraceptive claim to process without member cost-sharing as required by law.

7. Each Insurer will monitor and assess the efficacy of all Corrective Actions and modify if needed.

8. Each Insurer will implement provider education relating to coding for Covered Services.

GENERAL PROVISIONS

1. Insurers acknowledge and admit the jurisdiction of the Commissioner over the subject matter of this Consent Order.

2. Insurers acknowledge and agree that the Consent Order is entered into freely and voluntarily and that no promise was made, nor was any coercion used, to induce the Insurers to enter into the Consent Order.

3. With respect to the facts and violations identified herein, each Insurer waives its right to a hearing before the Commissioner or the Commissioner's designee and waives its right to all other administrative or judicial review otherwise available under Vermont law, including the rules of the Vermont Department of Financial Regulation and the provisions of 3 V.S.A., Chapter 25.

4. This Stipulation and Consent Order is entered into solely for the purpose of resolving the violations identified herein, and it is not intended for any other purpose.

5. Noncompliance with any of the terms and conditions in this Consent Order shall be a violation of a lawful order of the Commissioner and a violation of the laws of the State of Vermont and may result in additional administrative action and the imposition of injunctive relief, sanctions, and additional penalties pursuant to applicable provisions of Title 8, including provisions imposing enhanced penalties for willful violations.

6. Nothing herein shall be construed as limiting the Commissioner's ability to investigate Insurers for violations not resolved herein or to respond to and address any consumer complaints made with regard to the Insurers.

7. Nothing herein shall be construed as having relieved, modified, or in any manner affected the Insurers' ongoing obligation to comply with all federal, state, or local statutes, rules, and regulations applicable to the Insurers.

8. Nothing herein shall be construed as limiting any private right of action a person may have.

9. This Consent Order shall be governed by and construed under the laws of the State of Vermont.

SIGNATURES

The terms and conditions set forth in this Consent Order are hereby stipulated and agreed to. I certify under the pains and penalties of perjury that I have taken all necessary steps to obtain the authority to bind the Insurers to this Stipulation and Consent Order and that I have been duly authorized to enter into this Stipulation and Consent Order on behalf of Insurers.

BY: Rebecca C. Heintz Rebecca C. Heintz (Sep 19, 2023 17:26 EDT) Date: September 19, 2023
Print Name: Rebecca C. Heintz
As Principal of Blue Cross and Blue Shield of Vermont


BY: _____ Date: July ____, 2023
Print Name: _____
As Principal of MVP Health Care

BY: _____ Date: July ____, 2023
Print Name: _____
As Principal of CIGNA

The terms and conditions set forth in this Consent Order are hereby stipulated, agreed to, and ordered. This ORDER shall become effective immediately upon the date set forth below.

BY ORDER OF THE COMMISSIONER

11th day of October, 2023



KEVIN GAFFNEY, Commissioner
Vermont Department of Financial Regulation

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The terms and conditions set forth in this Consent Order are hereby stipulated and agreed to. I certify under the pains and penalties of perjury that I have taken all necessary steps to obtain the authority to bind the Insurers to this Stipulation and Consent Order and that I have been duly authorized to enter into this Stipulation and Consent Order on behalf of Insurers.

BY: _____ Date: July __, 2023

Print Name: _____

As Principal of Blue Cross and Blue Shield of Vermont

BY:  _____ Date: ^{August} ~~July~~ 16, 2023

Print Name: Karla Austen

As Principal of MVP Health Care

BY: _____ Date: July __, 2023

Print Name: _____

As Principal of CIGNA

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BY ORDER OF THE COMMISSIONER

11th day of October, 2023



KEVIN GAFFNEY, Commissioner
Vermont Department of Financial Regulation

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BY: _____ Date: July __, 2023

Print Name: _____

As Principal of Blue Cross and Blue Shield of Vermont

BY: _____ Date: July __, 2023

Print Name: _____

As Principal of MVP Health Care

BY: Gloria R. Perrotta Date: ^{August} ~~July~~ 22, 2023

Print Name: Gloria R. Perrotta

As Principal of CIGNA

The terms and conditions set forth in this Consent Order are hereby stipulated, agreed to, and ordered. This ORDER shall become effective immediately upon the date set forth below.

BY ORDER OF THE COMMISSIONER

11th day of October, 2023



KEVIN GAFFNEY, Commissioner
Vermont Department of Financial Regulation