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**Bulletin 2016-011**

**April 29, 2016**

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**TO: ALL HEALTH INSURANCE CARRIERS, HEALTH CARE PLANS  
AND HEALTH MAINTENANCE ORGANIZATIONS OFFERING OR  
RENEWING MAJOR MEDICAL HEALTH INSURANCE PRODUCTS  
IN NEW MEXICO**

**RE: FEDERAL REQUIREMENT THAT CARRIERS COVER CERTAIN  
TOBACCO CESSATION PRODUCTS WITHOUT CONSUMER  
COST-SHARING**

**THE FOLLOWING BULLETIN** is issued pursuant to Insurance Bulletin Rules, 13.1.2.1 to 13.1.2.10 NMAC.

The purpose of this Bulletin is to remind all carriers of certain benefit requirements for tobacco cessation aids provided for under the federal Patient Protection and Affordable Care Act (“ACA”) and clarified through guidance from the federal Department for Health and Human Services (“HHS”). The Superintendent requires carriers to be in compliance with the requirements outlined in this Bulletin as well as with any subsequent revisions and clarifications clarified through guidance from HHS.

**PREVENTIVE SERVICES:** The ACA requires coverage, with no cost-sharing, for certain evidence-based preventive items and services given a rating of “A” or “B” by the U.S. Preventive Services Task Force (“USPSTF”). Among its recommendations, the USPSTF indicates that clinicians should screen all adults for tobacco use and provide tobacco cessation interventions for those who use tobacco. It appears clear that such screening and tobacco interventions are required to be covered without cost-sharing and that plan benefits should not include any blanket benefit exclusions or limitations that apply to tobacco cessation items or services.

The Centers for Medicare and Medicaid Services (“CMS”) has also promulgated regulations that clarify that carriers may use reasonable medical management techniques to determine the frequency, method, treatment, or setting for the recommended item of service when those elements are not made clear in the USPSTF recommendations.

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**TOBACCO CESSATION PRODUCTS:** HHS has issued guidance<sup>1</sup> that identifies the following types of tobacco cessation products as items that it believes are appropriate for smoking cessation:

- Nicotine gum
- Nicotine patch
- Nicotine lozenge
- Nicotine oral or nasal spray
- Nicotine inhaler
- Bupropion
- Varenicline.

The New Mexico Office of Superintendent of Insurance would consider a health plan to be in compliance with the preventive care requirements of the ACA relative to tobacco cessation products if the health plan's drug benefit included at least one product within each of the above-noted tobacco cessation product types without cost-sharing (e.g., the health plan's drug benefit includes coverage, without cost-sharing, for at least one nicotine gum, one nicotine patch, one nicotine lozenge, etc.). Coverage requirements pertain to both over-the-counter and prescription products.

Carriers are permitted to employ reasonable managed care techniques to determine the frequency, method, treatment, or setting for the recommended item or services, provided that covered persons are always given access to at least one of the tobacco cessation products without prior authorization and the managed care methods are consistent with all state and federal laws. Whenever carriers make an adverse determination that denies or limits access to a requested product based on medical necessity criteria, they must provide all necessary notifications to patients and providers and follow all appropriate procedures for internal and external appeals.

Carriers should amend policies, evidences of coverage, formularies and/or drug brochures, or riders as necessary to ensure that insureds are given complete information about the coverage of and the cost sharing for tobacco cessation items and services.

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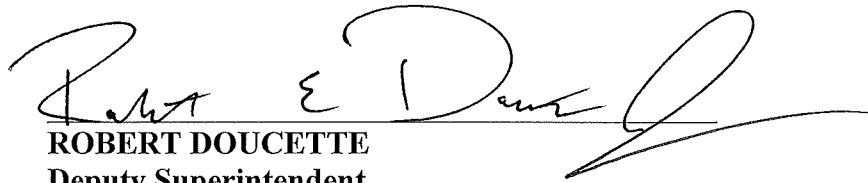
<sup>1</sup> The Center for Consumer Information & Insurance Oversight ("CCIIO") has set out "FAQs About Affordable Care Act Implementation (Part XIX)" ("FAQs, Part XIX") dated May 2, 2014 and available at:

[https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-faqs/aca\\_implementation\\_faqs19.html](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-faqs/aca_implementation_faqs19.html).

FAQs, Part XIX, Q5 explains that covered products would include all Food and Drug Administration ("FDA")-approved tobacco cessation products, including both prescription and over-the-counter medications. The FDA has approved as smoking cessation products the five tobacco replacement products and two non-nicotine medications listed.

If you have additional questions regarding this Bulletin, please contact the Life and Health Rate & Form Filing Bureau at 1-505-827-4561.

**ISSUED** at Santa Fe, New Mexico on April 29, 2016.



**ROBERT DOUCETTE**  
**Deputy Superintendent**