

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

ALLWAYS HEALTH PARTNERS INC. AND
ALLWAYS HEALTH PARTNERS INSURANCE
COMPANY,

Defendants.

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

RECEIVED

FEB 27 2020

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOWAN
CLERK/MAGISTRATE

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through the Office of the Attorney General ("AGO"), conducted an investigation into certain acts and practices of health plans doing business in Massachusetts, including AllWays Health Partners (formerly known as Neighborhood Health Plan) ("AllWays"), concerning Behavioral Health Care services (the "Investigation").

2. In lieu of litigation, AllWays agrees to voluntarily enter this Assurance of Discontinuance ("AOD") with the AGO on the terms and conditions contained herein, pursuant to G.L. c. 93A, § 5.

II. DEFINITIONS

1. These definitions are solely for purposes of this AOD.
2. "Adverse Benefit Determination" shall mean, consistent with the definition of "Adverse Determination" found at 211 CMR 52.02, a determination regarding a Member, based upon a review of information provided, to deny, reduce, modify, or terminate an admission, continued inpatient stay, or the availability or coverage of any other health care services (such as office visits and services, therapy, and psychopharmacology/medication management services), for failure to meet the requirements for coverage based on medical necessity, appropriateness of health care setting and level of care, or effectiveness, including a determination that a requested or recommended health care service or treatment is experimental or investigational.
3. "ALERT" shall mean any algorithm-based process, however named, used by Optum now or in the future for the identification and Utilization Management of episodes of routine outpatient care for Members.
4. "AllWays" shall mean collectively AllWays Health Partners, Inc., AllWays Health Partners Insurance Company, and Neighborhood Health Plan, Inc., including their officers, directors, employees, parents, subsidiaries, affiliates, and agents.
5. "AllWays Member" or "Member" shall mean an individual who is a Massachusetts resident or member of a group located in Massachusetts enrolled in (i) a commercial fully insured individual policy of accident and/or sickness insurance, (ii) a commercial fully insured group or blanket policy of accident and/or sickness insurance, or (iii) a commercial fully insured health maintenance contract pursuant to which AllWays provides health care coverage.
6. "Appreciable Utilization" shall mean, for AllWays' commercial fully insured health maintenance contracts and accident and/or sickness insurance policies (a) any Current

Procedural Terminology ("CPT") code with utilization that comprises 3% or more of the total utilization and (b) the three physical, occupational, or speech therapy codes with the highest utilization.

7. "Audit" shall mean the processes outlined in Section IV(B)(2)(c) of this AOD.

8. "Average Allowed Amount" shall mean the total amount AllWays, directly and through an MBHO, paid to its in-network Providers (before any member cost-sharing provisions are applied) for a specific CPT code divided by the total volume of those services provided to Members based on the paid claim experience.

9. "Base Rates" shall mean the minimum rates (typically set forth in a fee schedule) to be paid by AllWays, directly and through an MBHO, to Providers for covered health care services provided to Members. Such rates may be subject to negotiations that may result in payments to Providers that are different than the Base Rates.

10. "Behavioral Health" or "Behavioral Health Care" shall mean the diagnosis, prevention, treatment, cure, or relief of a behavioral health, substance use disorder ("SUD"), or mental health condition, illness, injury, or disease.

11. "Behavioral Health Care Provider" shall mean a Health Care Professional licensed, accredited, or certified to provide Behavioral Health Care as the primary purpose of his or her practice or a Facility that regularly provides Behavioral Health Care.

12. "Behavioral Health Care Provider Directory" shall mean any Provider Directory of Behavioral Health Care Providers.

13. "Chapter 258" shall mean Chapter 258 of the Acts of 2014: An Act to Increase Opportunities for Long-Term Substance Abuse Recovery.

14. "Clearly and Conspicuously" shall be defined as such term is defined in 940 C.M.R. § 6.01.

15. "Contracted Entity" shall mean the legal entity or entities that contract with AllWays, directly and through an MBHO, on behalf of itself and its Providers.

16. "Designated Contact" shall mean the individual or department(s) designated by a Contracted Entity to receive standard notifications from AllWays, directly and through an MBHO, on behalf of all of its contracted Providers, including notices for enrollment and verification of Provider Directory information. "Designated Contact" shall also mean any administrator, manager, nurse, physician, or other individual to whom an inquiry from AllWays is referred by an employee of the Contracted Entity.

17. "Designated Recipient(s)" shall mean, with respect to AllWays, its Member and Provider customer service departments, its Provider network contracting department, HealthCare Administrative Solutions ("HCAS"), or the Council for Affordable Quality Healthcare ("CAQH"); with respect to Optum, its member and Provider customer service departments and its network relations and network contracting department; and, for both AllWays and Optum, any personnel dedicated to receiving e-mail communications concerning Provider Directory inaccuracies through the electronic link required in Section IV(B)(1)(b)(iv) or designated to receive information through the Provider Outreach described in Section IV(B)(1)(d).

18. "Effective Date" shall mean ninety days from the date this AOD is fully executed by the Parties.

19. "Facility" shall mean any health care setting located and licensed in Massachusetts, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers,

diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

20. "Group Practice" shall mean a group of single-specialty or multi-specialty Health Care Professionals who associate as owners, employees, or contractors to deliver health care services.

21. "Health Care Professional" shall mean any individual physician or other health care practitioner licensed, accredited, or certified in Massachusetts to perform services for the diagnosis, prevention, treatment, cure, or relief of a physical health or Behavioral Health condition, illness, or injury and who provides such services in Massachusetts.

22. "Integrated Health System" means a local care unit that comprises multiple Group Practices, Facilities, and/or individual Health Care Professionals, including without limitation, a physician hospital organization, an accountable care organization, a physician organization, an independent practice association, or such other multiple Provider practices.

23. "MBHO" shall mean any Managed Behavioral Healthcare Organization retained by AllWays to manage its Behavioral Health benefit for Members. As of January 1, 2019, AllWays retained United Behavioral Health operating under the brand name Optum as its MBHO. Prior to that date, AllWays, then known as Neighborhood Health Plan, used Beacon Health Options as its MBHO.

24. "MHPAEA" shall mean the current or future implementing statutory provisions codified in the "Mental Health Parity and Addiction Equity Act" at 29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26 and 26 U.S.C. § 9812, the current or future implementing regulations duly promulgated by the Internal Revenue Service ("IRS"), Department of Health & Human Services

("HHS"), and the Department of Labor ("DOL"), and any current or future sub-regulatory guidance on MHPAEA issued by the IRS, HHS, and DOL.

25. "Non-Routine Outpatient Behavioral Health Services" shall mean the Behavioral Health services, listed in Exhibit 1 to this agreement, provided to Members.

26. "Practice Location" means the physical address(es) reported by a Health Care Professional or his or her Designated Contact as the location(s) where the Health Care Professional is regularly scheduled to provide health care services.

27. "Provider" shall mean a Health Care Professional or Facility.

28. "Provider Directory" or "Directory" shall mean any grouping, compilation, or listing identifying in-network Providers that AllWays, directly or through an MBHO, provides or makes available to Members, Providers, or the public-at-large, electronically or in paper format.

29. "Routine Outpatient Behavioral Health Services" shall mean the outpatient Behavioral Health services provided to Members that are not Non-Routine Outpatient Behavioral Health Services.

30. "Utilization Management" shall mean any techniques or procedures designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy or efficiency of, health care services, including levels of care and settings, provided to Members.

III. ALLEGED VIOLATIONS

1. Based on the Investigation, the AGO alleges that AllWays, directly and through its prior MBHO, engaged in certain unlawful acts and practices, as described below. AllWays denies that it has engaged in any unlawful acts or practices and does not admit any violation of any law or regulation, also as described below.

A. Provider Directories

1. AllWays publishes and maintains online Provider Directories that are intended to serve as a resource to its Members to help them access health care services, including the phone numbers and addresses of Providers; whether Health Care Professionals are available to see new patients; and whether the Providers are "in network" for an AllWays Member's plan.

2. Prospective Members may refer to Provider Directories to review whether their current Providers are in Defendants' network before enrolling in an AllWays plan. Current Members may rely on Provider Directories to select and/or contact Providers for themselves and their families when considering or seeking to obtain in-network Provider services.

3. The Commonwealth alleges that AllWays violated G.L. c. 93A by publishing and maintaining Provider Directories that are materially inaccurate and deceptive in a variety of ways that cause harm to consumers. The Commonwealth contends, for example, that these Provider Directories in some instances:

- a. do not accurately reflect certain Health Care Professionals' availability to see new patients for outpatient services;
- b. contain inaccurate contact information for Providers, which may hinder AllWays Members' ability to access these Providers for services;
- c. list Health Care Professionals at locations where they did not actually provide health care services, which could lead AllWays Members to believe that they have more substantial geographic access to Health Care Professionals than is actually the case; and
- d. inaccurately represent that a Provider accepts AllWays plans, which may lead a Member to incorrectly understand that the Provider is "in network."

4. AllWays denies the Commonwealth's allegations that its Provider Directories in any way violated G.L. c. 93A.

B. Provider Reimbursement Rates

1. The Commonwealth alleges that AllWays, directly and through its prior MBHO, used methods to establish Base Rates for outpatient Behavioral Health Care services that were not comparable to and were applied more stringently than the methods used to establish Base Rates for outpatient medical/surgical ("M/S") services, including by using a methodology that resulted in disparate Base Rates for Behavioral Health physician office visits compared to M/S physician office visits billed with the same evaluation and management codes.

2. The Commonwealth alleges that AllWays' conduct described above violated MHPAEA and was an unfair act or practice under G.L. c. 93A, § 2.

3. AllWays denies the Commonwealth's allegations that its reimbursement rates violated MHPAEA or constituted unfair acts or practices under G.L. c. 93A, § 2.

4. In January of 2019, during the course of the Investigation and prior to entering into this AOD, AllWays retained a new MBHO and, to avoid the delay, uncertainty, potential patient disruption, and expense of litigation, changed the methodology used to establish Base Rates for outpatient Behavioral Health Care services provided to its Members, which has generally resulted in an increase to such Base Rates.

C. Utilization Management

1. The Commonwealth alleges that AllWays, directly and through its prior MBHO, used Utilization Management processes to manage its Members' access to certain inpatient and outpatient Behavioral Health Care that were not comparable to, and were applied

more stringently than, the processes AllWays used to manage Members' access to comparable M/S care. Specifically, the Commonwealth alleges that:

a. AllWays, through its prior MBHO, required members to obtain authorization for the continuation of certain Routine Outpatient Behavioral Health Services beyond eight office visits while authorization requirements were not applied in a comparable way for M/S office visits.

b. AllWays, through its prior MBHO, required Members who had been stabilized after emergency treatment to obtain prior authorization before being admitted for certain inpatient mental health care while authorization requirements were not applied in a comparable way for Members admitted to the hospital from the emergency room for M/S inpatient care.

2. The Commonwealth alleges that these Utilization Management practices violate MHPAEA and are unfair acts or practices under G.L. c. 93A, § 2.

3. AllWays denies the Commonwealth's allegations that its Utilization Management processes violated MHPAEA or constituted unfair acts or practices under G.L. c. 93A, § 2.

4. Nonetheless, to avoid the delay, uncertainty, potential patient disruption, and expense of litigation concerning these Utilization Management issues, AllWays has agreed to the provisions set forth in Section IV below.

IV. ASSURANCES

A. Generally

1. AllWays shall not engage in any unfair or deceptive acts or practices.

2. AllWays shall comply with all federal and Massachusetts laws and regulations pertaining to Behavioral Health Care parity, including MHPAEA, now in effect or later enacted.

B. Provider Directories and Networks

1. All Provider Directories

a. Generally. AllWays, directly and through any MBHO, shall comply with all federal and Massachusetts laws and regulations pertaining to Provider Directories now in effect or later enacted, including any regulations promulgated by the DOI. Additionally, AllWays, directly and through any MBHO, shall, as applicable, comply or continue to comply with the further Assurances set forth in this Section.

b. Provider Directory Contents. AllWays' Provider Directories shall:

i. Clearly and Conspicuously disclose the date on which the electronic Directory was last updated, and the date of printing of any paper Directory.

ii. Clearly and Conspicuously state the circumstances under which a Health Care Professional will be designated in the Provider Directories as "accepting new patients."

iii. Clearly and Conspicuously disclose (1) when information in an electronic Provider Directory has been designated "unverified" pursuant to Section IV(B)(1)(c) of this AOD, and (2) an explanation that such "unverified" information may not be current but updated information has not yet been obtained.

iv. Clearly and Conspicuously disclose the manner in which consumers should report Provider Directory inaccuracies, including a customer service telephone

number and an electronic link that members may use to notify AllWays, or its MBHO, as applicable, via e-mail of inaccurate Provider Directory information.

v. Clearly and Conspicuously provide notice to consumers that they may file complaints relating to Provider Directory inaccuracies or Provider network access issues to DOI, including the contact information and method for filing such a complaint with DOI.

vi. For each Health Care Professional, (1) list only his or her Practice Location(s), and (2) not list that Health Care Professional at other physical addresses of a Group Practice that are not that Health Care Professional's Practice Locations.

vii. Clearly and Conspicuously state the name of the MBHO, if applicable, that maintains the Behavioral Health Care Provider network for AllWays Members.

c. Provider Directory Updates and Corrections

i. Within thirty days of the termination of a Provider's agreement with AllWays or its MBHO, AllWays or the MBHO, as applicable, shall remove any applicable listing for that Provider from the Provider Directory.

ii. Within thirty days of receiving specific notice of potentially inaccurate information in their Provider Directories through their respective Designated Recipients(s) or through an Audit, AllWays or its MBHO, as applicable, shall investigate the potential inaccuracy with appropriate diligence, seek any information necessary to correct the inaccuracy, and, where such information is obtained, update the Provider Directory accordingly.

iii. If AllWays or its MBHO, as applicable, is unable to validate the accuracy of the Provider Directory listing that is the subject of the notice after a diligent investigation and/or is unable to obtain information necessary to correct the Provider

Directory during the thirty day period in subsection ii, AllWays or its MBHO, as applicable, shall within the subsequent 30 days either remove the listing or edit the Provider Directory as provided in the following subsections iv-vi.

iv. If the potential inaccuracy relates to the physical address(es) of the Provider, the telephone number to reach the Provider, and/or the plans accepted by the Provider, such information shall either be immediately removed from the online Provider Directory until updated information is obtained, or designated as "unverified" for a period not to exceed ninety (90) days after receiving the notice of a potential inaccuracy, after which the information must be immediately removed until updated information is obtained. AllWays' or its MBHO's obligation to remove information or mark it as "unverified" under this section is limited to the specific Health Care Professional or Facility to which the potentially inaccurate information is related and shall not apply broadly to an entire Group Practice, Integrated Health System, or to any other Health Care Professional or Facility in a Group Practice or Integrated Health System.

v. If the potential inaccuracy relates to whether a Health Care Professional is "accepting new patients," AllWays or its MBHO, as applicable, shall remove from the online Provider Directory any designation that a Health Care Professional is "accepting new patients" until updated information is obtained.

vi. If the potential inaccuracy relates to whether a Provider is or continues to be a participating in-network Provider, AllWays or its MBHO, as applicable, shall remove the Provider listing from the online Provider Directory until updated information is obtained.

d. Provider Outreach

i. Practice Location Remediation. Within six months of the Effective Date, AllWays shall review its Provider Directory, and for any Health Care Professional listed at more than three locations, shall (1) contact such Health Care Professional, or the Health Care Professional's Designated Contact, and request that he or she verify the physical address(es) where the Health Care Professional is scheduled to regularly provide health care services and, where necessary, provide updated information, and (2) edit the Provider Directory in accordance with Section IV(B)(1)(c) above for such Health Care Professional. AllWays shall use reasonably diligent efforts to obtain a response from the Health Care Professional (or his or her Designated Contact).

ii. At least quarterly, AllWays shall contact each network Health Care Professional who is not a Behavioral Health Care Provider (or, as applicable, his or her Designated Contact) via a targeted communication by mail or e-mail that has the sole focus of verifying Provider Directory information. In this communication, AllWays shall (1) request that the Health Care Professional (or his or her Designated Contact) review the information listed in the Provider Directory for that individual or, with respect to a Designated Contact, the information listed in the Provider Directory for multiple Health Care Professionals, including the Health Care Professional's availability to see new patients, telephone number, physical address(es), and network status; (2) request that the Health Care Professional (or, as applicable, his or her Designated Contact) verify the accuracy of the information (including whether the physical addresses listed for the Health Care Professional(s) are locations where he or she is scheduled to regularly provide health care services), or provide any necessary updates to correct the listings; and (3) provide instructions as to how the Health Care Professional (or, as

applicable, his or her Designated Contact) should verify Provider Directory information or communicate updates. Such notice may indicate that failure to respond in a timely fashion may result in the temporary removal of the Health Care Professional(s) from the Provider Directory until such time as the Health Care Professional or Designated Contact responds with corrected and complete information. With respect to the Health Care Professional/Designated Contact outreach described in this paragraph, it is insufficient for AllWays to seek verification of, for instance, whether a Group Practice as a whole is accepting new patients; AllWays must seek to verify and obtain updated information for each individual Health Care Professional identified in the Provider Directories who is not a Behavioral Health Care Provider.

iii. AllWays, directly and through its MBHO, shall require Group Practices to provide prompt notification to them whenever a Health Care Professional leaves or joins the Group Practice or changes the location where he or she is regularly scheduled to provide health care services. Upon receiving such notification, AllWays, directly and through its MBHO, shall within 30 days edit the Provider Directories to reflect such notification in accordance with the procedures set forth in Section IV(B)(1)(c).

iv. AllWays, directly and through its MBHO, shall remind Providers or their Designated Contact at least quarterly that AllWays or its MBHO, as applicable, are obligated to provide members with Provider Directory information and that Providers either directly or through their Designated Contact are required to notify them about any inaccurate information in the Provider Directories so that appropriate corrections may be made. Such reminder may be provided in conjunction with other communications to Providers or their Designated Contact.

e. Employee Training. AllWays, directly and through its MBHO, shall train its relevant member and Provider customer service employees regarding how to route issues concerning Provider Directories and Provider network access, including member complaints, to the appropriate personnel for monitoring and correction of Directory inaccuracies. Within sixty days after the Effective Date, AllWays, directly and through its MBHO, shall obtain a written or digital certification from the relevant member and Provider customer service employees that they completed the training, to be retained for four years from the date of the training. Thereafter, AllWays, directly and through its MBHO, shall re-train each relevant member and Provider customer service employee at least every two years and conduct the same certification process.

f. Member Complaints

i. AllWays, directly and through its MBHO, shall track and monitor member complaints concerning its Provider Directories and/or access to its Provider networks, including without limitation, complaints alleging inadequate Provider networks or untimely access to care. Such tracking and monitoring shall include the date such complaint was submitted, the date such complaint was closed (if applicable), and a record of actions taken in response to such complaint.

ii. AllWays, directly and through its MBHO, shall take appropriate and timely action to resolve Provider Directory and network access issues as they arise, including but not limited to investigating complaints of Provider Directory inaccuracies in accordance with the terms of this AOD and applicable DOI and Massachusetts Health Policy Commission regulations.

2. Behavioral Health Care Provider Directories and Network Adequacy

a. Generally. AllWays, directly and through its MBHO, shall adhere to all DOI regulations concerning the maintenance of a Behavioral Health Care Provider network that is adequate in numbers and types of Behavioral Health Care Providers to assure that all covered Behavioral Health services will be accessible to its members without unreasonable delay. Additionally, AllWays, directly and through its MBHO, shall, as applicable, comply or continue to comply with the Assurances set forth in this Section. However, no allegation by the AGO of network inadequacy or any other violation of the Assurances contained herein may be based solely upon the removal of a listing from a Provider Directory required by Section IV(B)(1)(c) above. AllWays shall not be liable under this Section for the act(s) or failure(s) to act of any Provider.

b. Contents of Behavioral Health Care Provider Directory. Except where required to remove information in accordance with the provisions of this AOD, AllWays, directly and through its MBHO, shall Clearly and Conspicuously list for each of its network plans, the following information as received from the Health Care Provider (or Designated Contact) in its Behavioral Health Care Provider Directories:

- i. For each Health Care Professional:
 1. Name;
 2. Gender;
 3. Practice Location(s);
 4. Specialty, if applicable;
 5. Whether he or she is accepting new patients;
 6. Medical group and/or facility affiliations, if applicable;

7. Languages spoken other than English, if applicable;
8. Areas of expertise reflecting the categories of service(s) the Health Care Professional reports that he or she actually provides to members;
9. Whether he or she offers office visits or outpatient appointments at a Practice Location, or is only available through a hospital or inpatient facility;
10. Telephone contact information; and
11. Board certification(s).

ii. For hospitals:

1. Hospital name;
2. Hospital type;
3. Participating hospital location;
4. Hospital accreditation status; and
5. Telephone contact information.

iii. For Facilities other than hospitals:

1. Facility name;
2. Facility type;
3. Participating Facility location(s); and
4. Telephone contact information.

iv. For electronic Directories, items in (b)(i)(1)-(7); (b)(ii)(1)-(4); and (b)(iii)(1)-(3) must be made available in a searchable format or have the capability to filter search results.

e. Audits

i. Within three months of the Effective Date, AllWays, directly or through its MBHO, shall contact each Health Care Professional in its Behavioral Health Care Provider Directories who has not submitted a claim within one year of the Effective Date (or the Designated Contact for such Health Care Professional). In such communication, AllWays, directly or through the MBHO, shall seek to (1) verify with the Health Care Professional (directly or through a Designated Contact) his or her Provider Directory information (including all the information set forth in subsection b(i)) and/or (2) obtain from the Health Care Professional (directly or through a Designated Contact) any updates to the information in the Provider Directory. The communication may also indicate that failure to respond in a timely fashion may result in the temporary removal of the Health Care Professional(s) from the Provider Directory until such time as the Health Care Professional or Designated Contact responds with corrected and complete information. If the Health Care Professional's information cannot be verified, or updated information cannot be obtained after reasonable attempts to do so, AllWays, directly or through its MBHO, shall edit the Behavioral Health Care Provider Directory in accordance with Section IV(B)(1)(c)(iv)-(vi). Thereafter, AllWays, directly or through its MBHO, shall complete this audit process on a quarterly basis for any Health Care Professional in its Behavioral Health Care Provider Directories who has not submitted a claim to AllWays, directly or through an MBHO, as applicable, within one year of the audit date and who has not been audited at any time in the twelve months prior to the audit.

ii. Beginning with the first full quarter following the Effective Date, AllWays, directly or through its MBHO, shall conduct a rolling quarterly audit of its Behavioral Health Care Provider Directories. The audit shall consist of a representative sample

of not less than 15% of the Behavioral Health Care Providers listed in the Directories (and exclude Providers who have previously been audited at any time in the twelve months prior to the audit) each quarter but in no event shall AllWays, directly or through an MBHO, fail to audit 100% of its Behavioral Health Care Provider Directories annually. AllWays, directly or through its MBHO, shall contact each Provider (or, as applicable, the Provider's Designated Contact) in the audit group and seek to (1) verify whether the Provider Directory information (including all the information set forth in subsection (2)(b)) is accurate; and/or (2) obtain from the Provider (directly or through a Designated Contact) any updates to the information in the Behavioral Health Care Provider Directory. If the Provider Directory information cannot be verified, or updated information obtained, after reasonable attempts to do so, AllWays, directly and through its MBHO, shall edit the Behavioral Health Care Directory in accordance with Section IV(B)(1)(c)(iv-vi).

iii. For a period of five years after each Audit, AllWays, directly or through its MBHO, shall maintain documentation that identifies the Providers who were selected for the Audit and the results of each Audit.

C. Provider Reimbursement Rates

1. Generally. AllWays, directly and through an MBHO, shall use a methodology for establishing Provider reimbursement rates for outpatient Behavioral Health services that is comparable, as written and in operation, to the methodology used for establishing Provider reimbursement rates for outpatient M/S services in accordance with MHPAEA. For purposes of this provision, the methodologies do not necessarily need to be identical to be "comparable."

2. Methodology for Setting Base Rates. AllWays, directly and through an MBHO, shall:

a. use a methodology (inclusive of any and all of the factors used in the methodology) to set Base Rates for outpatient Behavioral Health Care services that is, as written and in operation, comparable to and applied no more stringently than the methodology used to set Base Rates for outpatient M/S services.

b. to the extent AllWays uses data or any other information published by the Centers for Medicare and Medicaid Services in any way to analyze, update, or set its Base Rates for M/S services, use any such data or information in the methodology used to determine outpatient Base Rates for Behavioral Health Care in a way that is at least comparable to and no more stringent than in the methodology used to determine outpatient M/S services Base Rates.

3. Reporting

a. AllWays shall report to the AGO, annually for a 4-year period, (i) all substantive changes to the methodologies used to determine Base Rates; (ii) its Behavioral Health and M/S Base Rate fee-for-service schedules; and (iii) documents sufficient to identify the factors and processes used by AllWays, directly and through an MBHO, to determine its annual Base Rates. Each annual report shall be due on or before July 1st of the reporting year for which the report is due (e.g., the annual report for the April 1, 2020 to March 31, 2021 reporting year shall be due on or before July 1, 2020) and reflect the then-current Base Rates. The information required under this subsection (a) has already been provided for the reporting period April 1, 2019 – March 31, 2020 and no further report of the materials required under this paragraph shall be due for that period. The last report shall be due on or before July 1, 2023.

b. AllWays shall report to the AGO annually for a 4-year period the Average Allowed Amounts for Behavioral Health and M/S Providers paid on a fee-for-service basis for services rendered in the office setting (place of service code 11) for all CPT codes with Appreciable Utilization by Behavioral Health and M/S Providers. Average Allowed Amounts shall be reported separately by AllWays, directly and through its MBHO, for physicians, nurse practitioners, PhDs, and masters level clinicians for each billing code. Each annual report shall be due on or before July 1st of the year following the reporting year for which the report is due (e.g., the annual report for the April 1, 2019 to March 31, 2020 reporting year shall be due on or before July 1, 2020). The last report shall be due on or before July 1, 2023.

c. AllWays shall make good faith efforts to answer any reasonable inquiries from the AGO concerning the reports provided under this Section. The AGO may make reasonable requests for additional information as necessary to clarify information provided under this Section.

D. Utilization Management

1. Generally. AllWays, directly or through its MBHO, shall, as applicable, comply or continue to comply with all laws and regulations now in effect or later enacted concerning the Utilization Management of AllWays Members' health care. Additionally, AllWays, directly or through its MBHO, shall, as applicable, comply or continue to comply with the Assurances set forth in this Section.

2. Policy Disclosures. AllWays, directly and through its MBHO, shall clearly and accurately disclose Utilization Management policies and procedures (including requirements relating to prior authorization, notification, and the review process under ALERT) in Member documents, Provider manuals, internal policies, and on website subpages as

applicable and appropriate (e.g., information regarding prior authorization for Non-Routine Outpatient Behavioral Health Services need not appear in web subpages or internal policies dealing with inpatient benefits but shall appear in any web subpages or internal policies where outpatient benefits and Utilization Management of such benefits are discussed). These disclosures shall include the following:

- a. Notification that prior authorization is not required for Routine Outpatient Behavioral Health Services, such as therapy or psychopharmacology/medication management visits.
- b. Identification of all Non-Routine Outpatient Behavioral Health Services and, where applicable, disclosure that such services require prior authorization (unless subject to Chapter 258 requirements).
- c. For AllWays plans and Members covered by Chapter 258, notification that Members' coverage for SUD is subject to the provisions of Chapter 258; that initial authorization for SUD treatment is not required; and that Acute Treatment Services and Clinical Stabilization Services treatment will be covered for up to a total of fourteen days without authorization or medical necessity review.

3. Inpatient Services. AllWays, directly and through any delegate, shall not require Members to obtain prior authorization to be admitted to a Facility to receive mental health inpatient treatment from an emergency department and/or after receiving emergency services if deemed appropriate by a Provider regardless of whether the Member has been stabilized. AllWays shall ensure that any applicable Utilization Management policy and/or Provider manual makes clear such policy.

4. Outpatient Services

a. AllWays, directly and through any delegate, shall not issue Adverse Benefit Determinations for Routine Outpatient Behavioral Health Services including, but not limited to, office visits and services for therapy and psychopharmacology/medication management services, for any reason other than fraud or abuse.

b. ALERT. AllWays, through Optum, may continue to use ALERT for Routine Outpatient Behavioral Health Services provided that:

i. the processes used to identify cases and then conduct Utilization Management under ALERT are consistent with AllWays' obligations under this AOD;

ii. a Clear and Conspicuous and complete description is set forth in Provider manuals and on Optum's website of the circumstances under which Routine Outpatient Behavioral Health Services are subject to Utilization Management under ALERT;

iii. at the time of any initial outreach to Providers (in whatever form) to request clinical case information needed for Utilization Management, there is a Clear and Conspicuous disclosure to the Provider that (1) the Provider may choose to provide the requested information through a written form accessible online rather than through telephonic submission, and (2) the case may be subject to peer-to-peer review for further discussion regarding treatment plan options;

iv. AllWays and/or Optum shall not tell or otherwise suggest to Providers that ALERT-based reviews may result in an Adverse Benefit Determination;

v. the electronic form that Providers may use to submit clinical information is Clearly and Conspicuously identified and easily accessible on Optum's applicable online website subpage(s);

vi. once an individual's Routine Outpatient Behavioral Health Service is subject to an ALERT-based utilization review, any further Utilization Management of that individual's Routine Outpatient Behavioral Health Services under ALERT shall be suppressed for at least six months after the date the initial review is completed; and

vii. Non-Routine Outpatient Behavioral Health Services are not subject to ALERT.

c. Nothing in this AOD shall limit the ability of AllWays, directly and through an MBHO, to otherwise use an algorithm for various reasons that reflect generally accepted standards of practice in the industry including but not limited to for care coordination, disease management, Utilization Management (other than as noted in paragraphs 4(a) and 4(b) above), claims billing and payment monitoring, benefit administration, and/or to identify and review potential instances of fraud, waste, or abuse by a Member or Provider provided that the use of such algorithm complies with the provisions of this AOD and MHPAEA.

d. AllWays, directly and through an MBHO, shall apply Utilization Management processes, including Optum's ALERT Program or any similar program or algorithm, for outpatient Behavioral Health Care in a manner that, as written and in operation, is comparable to, and no more stringent than, AllWays' application of Utilization Management processes for comparable outpatient M/S services. For example, AllWays shall ensure that the methods used to conduct Utilization Management of outpatient Behavioral Health Care (e.g., communication and collection of information by telephone, email, fax, form, etc.) are

comparable to and not more stringent than the methods used to conduct Utilization Management of outpatient M/S services and otherwise comply with state and federal law. Nothing in this paragraph shall be read to prefer any communication method over any other or to imply that any communication method is more stringent than any other.

e. In accordance with MHPAEA, the processes, strategies, evidentiary standards, or any other factors AllWays, directly and through its MBHO, considers in implementing and applying Utilization Management processes with respect to outpatient Behavioral Health Care shall be comparable to, and applied no more stringently than, those applied with respect to M/S outpatient services. Further, AllWays shall document the processes, evidentiary standards, and other factors used to develop and apply Utilization Management techniques for outpatient Behavioral Health Care and how such processes, evidentiary standards, or other factors were applied comparably with respect to Utilization Management techniques used for comparable outpatient M/S care.

5. Reporting.

a. Beginning on or before March 31, 2020, for purposes of reporting data from calendar year 2019, and on an annual basis thereafter for a three-year period, AllWays shall provide to the AGO a report with a list of each unique Routine Outpatient Behavioral Health Service with a Provider for which AllWays, directly or through a delegate such as Optum, issued an adverse determination and information sufficient to identify the CPT codes and services at issue and the basis of the adverse determination. The annual reports shall be due on or before March 31 and cover the previous calendar year; the last report shall be due on or before March 31, 2023. Upon the AGO's request, AllWays shall provide the notices of the adverse determinations.

b. Within three months from the Effective Date of this AOD, AllWays shall provide the AGO with copies of the Utilization Management policies and such other Member or Provider facing materials that have been updated for purposes of clarifying AllWays' existing practices and/or complying with this AOD.

c. For a period of three years after the Effective Date, AllWays shall report to the AGO on an annual basis, no later than March 31st of each year, any material changes made to Utilization Management policies and practices relating to Behavioral Health Care, such as changes in prior authorization requirements.

6. Data Maintenance. AllWays, directly and through its MBHO, shall maintain and have the ability to produce data sufficient to monitor AllWays' compliance with the assurances in this AOD concerning Utilization Management, including, without limitation: denials and modifications of initial requests for authorization; outcomes resulting from concurrent reviews, including denials and modifications of requests for continued treatment and days and/or visits authorized at each review; and frequency of concurrent reviews conducted.

V. PAYMENT TO THE COMMONWEALTH

Within thirty days after the filing of this AOD with the Superior Court of Suffolk County, AllWays shall pay \$175,000 to the Commonwealth by electronic funds transfer to an account identified by the AGO. This amount shall be deposited into a trust fund for the purpose of assisting the AGO to discharge its duties, in accordance with G.L. c. 12 § 4A, and to be used in the sole discretion of the AGO to promote initiatives designed to prevent or treat substance use disorders, increase access to Behavioral Health Care services, or otherwise assist Massachusetts Behavioral Health Care consumers.

VI. GENERAL PROVISIONS

1. This AOD represents the entire agreement between the AGO and AllWays concerning the matters addressed herein. It supersedes any prior agreement, understandings, or stipulations between the parties regarding the subject matter hereof.

2. This AOD shall be binding on AllWays, as well as its agents, servants, employees, successors, and assigns.

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

4. Except for purposes of enforcing compliance with this AOD, no part of this AOD, including its allegations and commitments, shall constitute evidence of any liability, fault, or wrongdoing by AllWays. This document and its contents are not intended for use by any third party for any purpose, including submission to any court for any purpose.

5. If the AGO believes AllWays to be in violation of this AOD, the AGO shall give it written notice of that alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). Before commencing an action for breach of this AOD, the AGO will notify AllWays in writing of such breach, provided, however, that the AGO, in its sole discretion, may take immediate action at any time if it determines that there is a threat to the health or safety of the citizens of Massachusetts. Upon receiving said notice, AllWays shall then have twenty-one (21) days from receipt of such written notice to provide a good faith written response to the AGO's determination, during which time the AGO will not commence any action for breach of this AOD. The AGO agrees to discuss the response and engage in a good faith process to address any disagreements prior to commencing an action for breach of this AOD. The response shall contain, at a minimum, either:

- a. A statement explaining why AllWays believes that it is in full compliance with this AOD; or
- b. A detailed explanation of how the alleged breach(es) occurred; and
 - i. A statement that the alleged breach has been addressed and a description of the action taken by AllWays to address the breach; or
 - ii. A statement that the alleged breach cannot be reasonably addressed within twenty-one (21) days from receipt of the notice but AllWays has begun to take corrective action to address the alleged breach and is pursuing such corrective action with reasonable due diligence, and a detailed and reasonable timetable for addressing the alleged breach.

6. Nothing in this AOD shall prohibit AllWays from challenging any future laws or regulations related to the issues addressed in this AOD. Further, nothing in this AOD shall be construed as a waiver by AllWays of its right to raise any other arguments or defenses in the future related to the issues included in this AOD.

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

8. This AOD shall not relieve AllWays of any obligation to comply with applicable federal and state laws and regulations. Nothing in this AOD shall require AllWays to take any action that is in violation of applicable federal or state laws and regulations. If AllWays believes that there is a conflict between this AOD and applicable federal or state laws and regulations that prevents it from complying with this AOD, AllWays shall notify the AGO of its perceived inability to comply with the AOD and the parties will attempt to resolve any such conflict in good faith.

9. As relates to Section IV(C) ("Provider Reimbursement Rates") and Section IV(D) ("Utilization Management"), if the U.S. HHS, DOL, and/or IRS issue interpretative guidance concerning non-quantitative treatment limitations including without limitation the "comparable to" and "applied no more stringently than" standards set forth under MHPAEA, the interpretations stated in the applicable guidance from these federal agencies shall control the meaning of those standards as used in this AOD.

10. This AOD shall terminate on the tenth anniversary of the Effective Date if not otherwise terminated in whole or in part, except that Sections IV(B)(1)(b)-(d) ("Provider Directory Contents," "Provider Directory Updates and Corrections," and "Provider Outreach"), and IV(B)(2)(b)-(c) ("Contents of Behavioral Health Care Provider Directory" and "Audits") shall terminate on the fifth anniversary of the Effective Date.

11. Compliance with this AOD resolves and settles all civil claims alleged by the AGO herein, and which the AGO alleged or could have alleged pursuant to Chapter 93A, MHPAEA, or Chapter 258 up to the date this AOD is fully executed, whether known or unknown, against AllWays, its parent corporations, affiliates, agents, subsidiaries, subdivisions, officers, employees, successors, and assigns, relating in any way to the Investigation of Behavioral Health parity, Provider Directories, Provider network adequacy, Utilization Management practices, and Provider reimbursement rates. This AOD does not resolve and shall not be deemed a waiver of any other actual or potential claims the Commonwealth may have against AllWays. Notwithstanding any term of this AOD, specifically reserved and excluded from this release, is any civil or administrative liability that any person and/or entity, including AllWays, has or may have to the Commonwealth not expressly covered by the release in this

paragraph, including, but not limited to (a) Medicaid claims; (b) state false claims violations; and (c) DOI administrative claims and proceedings.

12. Nothing in this AOD is to be construed as a waiver by AllWays of any rights it may have to assert that information it provides or provided pursuant to this AOD or the Investigation is not subject to public disclosure under applicable law. AllWays may assert at any time that any submission to the AGO, whether by itself or by its MBHO, in connection with this AOD, is subject to exemption from disclosure under applicable public records law, including but not limited to G.L. c. 66 and its implementing regulations.

13. AllWays shall comply with and respond to all reasonable inquiries and requests from the AGO regarding the implementation of the terms contained within this AOD.

14. In lieu of litigation, AllWays hereby accepts the terms and conditions of this AOD and waives any right to challenge it in any action or proceeding. AllWays acknowledges that it has conferred with counsel of its choice concerning the advisability of executing this AOD and that this AOD shall not be deemed prepared or drafted by one party or another.

15. This AOD, including any time period within which a party must perform, or begin to perform, or complete an obligation, may be amended upon written agreement of all parties for good cause shown. The AGO agrees to consider in good faith any request by AllWays to amend this AOD (a) to conform with any material provision or language that is included in any subsequent Assurance of Discontinuance, Consent Judgment, Letter of Agreement, or similar instrument between the AGO and any other health plan or agent thereof, relating to any matters set forth herein or (b) if AllWays believes there is or will be a material

change to operations (including in the use of or reliance on an MBHO to perform any or all of AllWays' obligations herein) that will impact its ability to comply with this AOD.

16. Any notices or communications required to be transmitted between the AGO and AllWays pursuant to this AOD 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:

Health Care Division
c/o Lisa Gaulin, Assistant Attorney General
lisa.gaulin@mass.gov
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

If to AllWays, then to BOTH:

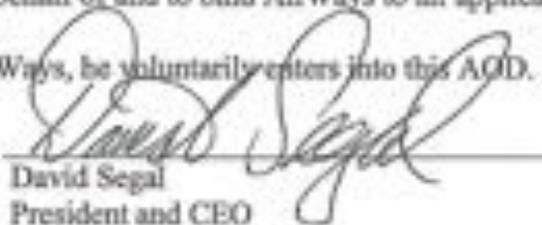
Alice E. Moore
SVP, Legal Regulatory Affairs and Compliance
AllWays Health Partners
399 Revolution Drive, Suite 820
Somerville, MA 02145
amoore@allwayshealth.org

and to

Robert G. Kidwell
Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.
701 Pennsylvania Ave., NW, Suite 900
Washington, DC 20004
rgkidwell@mintz.com

17. The undersigned represents that he is duly authorized to execute this AOD on behalf of and to bind AllWays to all applicable provisions of the AOD, and that on behalf of AllWays, he voluntarily enters into this AOD.

By:



David Segal
President and CEO
AllWays Health Partners

Date: 2-10-20

COMMONWEALTH OF MASSACHUSETTS
ATTORNEY GENERAL MAURA HEALEY

By: *Lisa Gaulin*
Lisa Gaulin, Assistant Attorney General (BBO# 654655)

Date: 2-11-20

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**EXHIBIT 1
NON-ROUTINE OUTPATIENT BEHAVIORAL HEALTH SERVICES**

Service	CPT / Revenue Code	Service Description
Diversionary/IOP	905	Intensive OP Services - Psychiatric
Diversionary/IOP	906	Intensive OP Services - Chem Dep
Diversionary/Partial	912	Partial hospitalization-less intensive
Diversionary/Partial	913	Partial hospitalization-intensive
Outpatient Services	90867	Therapeutic Repetitive Transcranial magnetic stimulation treatment; planning 1 VISIT
Outpatient Services	90868	Therapeutic Repetitive Transcranial magnetic stimulation treatment; delivery and management, per session 1 VISIT
Outpatient Services	90869	Therapeutic Repetitive Transcranial Magnetic Stimulation (TMS) treatment; subsequent motor threshold Re-determination with delivery and management 1 VISIT
ECT	90870	ECT (Single Seizures)
Outpatient Services	96130	Psychological testing evaluation services by physician or other qualified health care professional, including integration of patient data, interpretation of standardized test results and clinical data, clinical decision making, treatment planning and report and interactive feedback to the patient, family member(s) or caregiver(s), when performed, first hour
Outpatient Services	96131	Psychological testing evaluation services, by physician or other qualified health care professional, each additional hour
Outpatient Services	96136	Psychological or neuropsychological test admin and scoring by physician or other qualified health care professional, two or more tests, any method, first 30 minutes
Outpatient Services	96137	Psychological or neuropsychological test admin and scoring by physician or other qualified health care professional, two or more tests, any method, each additional 30 minutes
Outpatient Services	96138	Psychological or neuropsychological test admin and scoring by technician, two or more tests, any method, first 30 minutes
Outpatient Services	96139	Psychological or neuropsychological test admin and scoring by technician, two or more tests, any method, each additional 30 minutes

**EXHIBIT 1
NON-ROUTINE OUTPATIENT BEHAVIORAL HEALTH SERVICES**

ABA	H0031	Mental health assessment, by non-physician
ABA	H0032	Mental health service plan development by non-physician
Diversionary/ABA	H2012	Behavioral health day treatment, per hour
ABA	H2014	Skills training and development, per 15 minutes
ABA	H2019	Therapeutic behavioral services, per 15 minutes
Nurse Aid	T1004	Specialing
ECT	901	ECT (Single Seizures)
Day/Evening	907	Community Behavioral Health Program, Day Treatment

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