

**Andrew Rose** <andrewnewkirkrose\_>

To: dbhufford\_

Wed, Nov 6, 2019 at 11:47 AM

Mr. Hufford,

My wife and I operate a medicaid behavioral health clinic in Boulder. We train intern therapists from the universities and also supervise pre-licensure externs and provide couple and individual therapy ourselves. I mostly treat children in high conflict divorce.

Providers in Colorado are facing a similar situation as Smith v United Health and I was wondering if I could discuss this with you.

One difference here is we are Medicaid providers, which has been more recently wrapped into MHPAEA, including through Colorado HR 1269.

<https://leg.colorado.gov/bills/hb19-1269>

Colorado Medicaid (administered by HCPF, Health Care Policy and Finance) split medical/physical and mental health in administrative ways that make parity an issue.

Specifically they divided Colorado into 7 regions and gave contracts to Anthem (our problem), Beacon, Colorado Access, and Rocky Mtn Health Plan.

Anthem has essentially arbitrarily stated they will lower our pay from 100% to 80% of Colorado Medicaid fee schedule. This will rock our clinic's budget and we must cut pay, cut staff, and cut programs. They paid us 100% for the last two years. Now they claim "you have an MA" as a legitimate reason to cut our pay. There is no cut on the medical/physical side.

The damages, multiplied across maybe 1000 providers (there are 300,000 members in the affected regions), will be 20% of \$104.26 for every session where we are underpaid. These damages will start Jan 1.

We met with Anthem, it was unproductive. Some notes below.

We are meeting with State Representative Singer and HCPF VP for Medicaid with the below agenda.

The main obstacle at this point seems to be that HCPF is arguing pay is not a NQTL. According to Smith, as I understand it, they are incorrect

If you could please email your thoughts or referrals, I'd appreciate it. We also would love your representation on contingency. We're struggling here to deliver necessary psychotherapy to a damaged community.

In kind regards,  
Andrew Rose  
Director, Boulder Emotional Wellness

### **Meeting with Anthem Nov 2019 contemporaneous notes.**

Anthem Janet Pogar VP Region, requested meeting be limited to ½ hour for family reasons.

CAAP, CCA, etc Lobbyist Jeff Thormasgaard was relieved by Becky Miller who brought Sue from Mt Vincent. This change in the meeting composition was unexpected.

The Anthem office is secure. We were escorted to the 11th floor of the Anthem building, then escorted on a separate elevator to the 12th floor, to a conference room.

Janet and CCHA Director Ericka \_ met with us.

This was an unproductive meeting where CCHA said, essentially, “we’ve been paying on a tiered rate for 30 years, that’s what we do on the commercial side, we were wrong out of the gate to offer 100%.” They didn’t see the issue as parity, just historical and habitual reasons to set our pay at this 80% rate, reduced from 100%. They did not disclose statistics that I expected them to know.

The tiered system is antiquated and arguably sexist. Providers at different levels provide different service codes. The higher pay for work that requires specialized training is built into the service code, as it should be. Regardless of the history and culture around paying MA level social workers, addiction counselors, and counselors at the lowest tiers, CCHA paid us 100% and is now reducing that rate.

Neither Janet nor Erica presented this issue as parity related and seemed either unaware of their at least partial exposure or unconcerned.

It is very concerning that Ms Pogar apparently received and then disclosed information from emails I sent to HCPF. I asked her who at HCPF was sending her my emails and to my surprise, she would not say. She said she knew about “your class action lawsuit.”

I asked her if she understood Smith v United and she had not heard of the case.

Other exchanges, paraphrased:

“Why were we paid 100% of the scale for two years”

That was our mistake out of the gate, we didn't do the normal tiered payment which I've seen for 30 years.

“Why didn't you cut it 30%”

We could have cut it 50%.

[Which is our point. Colorado and USgov regulate the member treatment and leave the providers exposed to payment changes without regulation. Any RAE can reduce our pay.]

“This was a big change, but HCPF was surprised, did you notify HCPF before cutting these rates 20%”?

[mumble]

“What happens to the money you save from cutting the rate.”

Don't know. I'm not in finance.

“Why aren't facilities being cut?”

We have facility contracts with them. CMHC, FQHC, hospitals

“Can we be a facility? “

What is your current level of licensing?

[The state does not offer a licensing path for clinics that do not hold people involuntarily or have beds]

Of course we can't make a contract and create a whole new kind of facility DORA doesn't even know about!

“Have you cut Nurse Practitioners and Physicians Assistants?”

I don't think we have NPs or PAs delivering mental health, not that I've heard of.

“Are you cutting rates for Medical providers that have a lower level of training than MDs?”

We don't pay MDs, who are FFS.

“So the issue of parity belongs to HCPF?”

I don't know about that.

“How many providers are impacted by these cuts?”

I don't know. You should know, you're talking about a class action lawsuit.

[The discussion of Smith v United was not something I had with Ms. Pogar. She is apparently signaling that she gets the emails that I send to HCPF.]

“How many independent providers are in your network vs facilities? 50%”

We have a large amount of services delivered through facilities.

“Is this cut a QTL or NQTL”

I don't know about that.

“Will these cuts lower your capitation?”

I don't know.

“Well, what should we do? How can we make up the 20%? Do you have grants?”

We could do a quality improvement, what would be the ROI?

[I will follow up with this.]

Ms. Pogar was quick to state that “our MCI is way higher than it needs to be,” referring to the 85% MCI mandated.

Ms. Pogar also was strident in her affirmation that we had received a 2% raise July 1, 2019. This was exceedingly odd given that we were discussing a 20% pay reduction.

I stated that I believed that Anthem had the money to continue paying 100%, that HCPF was paying Anthem over \$14 million a month, and that we'd like our opposition to the cuts to be pushed to Anthem decision makers.

Due to limited time, we were not able to raise the issue of the 99354 extension code that Anthem will not pay, RAE 'slamming', and other parity issues.

----- Forwarded Message -----

**From:** Andrew Rose <andrewnewkirkrose\_>  
**To:** Jonathan Singer <repsinger\_>  
**Cc:** Taylor Nagy <taylor.nagy\_>  
**Sent:** Wednesday, November 6, 2019, 11:28:22 AM MST  
**Subject:** Re: 20% pay cut for mental health providers

Good morning, I appreciate the response. I assume you are referring to a meeting with Rep. Singer and HCPF (Karabatsos and/or Bimestefer). Let me know if that's incorrect.

Agenda: Parity, Pay, RAE enrollment changed, Supervised services, Extended sessions

0. What is HCPF's understanding of the impact of a 20% pay cut to providers for 300,000 members in RAE 6 and 7?
- 0.5. Review of capitation payments to Anthem, totaling over \$14 million per month, and usage, MCI stats. CORA issues.
1. How does HCPF understand 'parity' (as described in MHPAEA and Co HR 1269) in relation to the RAE system.
2. What are current HCPF concerns regarding parity?
3. How are medical providers' and mental health providers' claims processes different (filing, processing, payment)
3. What is HCPF understanding of Smith v United?  
<https://www.jdsupra.com/legalnews/smith-v-united-healthcare-starting-90269/>
4. If HCPF takes the position that pay is not a parity issue, what law do they base that on?
5. Parity concerns:
  - a) RAE 4 introduced pre-authorizations for psychotherapy at session 7, 16, and 26.
  - b) children can be moved from one RAE to another by getting medical care, then their mental health care claims get denied
  - c) RAEs can make pay changes without HCPF oversight, without any parity
  - d) the RAE system itself challenges the parity concept by capitation vs ffs
  - e) CPT extension 99354 is allowed in the Medicaid Fee Schedule and therefor to Medical. Mental health needs it for 90 minute family therapy.
6. What is HCPF plan for parity? What is it's relationship with Ombudsman? What is Ombudsman's power?
7. Uneven rules within the RAEs. All RAES allow for supervised work except Colorado Access. This causes problems when children are moved out of RAE 6 into RAE 3/5.

Solutions, either administrative or legislative:

1. HCPF takes pay as a NQTL (non quantitative treatment limitation) and adds contract language to provide oversight for changes to Mental Health Provider pay.

2. HCPF requires RAEs to pay 100% of the Medicaid Fee Schedule, as Anthem did for years. This rate is still far below market and far below Medicare rates.
3. Beacon, RAE 4's preauthorizations for 90837 are brought into parity with the medical side.
4. Members are not moved from one RAE to another just by visiting a clinic.
5. RAEs must pay 99354 so that family therapy is supported.
6. Colorado Access allows for pre-licensure externs and university program supervised interns to provide therapy, as HCPF mandates.

Here is an illustration of point 4:

To illustrate: Two children, living next door to each other in Louisville, are covered by Anthem (RAE 6), and come to our clinic for play therapy. One child has divorced parents and splits time in Denver. Child gets ill in Denver and goes to a clinic.

Because of the way enrollment is determined, which is by THE PHYSICAL LOCATION OF THE MEDICAL PROVIDER, the child is 'slammed' (this is a term used in the telecom industry when customers have their carriers changed without asking for it), into RAE 3 or 5 (Denver, Colorado Access). The parent is not notified that this happened.

Then the child that went to the Denver clinic comes to play therapy. I file a claim with CCHA, and it gets denied, because the child is now in another RAE.

Then, I have to notify the parent that their child is no longer covered. Turns out, I'm the first one to tell them. So who do they get mad at?

Then, I have to give them the magic phone number to get their child re-enrolled in Anthem(RAE 6). By the way, that phone number is 303-839-2120

This stresses the treatment, the provider, and the parent, and medical/physical never has to deal with this.