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OPINION LETTER NO. 96-83

The Honorable Claire McCaskill  
Representative, District 42  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative McCaskill:

This opinion is written in response to the following questions:

1. Does a medical expense insurance policy or contract of a Company doing business as an insurer in Missouri which limits payments of benefits for expenses for inpatient treatment for a recognized mental illness to a maximum of \$10,000 (and has no such limitation for benefits for expenses of any other illness) violate the provisions of sub-section 2(1) of Section 376.381 of the Revised Statutes of Missouri where the reasonable and necessary hospital expenses for such treatment for thirty (30) days exceeds \$10,000?
2. Does a medical expense insurance policy or contract of such an insurance company violate the provisions of sub-section 2(2) of Section 376.381, RSMo., when it provides benefits for outpatient expenses for other medical care, but does not provide (or expressly excludes) benefits for therapeutic care and treatment expenses for a recognized mental illness as an outpatient, which therapeutic care and treatment have been prescribed by a licensed physician specializing in the

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treatment of mental illness, and such outpatient therapeutic care and treatment are rendered in a psychiatric hospital or residential treatment center accredited by the Joint Commission on Accreditation of Hospitals?

3. Does a medical expense insurance policy or contract of such an insurance company violate the provisions of sub-section 2(3) of Section 376.381, RSMo., when it provides benefits for outpatient expenses for other medical care, but does not provide (or expressly excludes) benefits for outpatient psychotherapy sessions for a recognized mental illness rendered by a licensed physician specializing in the treatment of a mental illness, or by a licensed psychologist?

Simply put, these three questions describe situations in which insurance policies or contracts of a company doing business as an insurer in Missouri offer benefits for mental health expenses below the minimums set forth in Section 376.381.2, RSMo Supp. 1982. Sections 376.381 and 376.382 were passed by the General Assembly in 1980 in C.C.S.H.B. 1724, 1980 Mo. Laws 503, 514.

Section 376.381 provides:

1. For purposes of sections 376.381 and 376.382, the term "recognized mental illness" shall include those conditions classified as "mental disorders" in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, but shall not include mental retardation.

2. After August 13, 1980, every insurance company, health services corporation and health maintenance organization doing business in Missouri shall offer to each policyholder or contract holder of a medical expense policy or contract coverage for expenses arising from psychiatric services for a recognized mental illness, which coverage shall at least meet the following minimum requirements:

- (1) In the case of policies or contracts which provide benefits for expenses as an inpatient in a general hospital, benefits for inpatient treatment for a recognized mental

illness shall be the same as for any other illness, except that benefits may be limited, but benefits shall be available for at least thirty days in any policy or contract benefit period;

(2) In the case of policies or contracts which provide benefits for outpatient expenses, benefits shall apply to the therapeutic care and treatment of a recognized mental illness when prescribed by a licensed physician specializing in the treatment of mental illness and rendered in a psychiatric residential treatment center accredited by the Joint Commission on Accreditation of Hospitals on either an inpatient or outpatient basis. Such benefits shall be payable within the terms of the policy or contract notwithstanding the policy or contract definition of hospital, to the extent of not less than fifty percent of the reasonable and customary charges for such services and up to a maximum benefit of one thousand five hundred dollars during each policy or contract benefit period;

(3) In the case of policies or contracts which provide benefits for outpatient expenses, such benefits shall be provided to the extent of not less than fifty percent of reasonable and customary charges for twenty psychotherapy sessions during any policy or contract benefit period for psychiatric services for a recognized mental illness rendered by a licensed physician specializing in the treatment of mental illness. Such benefits shall also apply to such services when rendered by a licensed psychologist unless specifically rejected by the group or individual policyholder or contract holder. The frequency of such psychotherapy sessions may be limited, but benefits shall be available for at least one session during any seven consecutive days. [Emphasis in original.]

Section 376.382 provides:

1. The offer of such minimum benefits as set forth in section 376.381 shall be made to Missouri applicants for coverage with respect to all individual and group medical expense policies or contracts issued after August 13, 1980, and shall be made to existing Missouri

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group policyholders or contract holders with respect to medical expenses policies or contracts adjusted to change rates after August 13, 1980.

2. Nothing in section 376.381 or this section shall prohibit the insurance company, health services corporation or health maintenance organization from including all or part of the minimum benefits set forth in subsection 2 of section 376.381 as standard benefits in their policies or contracts issued in Missouri.

In view of the language of these sections setting forth the minimum requirements, it would appear that the answer to all three of your questions is "yes." That is, health insurance providers cannot limit benefits for recognized mental illness in the manner stated.<sup>1/</sup> Without a more thorough examination of the total relationship between the health insurance provider and the insured, a conclusive answer cannot be given.

In our opinion, Sections 376.381 and 376.382 require all health insurance providers to offer a medical expense policy or contract coverage for the treatment of recognized mental illness in conformance with at least the minimum requirements set forth in subsections (1), (2), and (3) of Section 376.381.2. However, we see nothing in these statutes which prevents the health insurance provider from offering alternative benefits of lesser value when the insured rejects the mandatory offer of the minimum benefits set forth in the statute.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard L. Wieler.

Very truly yours,



JOHN ASHCROFT  
Attorney General

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<sup>1/</sup>We interpret the words "except that benefits may be limited, but benefits shall be available for at least thirty days in any policy or contract benefit period" in Section 376.381.2(1) to mean that benefits for inpatient treatment of a recognized mental illness may not be limited during the first thirty days of a policy or contract benefit period.