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BY ELECTRONIC MAIL

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Kevin Beagan, Deputy Commissioner, Health Care Access Bureau
Nancy Schwartz, Director, Bureau of Managed Care
Massachusetts Division of Insurance
1000 Washington Street
Boston, MA 02118

RE: Comments on Federal Parity Compliance

Deputy Commissioner Beagan and Director Schwartz:

Thank you for your continued commitment to improving enforcement of the state and federal mental health and addiction parity laws. Health Law Advocates (HLA) appreciates the Division's significant efforts in recent years to promulgate regulations, establish a consumer complaint process, and develop an annual parity certification and compliance "audit" of health insurance carriers. HLA, together with Health Care For All, the Association for Behavioral Healthcare, National Alliance on Mental Illness – Massachusetts, and the Massachusetts Organization for Addiction Recovery, are pleased to provide these comments on the topic of parity compliance.

As you know, the Division of Insurance is the primary enforcement authority for both the Massachusetts Mental Health Parity Law and the Federal Mental Health Parity and Addiction Equity Act (MHPAEA). Though MHPAEA has been in effect for years, the final parity regulations, issued in November 2013 and effective for most health plans on January 1, 2015, offer new clarity and guidance for states. We are pleased that the Division is taking additional steps to exercise its parity enforcement authority under the law.

Consumer Complaint Process

We were pleased to learn that the Division established a standing committee to review consumer complaints that may relate to the mental health and addiction parity laws. Consumer complaints are an important way to measure and monitor health plans' compliance with the parity laws. However, we are concerned that the number of such complaints received and identified by the Division (estimated by Division staff as "less than 50" over the past year) is not representative of the volume of complaints and concerns HLA and other advocacy organizations hear from consumers and providers across the Commonwealth. One reason for the discrepancy may be a lack of public awareness of the protections

available under the mental health and addiction parity laws, and that a mechanism exists to file complaints with the state. In recent years, HLA has provided educational trainings to hundreds of behavioral health providers, consumers, and their families in an effort to increase the public's knowledge and understanding of the parity laws. However, there is still a serious need for further public education and outreach around the parity laws and available enforcement mechanisms.

We urge the Division to issue of a parity-specific consumer complaint form that is easily understandable to the average consumer, and may be completed by the consumer, or on the consumer's behalf by a health care provider or advocate. Attached, please find a sample complaint form that the Division may consider. This sample form requests specific health plan information that will make it easier for the Division to determine the validity of the parity complaint. In addition, the creation of a parity-specific form would be of minimal expense to the Division, as it could be posted online and available for electronic distribution, and may even conserve Division staff resources by streamlining the identification of mental health parity-related consumer complaints.

Annual Compliance Certification

The annual compliance certification process established by the Division is an important step toward holding health plans accountable for their behavioral health policies and practices. While the 2012 certification response from the health plans included helpful information, there are several aspects of the certification process which may be improved.

First, some of the claims data submitted by the carriers is too general to be particularly useful. In addition to requiring that the carriers report on the volume and frequency of denials for medical and behavioral health services, the carriers should also report on the volume and frequency of denials at different stages of claims review; for example, pre-authorization or pre-certification, concurrent review and post-service review.

The Division should also request specific information about how the health plans determine reimbursement rates and usual and customary rates across classifications of medical and behavioral health services. MHPAEA and its regulations are clear that the "standards for provider admission to join a network, including reimbursement rates," and "standards for determining usual and customary rates" are nonquantitative treatment limitations and are subject to parity compliance requirements. See 29 CFR 2590.712(c)(4)(ii). This means that the standards and guidelines a health plan uses to determine reimbursement rates for behavioral health services may not be more restrictive than the standards and guidelines a health plan uses to determine rates for medical services. This is an important provision in the federal parity regulations, however it has proven difficult to evaluate and enforce due to the lack of transparency around rate-setting. Increased transparency around how health plans establish reimbursement rates will allow the Division to better assess network adequacy and access to services, because insurers' reimbursement rates are closely correlated with provider willingness to participate in an insurer's network. If a health plan establishes rates for behavioral health services too low, fewer providers will participate in the network, leading to inadequate networks and access to services.

The carriers should also report on substance use disorder claims data separately from mental health claims data. Though substance use disorder and mental health conditions are often

grouped together under the "behavioral health" umbrella, SUD and mental health are vastly different areas of healthcare with different trends in claims denials and coverage restrictions. Recent reports from the Office of Patient Protection documented significant differences in SUD and mental health external review requests and results. See Office of Patient Protection Annual Report 2013 (issued Nov. 2014).

Finally, further clarification is needed around how plans report certain health care services that may be classified as "medical" claims, despite being a behavioral health service. For example, pursuant to the Massachusetts Mental Health Parity Law, neuropsychological testing and psychopharmacological services are considered "medical benefits," despite the fact that these services are often used in a behavioral health context. Due to this potential confusion, the carriers should clarify whether they are including NPT and psychopharmacological services in the medical claims data, and should disclose the specific data related to these services.

Importance of Investigations to Monitor Parity Compliance

Even with an improved annual parity certification process in place for health plans, it may be unlikely that self-reported data from health plans is the most effective method of uncovering parity non-compliance in plan practices. A 2013 report from the U.S. Department of Health and Human Services discussed a parity compliance study conducted by the University of Chicago, which reported significant difficulty analyzing compliance from self-reported health plan data.[1] That study suggests that compliance monitoring methods implemented by the California Department of Mental Health may be more effective in evaluating health plans' parity compliance:

> "Assessing compliance with NQTLs is difficult from document review and self-report from employers and plans. We assessed NQTLs through a detailed review of plan documents and responses from an extensive questionnaire administered to plans' MH/SUD and medical/surgical vendors. Our analyses uncovered numerous areas of concern which warrant more intensive investigation…[] Although we were able to identify some areas of non-compliant NQTLs, it is likely that our reliance on these limited sources of information drawn primarily from large employers' health plans resulted in a significant under-identification of non-complaint NQTLs. A careful, in-depth and longitudinal compliance monitoring of plans' NQTL policies and practices would be likely to turn up correctable problems that our analysis could not detect. The California Department of Mental Health's processes for monitoring plans' compliance with California's Mental Health Parity Act included onsite surveys, reviews of claims files, utilization review files, and internal management and performance reports. California was able to detect patterns in practice that could not be identified from the kind of reviews undertaken in the current

[1] See U.S. Department of Health and Human Services, *Consistency of Large Employer and Group Health Plan Benefits with Requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008*, (Nov. 2013).

> report: plans incorrectly denying coverage for ER visits; plans were failing to monitor whether beneficiaries had reasonable access to after-hours services; and plans failed to include required information in claim denial letters."[2]

In light of these findings, we urge the Division to utilize its investigatory authority to implement some of the methods used by the California Department of Mental Health to review plans' parity compliance both on paper and in practice.

* * *

In summary, these comments propose the following changes and amendments to the Division's current parity enforcement structure:

- Create a parity-specific complaint form to streamline the parity complaint process;
- Amend the annual parity "audit" to include a request for information relating to how carriers establish reimbursement rates;
- Amend the annual parity "audit" to request additional details on the volume and frequency of carrier denials at different stages of claims review, including pre-authorization;
- Request that carriers report on substance use disorder claims separately from mental health claims; and
- Employ the investigative and enforcement methods used by the California Department of Mental Health to more comprehensively review carriers' parity compliance.

Thank you for the opportunity to provide these comments. If you have any questions, please contact Laura Goodman at lgoodman@hla-inc.org, or (617) 275-2917.

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HEALTH CARE FOR ALL

ABH ASSOCIATION FOR BEHAVIORAL HEALTHCARE

NAMI National Alliance on Mental Illness Massachusetts

MOAR Massachusetts Organization for Addiction Recovery

[2] Id. at pp. 52-53.