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For information, contact:
Matthew Celentano, Executive Director

November 15, 2021

Lisa Larson
Regulations Manager
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

Re: Mental Health Parity Regulations – Comments on Revised Draft of Proposed Documents – Data Supplements

Dear Ms. Larson:

On behalf of the League of Life and Health Insurers of Maryland, Inc. (League), thank you for the opportunity to provide comments on the appropriateness of the proposed supporting documents for Draft COMAR 31.10.51. The League is the state trade association representing life and health insurance companies in Maryland.

The League appreciates the work the Maryland Insurance Administration (MIA) has done on this issue from the 2020 Session to date and the collaborative process throughout. The League would like to thank the MIA for its consideration of the comments made throughout the 2020 Session and corresponding workgroups including the industry. While the process has addressed some of the questions and concerns we raised, the discussion still leaves a number of concerns for League members.

The League still has strong concerns about the proposed additional data supplements.

As you are well aware, the Federal landscape has dramatically shifted in recent months due to the passage of the Consolidated Appropriations Act (CAA). Carriers are still receiving guidance regarding the nature and depth of documents required to support an NQTL analysis and having a divergent approach could have harmful results. The Department of Labor (DOL) is **currently** performing a significant number of audits that will culminate in a Congressional report and any findings of non-compliance. The DOL has committed to releasing guidance which will address the same issues covered in the data supplement templates such as documenting information for the in-operation analyses.

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Ultimately, a patchwork of reporting templates across states will have no benefit to regulators and will present significant undue compliance challenges for carriers across the country. Carriers would rather the MIA choose the DOL's proposed tool to ensure consistency, especially as other states are beginning to have similar conversations. Carriers also believe that if a state goes further than the DOL tool, this will require additional resources that might have otherwise been used for innovation to improve behavioral health outcomes for consumers.

We have repeatedly heard from stakeholders that we cannot wait for action from the Federal government, but the reality is that the Federal authorities have sped up their communication in recent months. and we do not believe it to be accurate to say we cannot wait for the Federal government to catch up – the CAA raised the bar for federal parity requirements such that the agencies now follow state laws that included step-wise NQTL requirements like those in Connecticut or New Jersey. It is also our understanding that continued guidance and templates could be available as early as this coming spring.

DOL Secretary Walsh stated that from April 9, 2021 to June 24, 2021, DOL issued 74 letters to plans and issuers, requesting documentation of NQTL parity analyses for approximately 160 separate NQTLs. In response to these requests, 22 plans and issuers have so far produced comparative analyses covering approximately 41 NQTLs. To date, DOL has issued seven letters noting insufficiency findings and/or requesting additional information. DOL plans to issue more insufficiency letters and new request letters on a rolling basis going forward. DOL, along with Health and Human Services and the Department of the Treasury, will submit the first report to Congress on the review of comparative analysis in December 2021. We only raise this to highlight the ongoing confusion about to what is required.

As to additional data supplement comments, League members contend that MHPAEA NQTL analysis using the 5-part CAA standard is federal law and plans will be able to provide these analyses to the MIA. However, the Maryland data supplements narrowly prescribe metrics and in-operation measures which contradict the MHPAEA DOL Tool Framework. For example, the DOL Toolkit states there are multiple frameworks for plans to compare reimbursement methodologies and outcome measures.

The Maryland proposed data supplement 4 constrains a payer to use Medicare as the external benchmark and removes all flexibility contained in MHPAEA for how a plan may demonstrate compliance with the NQTL. Whereas the DOL Toolkit allows for a myriad of ways to compare reimbursement rates, the Maryland approach seems to be narrowly focused on only one prescribed way of performing the analysis. In addition, the Maryland approach breaks down provider types in a more granular fashion than what is required in the DOL Toolkit. For example, Maryland sets forth four required provider categories: Primary Care Physicians; Non-psychiatrist Medical/Surgical Specialist Physicians; Psychiatrists; and, Non-psychiatrist Behavioral Health Professionals. The DOL Toolkit, however, only focuses on two such categories: MD specialists and non-MD specialists. Stratification beyond the DOL Toolkit creates significant additional burden for plans.

Finally, to address the MIA's question about the compliance cost impact, carriers believe that the costs to perform these unique state requirements which are neither required by Maryland state law nor Federal law could be significant and extremely burdensome, without any additional benefit to the state or consumers. The significant costs required to comply with additional data supplements will only serve to hamper health care affordability, as increased costs are filtered down to consumers.

Thank you, again, for the opportunity to provide this feedback on the mental health parity regulations and proposed supporting documents. Should you have any questions, please do not hesitate to contact me.

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Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Celentano", with a long horizontal line extending to the right.

Matthew Celentano
Executive Director
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