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June 10, 2020

Sent Via Certified and Electronic Mail

The Honorable Delores G. Kelley
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, Maryland 21401

Re: Senate Bill 586 of 2015 – Final Report of Survey Three Analysis

Dear Senator Kelley:

This letter is to notify you of the conclusion of the Maryland Insurance Administration (“MIA”)’s third survey of carrier compliance with federal Mental Health Parity and Addiction Equity Act (“MHPAEA”) and applicable state mental health and substance use disorder parity laws.

On September 18, 2019, the MIA submitted an interim report providing you with an update concerning the results of the third survey. The third survey was conducted to determine carrier compliance with parity laws concerning the imposition of nonquantitative treatment limitations (“NQTLS”). Under MHPAEA, a plan may not impose an NQTL with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or mental health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, then processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.¹ The MIA indicated in the interim report that at the conclusion of its investigation, it would submit the final results of the investigation into the United Healthcare entities.

Based on the review of the records provided, the MIA reached a consent order finding that Optimum Choice, Inc. and UnitedHealthcare of the Mid-Atlantic, Inc., violated §§ 19-710.1 and 19-729 of the Health General Article and United Healthcare Insurance Company violated §4-113(b)(5). Specifically, with respect to Optimum Choice, Inc. and UnitedHealthcare of the Mid-

¹ See 45 C.F.R. 146.136(c)(4)(i)

Atlantic, Inc., the Administration found that the companies violated section 19-710.1 of the Health General Article by (1) aggregating claims paid to dissimilar health care providers for the same CPT code to determine the average rate of reimbursement; and (2) for using a greater percentage of reduction for the reimbursement of mental health care providers than the percent reduction used for other healthcare providers using the same CPT code. Under the terms of the consent order, the companies are required to pay a total administrative penalty in the amount of \$122,500, and to make restitution payments to eligible members.

During this past legislative session, based on the impending conclusion of the third survey, the Administration worked closely with Delegate Ariana Kelly, Senator Malcolm Augustine, the carriers, and stakeholders on cross-filed bills designed to ensure ongoing compliance with parity laws based on new carrier reporting requirements. The MIA looks forward to working with stakeholders during the process of promulgating regulations to carry out the mandate by the General Assembly to ensure robust enforcement and compliance with parity laws.

If you have any questions, please do not hesitate to contact me.

Sincerely,

signature on original

Erica Bailey
Associate Commissioner for Compliance & Enforcement

Cc: Delegate Shane Pendergrass, Chair, House Health and Government Operations Committee
Lisa Simpson, Committee Counsel
Patrick Carlson, Committee Counsel for Senate Finance
Jay Coon, Deputy Commissioner