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Via email: [mhpaea.mia@maryland.gov](mailto:mhpaea.mia@maryland.gov)

Kathleen A. Birrane  
Commissioner  
Maryland Insurance Administration  
200 St. Paul Place  
Suite 2700  
Baltimore, Maryland 21202-2272

Re: Draft mental health parity reporting regulations with forms

Dear Commissioner Birrane:

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) extends our thanks to you, the Administration and the Mental Health Parity Workgroup for addressing the access and affordability problems with mental health and substance use disorder (MH/SUD) services in Maryland that underly the 2020 mandatory reporting law and the draft regulations with forms. The pandemic of course continues to exacerbate the access and affordability problems experienced by consumers enrolled in commercial insurance, increasing the need for targeted solutions that will work effectively in Maryland as soon as possible.

The HEAU supports the Administration's draft regulations and draft reporting forms because they promise to further the legislature's goal of obtaining actionable disclosures about how nonquantitative treatment limitations (NQTLs), as written and in operation in Maryland, may be contributing to the problems at the same time they may be violative of the federal Mental Health Parity and Addiction Equity Act of 2008 (the Parity Act). Effective February 10, 2021, the Parity Act requires all covered plans to conduct and regularly update their annual NQTL comparative analyses and to produce them to federal or state regulators upon request.

The more stringent state law requirements in Maryland's 2020 law, i.e., that *mandatory* reports with additional analytical information be filed in March 2022 and March 2024, do not alter the compliance obligations of any plan subject to the federal Parity Act. We believe the draft language of Regulation .04.A intends to make this point. The HEAU respectfully asks that the Administration clarify the draft language and offers this suggested language:

***04 Filing of Nonquantitative Treatment Limitation Comparative Analysis Report.***

*A. For the five health benefit plans with the highest enrollment for each product offered by the carrier in the individual, small, and large group markets, a carrier that delivers or issues for delivery a health benefit plan in the State shall file a comparative analysis for each nonquantitative treatment limitation specified in the form required by the Commissioner to demonstrate compliance with §§ 15-144 (c)-(e). An analysis report shall be filed with the Commissioner using only the form developed by the Commissioner and posted on the Administration's website.*

The HEAU also respectfully requests that the Administration clarify its intent regarding Section 12 of its draft NQTL Comparative Analysis Report form. We believe the MIA intends Section 12 (Restrictions that Limit Duration or Scope of Benefits for Services) to be the catch all section where carriers must report about any NQTLs other than those covered by the preceding Sections 1-11. The HEAU supports this intent and offers these clarifying suggestions:

*12. Any Other Restrictions that Limit Duration or Scope of Benefits for Services*

*In this section, report on any NQTLs not reported on in another section, that limit the duration or scope of benefits for services. Examples: Does the plan restrict the geographic location in which covered services can be received (e.g., service area, within the state, within the U.S.)? Does the plan restrict the type(s) of facilities in which members can receive covered services?*

Finally, the HEAU commends the Administration for its clear and specific draft Instructions for MHPAEA NQTL Analysis Report and Data Report. The HEAU believes the reports should explain the multiple ways plans are employing artificial intelligence (AI), particularly in claims processing, and whether AI as written or in operation is more restrictive for MH/SUD benefits. The concerns relating to AI may warrant an express mention in the Instructions; we trust the Administration will follow up regarding any reports that exclude information about a plan's use of AI relevant to NQTLs.

The recent amendment of the Parity Act and the recent enactment of Maryland's mandatory reporting law underscore how urgently federal and state regulators and legislators are seeking comprehensive and detailed NQTL information so they may take

remedial action, as appropriate. In addition, the focus on obtaining granular data about hotly debated barriers to network participation - reimbursement rate information and credentialing/application processes – may finally allow the Administration and the General Assembly to move beyond the long-standing impasse between providers and carriers caused by the scarcity of actual data about the Maryland market.

Thank you for your efforts, and for consideration of the HEAU's comments.

Sincerely,

*Patricia F. O'Connor*

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