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August 16, 2017

Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

ATTN: Darci Smith, Special Assistant – MHPAEA, Compliance and Enforcement

Dear Ms. Smith:

Thank you for the opportunity to provide questions for the Maryland Insurance Administration's (MIA) third market conduct survey regarding compliance with the Mental Health Parity and Addiction Equity Act (Parity Act). The Maryland Psychiatric Society, a medical specialty organization representing over 700 psychiatrists in our state, has fully endorsed the letter sent by Ellen Weber at the Legal Action Center. In addition, please find below our other proposed survey questions along with the rationale for inclusion.

NONQUANTITATIVE TREATMENT LIMITATIONS (NTQLs)

Question #1:

With respect to medical management policies, provide the following information for the most recent 12 month period for (A) all mental health medications as a group, (B) all addiction medications as a group, and for (C) all somatic medications as a group, each broken down into (1) branded prescriptions and (2) generic prescriptions:

- a. Number of prescription orders requested by pharmacists attempting to fill a prescription (received by any method, including computer, fax, and phone);
- b. Number of prescription orders requested and actually dispensed to patients as written where authorization or intervention by the prescriber WAS NOT required;
- c. Number of prescription orders requested and actually dispensed to patients as written where authorization or intervention by the prescriber WAS required;
- d. Number of prescription orders requested that were NOT dispensed as written where authorization or intervention by the prescriber WAS required;
- e. Percentage of prescription orders requested by pharmacists that DO and DO NOT require a prior authorization;
- f. Number and percentage of total authorization requests approved and denied; and
- g. For those prescription orders requiring prior authorization and eventually dispensed to the patient as written, the delay (measured as number of days between request date and dispense date) in receiving the medications, reported as interquartiles (25th percentile, 50th percentile [median], 75th percentile).

Rationale:

Our members report a significant increase in the use of medical management procedures, such as prior authorizations, for psychiatric and addiction medications, even for medications that are generic or inexpensive. These medical management policies create barriers to timely access to medications, and may result in worse outcomes. Patients who have trouble getting prescriptions filled may need to make multiple phone calls, faxes, and trips to the pharmacy, which often results in periods without medication. Medical management policies, as written and in operation, are NQTLs that must not be more burdensome for people with mental health and/or substance use condition than for people with medical and/or surgical conditions.

Question #2:

For each category of provider (mental health providers, addictions providers, somatic providers), broken down into subcategories of prescribers and nonprescribers:

- a. provide the number of providers listed in the electronic network provider directory who have submitted at least one (1) outpatient office visit (CMS Place of Service code = 11) claim for at least one of any of the following CPT codes in the most recently available 6-month period: 99201, 99202, 99203, 99204, 99205, 90791, 90792;
- b. provide the number of listed providers who have submitted none (0) of the above-described claims in the most recently available 6-month period;
- c. provide the number of in-network and out-of-network claims submitted for outpatient services; and
- d. provide the number of in-network and out-of-network claims paid for outpatient services.

Rationale:

“Secret shopper” surveys have shown that a large proportion of mental health providers listed in the provider directory are not available to new patients; however, it is not known if there are similar results for addiction and somatic providers. This question will give an indication whether the networks are similarly deficient for other types of care.

If listed providers have submitted zero “new patient” claims over a six-month period, then they can reasonably be designated as unavailable to new patients (though they may continue to submit claims for established patients). Inpatient and E.R. claims should be excluded, as these providers do not provide ongoing care in these sites. CPT codes for “new patients” would include 99201, 99202, 99203, 99204 and 99205 for all provider categories, and additionally include 90791 and 90792, which are codes for initial psychiatric interviews for prescriber and nonprescriber providers (psychiatrists use a mix of 90792 and the 9920X codes).

An analysis of these results will provide an estimate for the actual availability of providers to patients who need an appointment with a new provider. If MH/SUD providers are less available to new members than somatic providers, this may be evidence of a Parity Act violation. Additionally, high proportions of out-of-network claims suggest the lack of adequate access to in-network outpatient services.

Along with the two survey questions above, we offer the following recommendations related to the MIA role in ensuring the Parity Act is fully implemented in our state.

Recommendation #1

We encourage MIA to regularly monitor all commercial plans for parity compliance. This could include an annual reporting mechanism (such as a consumer report card), improved solicitation from consumers of suspected violations, and/or parity accreditation from an accreditation organization.

Recommendation #2

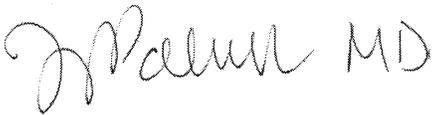
We suggest that MIA add checkboxes for Mental Health Parity, Substance Use Disorder Parity, and Network Adequacy on its consumer complaint form. The fact that parity violations as written were found and resolved during the second survey process suggests that unless there is effective ongoing oversight, plans may continue to violate the Parity Act either as written or in operation, whether intentionally or inadvertently. We note that the consumer complaint form still lacks a checkbox for parity violations even though we identified this deficiency to MIA two years ago.

Recommendation #3

Remove the “evidence of harm to consumers” threshold as a requirement for sanctions to be issued. The Parity Act does not require a test of demonstration of harm to consumers in order to be a violation. Any limitations or delays in access to care places consumers at risk of escalating adverse outcomes, in part contributing to the rising rates of suicides and opioid deaths. Requiring carriers to document evidence of harm in order to be sanctioned does not incentivize them to do so, and we believe that placing the burden of determining harm on MIA or MDH would be poor policy.

Thank you for considering our views. Please contact Heidi Bunes at heidi@mdpsych.org or 410-625-0232 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "J. Palmer MD".

Jennifer T. Palmer, M.D.
President