August 3, 2020

Katie Dzurec, Chair
Jane Beyer, Vice Chair
Mental Health Parity and Addiction Equity Act Working Group
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, DC 20001

Dear Chair Dzurec and Vice Chair Beyer:

The undersigned organizations strongly support the ongoing work of the Mental Health Parity and Addiction Equity Act (MHPAEA) Working Group of the National Association of Insurance Commissioners (NAIC) B Committee (Working Group). By creating a space in which state regulators can share experiences, best practices and resources, the Working Group is advancing mental health and substance use disorder parity to ensure that no patient experiences unlawful coverage discrimination. We are reaching out to encourage you to support a valid test for issuers to demonstrate parity compliance to help increase access to evidence-based care for mental health and substance use disorder (MH/SUD) treatment.

A critical component of the federal MHPAEA is its rules for quantitative treatment limitations (QTL), which govern session and day limits, and financial requirements (FR), which govern patient cost-sharing. For both QTLs and FRs, the MHPAEA implementing regulations at 45 CFR 146.136(c)(3) specify the calculations that must be done to determine compliance.

Specifically, MHPAEA prohibits a plan or issuer from imposing a QTL or FR applicable to MH/SUD benefits in any classification that is more restrictive than the predominant QTL or FR of that type that is applied to substantially all medical/surgical benefits in the same classification. The regulations specify that a QTL or FR is considered to apply to "substantially all" medical/surgical benefits if it applies to at least two-thirds of expected plan payments of medical/surgical benefits in the classification.

The regulations further specify that, if the type of QTL or FR meets the "substantially all" test, the level of a QTL or FR that is considered the "predominant" level of that type is the level that applies to more than half of expected plan payments of medical/surgical benefits in that classification subject to the QTL or FR. Given these rules, it is impossible for an issuer to demonstrate compliance for a QTL or FR without calculating the level of the QTL or FR and to which benefits it applies.

We strongly support a requirement for issuers to demonstrate compliance prospectively to help ensure patients receive the benefits of their premium dollars. Whether this is in advance or at the time of the form and rate filing process, because MHPAEA is a comparative law, issuers would help themselves and regulators in completing the comparative analysis in advance of offering plans to ensure that they are in compliance with the MHPAEA and applicable state law.

One tool to do this and make all the necessary calculations required by the regulations is the QTL/FR template and instructions brought to the Working Group by the Pennsylvania Insurance Department. Other tools may have different layouts or interfaces, but we believe it is essential to ensure that any valid alternative approach must capture the requirements of the federal MHPAEA regulation. The Working Group will greatly assist regulators' efforts across the country by highlighting this existing tool that has already been validated by state regulators for testing QTL/FR compliance with MHPAEA. It will be an enormous advantage for regulators to have advance comparative data rather than only market conduct exam data, which can be two or three years in arrears. We understand that issuers want to continue the status quo. Maintaining the status quo, however, is not helping anyone improve access to MH/SUD benefits. This is an important reason why regulators should be skeptical of insurer-developed tools that may not capture all the needed information, and which require duplicative work by regulators to validate.

Problems with QTL and FR compliance are not theoretical. Numerous market conduct examinations have found incorrectly applied QTLs and FRs that affect patients' ability to receive the MH/SUD care they need – either because coverage is arbitrarily limited with quantitative limits or because patients cannot afford to pay excessive out-of-pocket costs that are not required for comparable medical or surgical benefits. We strongly support a clear test for issuers to demonstrate parity compliance to help increase access to evidence-based care for MH/SUD treatment.

We urge you to make this tool available to health insurance regulators across the country, further encourage the Working Group to move forward with efforts to develop a non-quantitative treatment limitations (NQTL) template, and welcome the opportunity to support your efforts.

If you have any questions regarding these comments, please contact Daniel Blaney-Koen, JD, Senior Legislative Attorney, AMA Advocacy Resource Center at daniel.blaney-koen@ama-assn.org and David Lloyd, Senior Policy Advisor, the Kennedy Forum, at david@thekennedyforum.org.

Sincerely,

American Academy of Addiction Psychiatry
American Academy of Child and Adolescent Psychiatry
American Foundation for Suicide Prevention
American Medical Association
American Psychiatric Association
American Society of Addiction Medicine
Mental Health America
National Alliance on Mental Illness
The National Council for Behavioral Health
National Health Law Program
Shatterproof
The Kennedy Forum