HANYS®
Always There for Healthcare

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Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Lisa M. Gomez
Assistant Secretary
Employee Benefits Security
200 Constitution Ave NW
Suite S-2524
Washington, DC 20210

Danny Werfel
Commissioner
Internal Revenue service
Internal Revenue Service Building
1111 Constitution Ave.
NW Washington, D.C.

Re: REG-120727-21 Requirements related to the Mental Health Parity and Addiction Equity Act (CMS-9902-P)

Dear Administrator Brooks-Lasure, Assistant Secretary Gomez and Commissioner Werfel:

The Healthcare Association of New York State, on behalf of our member nonprofit and public hospitals, nursing homes, home health agencies and other healthcare providers, appreciates the opportunity to comment on the proposed changes to regulations implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

Individuals seeking behavioral health services have long experienced disproportionate barriers and obstacles relative to those seeking medical and surgical services. While New York state and the federal government have taken steps to remediate this problem, treatment obstacles for mental health conditions and substance use disorders and inconsistencies with the implementation of parity laws persist.

HANYS applauds the departments for their efforts to enhance and enforce behavioral health parity requirements. Unnecessary, complex administrative processes imposed by insurers continue to pull clinicians away from patient care and delay access to services. Without timely care, people living with behavioral health conditions often needlessly enter into crisis and require hospitalization. By

restricting benefits for mental health and substance use disorder services, health plans are denying life-saving care, imposing incalculable harm on patients and their loved ones and actively exacerbating health inequities.

Our comments on specific proposals are below.

Non-quantitative treatment limitations

While NQTLs were initially established to address concerns related to fraud, waste and abuse, they overwhelmingly restrict access to behavioral health services. The proposed rule includes important clarifications so that the federal departments and associated state regulators, such as the New York State Department of Financial Services, can better enforce existing regulations on the use of NQTLs, while bringing much-needed practical clarity for market participants (i.e., plans, issuers and providers) and patients alike.

HANYS appreciates the proposal to add additional examples to the regulation's illustrative, non-exhaustive list of NQTLs. Including prior authorization requirements as an example of a utlization management standard limiting or excluding benefits based on medical necessity or medical appropriateness is extremely important. HANYS members regularly find that plans require significantly more stringent medical necessity requirements for behavioral health services.

HANYS strongly supports the proposals to ensure that plans only establish NQTLs for behavioral health services that are no more restrictive than they would be for medical/surgical benefits, that NQTLs are designed according to specific standards and that payers collect and evaluate data to ensure compliance with such standards. We also recommend that CMS assess the impact NQTLs have on access to all services.

Network adequacy

Network adequacy has been a major obstacle to care for individuals with behavioral health needs. While limited provider networks can result in barriers to care in any field of medicine, they are particularly acute in behavioral health.

HANYS agrees that the current standards governing how a provider network is constructed and defined limit the availability of benefits. We support the proposal to subject network composition requirements to those applicable to the NQTLs as set forth in the proposed rule. However, we acknowledge that there are significant shortages in the behavioral health workforce that may challenge plans and issuers in establishing adequate networks. We urge the administration and Congress to invest resources to support behavioral health workforce development so that the promise of parity can be fully realized.

Prohibition on discriminatory factors

HANYS supports the departments' proposal prohibiting a plan or issuer from relying on any factor or evidentiary standard if it discriminates against MH/SUD benefits. This often occurs when plans/issuers rely on and perpetuate historic data or discriminatory structures as the basis for how they have designed and applied an NQTL or apply metrics that have not been subject to MHPAEA.

Comparative analysis

HANYS supports the proposed rule's implementation of the comparative analysis requirement added to MHPAEA by the Consolidated Appropriations Act of 2021. The departments propose that plans and issuers collect and evaluate outcome data to measure the impact of NQTLs on access to mental health and SUD benefits compared to medical/surgical benefits to demonstrate parity and would require that plans provide these comparative analyses to the departments or applicable state

authority upon request. This data should greatly assist federal and state regulators in enforcing parity requirements and achieving improved compliance with respect to NQTLs.

Self-funded plans

Under the Health Insurance Portability and Accountability Act of 1996, sponsors of self-funded, non-federal governmental health plans may elect to exempt those plans from parity in the application of certain limits to MH/SUD benefits (including requirements of MHPAEA). However, the Consolidated Appropriations Act of 2023 eliminated this opt-out. HANYS strongly supports the proposed language implementing the elimination of self-funded non-federal government plans' ability to opt out of MHPAEA.

We urge HHS to prioritize robust MHPAEA compliance reviews of these plans as soon as their opt-out is no longer valid. This is particularly important given that many of these plans opted out of MHPAEA specifically because they wished to continue discriminatory treatment limitations on MH/SUD benefits. HHS should immediately request plans' NQTL compliance analyses to ensure they are taking the necessary steps to comply with MHPAEA.

Parity in Medicare

HANYS is encouraged by CMS' latest efforts to address behavioral health parity in Medicare through the proposed 2024 Physician Fee Schedule. As shared in our comments, expanding reimbursement to a broader range of providers and settings and clarifying that SUD services are covered in intensive outpatient, partial hospitalization and residential treatment programs will help tremendously.

However, recent studies by Health Affairs, the U.S. Senate Finance Committee and the Kaiser Family Foundation demonstrate that CMS could further improve behavioral health parity in Medicare Advantage plans. For example, KFF reported that approximately 98% of beneficiaries were in plans that required prior authorization for these services in 2022. CMS also has a quantitative treatment limit in place for behavioral health services when no such limit exists for medical/surgical care — the 190-day lifetime limit for inpatient behavioral psychiatric admission. HANYS urges CMS to continue identifying and addressing ways Medicare standards can also comport with MHPAEA.

Request for information

The departments request feedback on how third-party administrators "could be further incentivized to facilitate compliance with MHPAEA." While HANYS agrees with the departments, rather than "incentivize" TPAs to comply with MHPAEA, HANYS urges the deparments to explore and use all possible avenues to hold both self-funded plan sponsors and TPAs accountable for MHPAEA compliance. HANYS asks that the deparments require plan sponsors to insert MHPAEA compliance provisions into their contracts with TPAs.

Thank you for the opportunity to provide feedback on potential modifications to the mental health and substance use disorder parity regulations. If you have questions, please contact Victoria Aufiero, vice president, insurance, managed care and behavioral health, at 518.431.7889 or vaufiero@hanys.org or Sarah DuVall, director, behavioral health, at 518.431.7769 or sduvall@hanys.org.

Sincerely,

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President