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April 12, 2024

Adrienne A. Harris
 Superintendent
 New York State Department of Financial Services
 One Commerce Plaza
 Albany, NY 12257

Re: Network adequacy standards for behavioral health services

Dear Superintendent Harris:

On behalf of the Healthcare Association of New York State's member nonprofit and public hospitals, health systems, and post-acute and continuing care providers, we appreciate the opportunity to comment on the state's proposed behavioral health network adequacy and access regulations (Title 11 NYCRR Part 38).

HANYYS applauds DFS for its efforts to enhance and enforce behavioral health parity requirements. We are encouraged by DFS' expanded focus on reducing and eliminating barriers to care.

HANYYS strongly supports the proposed requirements for payers to:

- cover out-of-network services when patients cannot receive services within designated timeframes, regardless of whether such benefits are included in an insured's coverage;
- charge only the in-network cost-sharing amount for OON services when the designated timeframes cannot be met with in-network providers, and apply such payments to the insured's out-of-pocket maximum for participating providers;
- establish a protocol for continually monitoring and assessing network capacity;
- certify compliance with network adequacy requirements annually; and
- establish an adequate network of behavioral health services.

Network adequacy is also challenged by payer utilization review and claims processing practices. HANYYS members regularly find that health plans impose significantly more stringent medical necessity requirements for behavioral health services, compared to physical healthcare services. HANYYS urges DFS to thoroughly evaluate such practices and enforce existing utilization review and payment requirements.

The network adequacy regulations are urgently needed and greatly appreciated

During the COVID-19 pandemic, many people experienced high levels of distress and mental health symptoms of what is now known as long COVID.¹ A 2023 New York Health Foundation analysis found that rates of depression and anxiety among New Yorkers remain highly escalated post-pandemic, disproportionately impacting certain populations.²

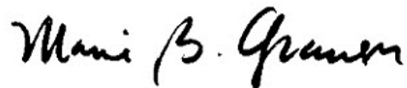
Lack of insurance coverage and high cost are major barriers to care. Twenty-three percent of respondents to a recent Kaiser Family Health Foundation survey indicated they skipped or delayed therapy due to cost.³

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 lifesaving care, imposing incalculable harm on patients and their loved ones, and actively exacerbating health inequities.

HANYS appreciates DFS' proposed actions to address the behavioral health crisis. We look forward to working with the agency as this regulation is implemented.

If you have questions, contact Anna Sapak, manager, insurance and managed care, at 518.431.7871 or asapak@hanys.org, or Sarah DuVall, director, behavioral health, at 518.431.7769 or sduvall@hanys.org.

Sincerely,



Marie B. Grause, RN, JD
President

¹ Substance Abuse and Mental Health Services Administration (June 2023). Advisory: Identification and Management of Mental Health Symptoms and Conditions Associated with Long COVID. <https://store.samhsa.gov/product/advisory-identification-and-management-mental-health-symptoms-and-conditions-associated>

² New York Health Foundation (June 2023). Treading water: The ongoing impact of the COVID-19 pandemic on New Yorker's mental health. <https://nyhealthfoundation.org/resource/treading-water-the-ongoing-impact-of-the-covid-19-pandemic-on-new-yorkers-mental-health>

³ Kaiser Family Foundation (2022). How does use of mental health care vary by demographics and health insurance coverage? <https://www.kff.org/mental-health/issue-brief/how-does-use-of-mental-health-care-vary-by-demographics-and-health-insurance-coverage>