September 3, 2019

The Honorable Alex M. Azar II, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244-8013

Re: Proposed Collection; Document CMS-10556; Medical Necessity and Contract Amendments Under Mental Health Parity

Dear Secretary Azar and Administrator Verma:

The National Health Law Program (NHeLP) appreciates the opportunity to comment on the CMS's proposed information collection activities covering medical necessity and contract amendments under Mental Health Parity for Medicaid. For over fifty years, NHeLP has worked to improve health access and quality through education, advocacy and litigation on behalf of low-income and underserved individuals. Given both our history and our decades of work ensuring access to behavioral health services in Medicaid, we strongly support CMS in continuing to collect this information for regulated entities.

Parity is A Crucial Component of Medicaid

Medicaid is the leading payer for mental health services in the United States and also plays an important role in providing coverage and access to substance use disorder (SUD) services for millions of low-income individuals.[1] In 2017, approximately 19.7 million people above the age of 12 had an SUD in the past

year and nearly one in five adults had experienced a mental health condition in the past year.[2] In 2015, Medicaid paid for 25% of all mental health spending and 21% of total spending on SUD in the United States.[3]

Despite the prevalence of behavioral health conditions, there has been a tendency among both private and public payers to provide more comprehensive coverage for medical and surgical benefits than for mental health and SUD benefits. Congress has passed two Acts mandating that coverage for mental health conditions that is on par with coverage for other health conditions.[4] The parity requirements set forth in these Acts also apply in Medicaid.[5]

Since CMS first promulgated regulations implementing the parity requirements in Medicaid in 2016, many states have reviewed the components of their Medicaid programs for compliance with the law pursuant to 42 C.F.R. § 438.920, and made adjustments and corrections as needed.[6] Implementation has helped states to ensure that they are providing appropriate access to critically needed behavioral health services to Medicaid beneficiaries in their states. It has also allowed CMS to oversee states' implementation and provide guidance and technical assistance as needed.

The Current Information Collection Activities are Well-Designed to Ensure that States and CMS Have the Information They Need to Enforce Parity

The current collection activities have been in place since the final rule was promulgated in 2016. They require that the medical necessity determination criteria for behavioral health services used by Medicaid Managed Care entities or other utilization management

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[1] *See* CMS, *Behavioral Health Services*, https://www.medicaid.gov/medicaid/benefits/bhs/index.html (last accessed August 14, 2019).

[2] Jonaki Bose *et al.,* Sub. Abuse & Mental Health Serv. Admin., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2017 National Survey on Drug Use and Health* 2 (2018), https://store.samhsa.gov/system/files/sma18-5068.pdf.

[3] Julia Zur, *et al.*, Kaiser Family Found., *Medicaid's Role in Financing Behavioral Health Services for Low-Income Individuals* 7 (2017) (analysis of the Substance Abuse and Mental Health Services Administration 2015 National Survey on Drug Use and Health), http://files.kff.org/attachment/Issue-Brief-Medicaids-Role-in-Financing-Behavioral-Health-Services-for-Low-Income-Individuals.

[4] *See* Mental Health Parity Act of 1996, Pub.L. 104–204; Mental Health Parity and Addiction Equity Act of 2008, 29 U.S.C. § 1185a.

[5] *See* Final Rule: Application of Mental Health and Substance Abuse Disorder Parity Requirements to Medicaid Managed Care, CHIP, and Benchmark Coverage, 81 Fed. Reg. 18389 (Mar. 30, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-03-30/pdf/2016-06876.pdf.

[6] *See, e.g.,* Cal. Dept. Health Care Servs., *Mental Health Parity Compliance Summary* (2018), https://www.dhcs.ca.gov/formsandpubs/Documents/MHParityComplianceSummary5.18.18.pdf; Mo. Dept. Social Servs., *MHPAEA Report for the Centers for Medicare & Medicaid Services* (2018), https://dss.mo.gov/mhd/mc/pdf/mental-health-parity-compliance.pdf; TennCare, *Mental Health Parity* (2017), https://www.tn.gov/content/dam/tn/tenncare/documents2/MentalHealthParity.pdf.

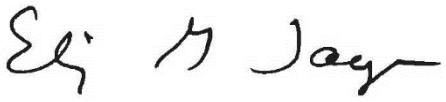
organizations under contract with the state be made available to potential participants, beneficiaries, or contracting providers upon request.[7] Making this information available is important for two reasons. First, it allows providers, beneficiaries, and their advocates to understand the criteria used to review requests for behavioral health services, so that they can tailor their requests to the most appropriate type and scope of services. Second, it also allows stakeholders to engage with plans and utilization management organizations to ensure that their criteria are consistent with the most up-to-date clinical research and standards of good medical practice.[8]

The collection also requires both that states include contract provisions in Medicaid Managed Care contracts to comply with parity requirements, and that those contract provisions be available to CMS.[9] These requirements facilitate states' compliance oversight role over managed care entities to whom they have delegated parity responsibilities. In addition, the collection makes the contract provisions and information collected pursuant to them available to CMS, so that CMS can use the information collected and reported in its oversight over State Medicaid managed care programs. If CMS considers changes to the current scheme in the future, we recommend that it aim to increase the transparency about parity for beneficiaries. Such changes should not pose any burden on states of Medicaid Managed Care plans considering that they are required to assess parity regardless.

Conclusion

We appreciate the opportunity to provide comments on the proposed collection. We support CMS in continuing to collect medical necessity and contract information to ensure compliance with Medicaid mental health parity rules. If you have any questions, please contact Abbi Coursolle at (310) 736-1652 or via email (coursolle@healthlaw.org).

Sincerely,



Elizabeth G. Taylor
Executive Director

[7] *See* 42 C.F.R. §§ 438.915(a), 440.395(c)(1), 457.496(e)(1).
[8] *Wit v. United Behavioral Health Care v. United Behavioral Health Care*, illustrates the need for high levels of transparency so that improper standards, including standards that do not conform with accepted standards of care and/or are driven by financial purposes, can be identified and challenged if necessary. No. 14-cv-02346, 2019 WL 1033730 (N.D. Cal. Mar. 5, 2019 at *15.
[9] *See* 42 C.F.R. § 438.6(n).