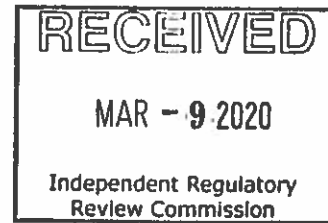




Drug & Alcohol Service Providers Organization of Pennsylvania

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Sandra L. Ykema, Department Counsel
1341 Strawberry Square
Harrisburg, PA 17120

Richard L. Hendrickson, Department Counsel
1341 Strawberry Square
Harrisburg, PA 17120

RE: Proposed Regulation No. 11-258, Mental Health Parity Analysis Documentation

On behalf of the Drug and Alcohol Service Providers Organization of Pennsylvania, I am writing to thank the Insurance Department for recent efforts to gather consumer and treatment program input and offering to hold stakeholder meetings on the enforcement of the federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

We also note that the Department is auditing the insurers on compliance with this important law and has identified many serious problems. (For example, the recent United Healthcare Market Conduct Audit found more violations than claims for substance use disorder treatment.) We look forward to reviewing the additional audits as they become available.

These market conduct audits and regulations are critically important to addressing Pennsylvania's deadly alcohol and drug epidemic.

We note that the policies under review here are purchased by individuals and/or employers and for this reason, should be transparent and accountable to both. Failure to provide needed addiction treatment results in increases in health care utilization, increases in crime and devastation to families. In addition, costs of untreated addiction end up shifted to counties and public funding.

In preparation for comments on the proposed regulation, we started by reviewing the content of the IRRC Regulatory Analysis Form.

Item (7) of this Form requires that the purpose of the regulation be explained. *"The proposed rulemaking will require an insurer to: (1) attest to documented analyses of its efforts to comply with MH/SUD parity requirements; and (2) make available for review the documentation necessary to demonstrate compliance with MH/SUD parity requirements."*

We recommend that the rule be strengthened and require that any attestation provided be signed by an officer of the company. In addition, parity compliance documents required here must be made easily available to the public.

Item (10) of the IRRC Regulatory Analysis Form notes that the Department has found administering MHPAEA compliance administratively challenging and that regulation is needed to provide more specific guidance. Our own brief review of the parity compliance audits to date confirms this.

Most importantly, in Item (10), the Insurance Department notes that consumers will benefit from this regulation and that because of the regulation, consumers will *“(1) have clear information about their coverage; and (2) receive the coverage promised in their insurance policies and required by law.”*

This kind of transparency is indeed a proper role for government. However, we worry that this regulation fails to achieve either of these goals. We recommend that the regulation be strengthened to require that the insurer notify subscribers of the addiction treatment coverage available to them and how to access it. Without such clarity, families desperate for help will continue to be unable to understand their coverage and obtain help.

Item (14) requires the Department to *“Describe communications with and solicitation of input from the public, any advisory council/group, small businesses . . .”* and others affected. However, the enumeration of groups consulted here appear to all be representatives of insurance carriers and insurers. It is imperative that input be received from people in recovery, addiction treatment programs and families, many of whom have lost loved ones to this illness while battling to access obscure insurance coverage.

Item (30) requires the Department to describe how it will continue to review the regulation for effectiveness. We recommend that the Department meet, at least annually, with people in recovery, addiction treatment programs, families and others to assess the effectiveness of the regulation.

In the proposed Rulemaking, External Comments section, we note that the Department circulated *“an exposure draft substantially similar to this proposed rulemaking. . .”* The exposure draft was shared with the Insurance Federation of Pennsylvania and other health insurers. The Department goes on to write that *“Those comments were carefully considered in the drafting of this rulemaking.”* In the future, we recommend that the Department share any drafts with people in recovery, addiction treatment programs, families and also, other affected departments of government such as: the Department of Drug &

Alcohol Programs, the Department of Health, the Department of Corrections, the Department of Labor & Industry, etc.

Moving on to the proposed regulation itself:

Section 168.1 Definitions. We are puzzled that the regulation takes the narrowest possible approach and limits its reach to commercial insurance policies – i.e. – to policies only affecting 24% of the citizens of Pennsylvania.

The Commonwealth has broad authority to regulate integrated delivery systems and utilization review entities. This authority allows the Commonwealth to protect consumers from parity violations at the hands of these systems. We see no reason to give them a free pass here and urge the Department to include them in this regulation.

In addition, we wonder why the draft was not reviewed and written in coordination with the Bureau of Managed Care/Department of Health and the Department of Human Services. Although the insurance policy may reflect compliance, its purpose can easily be thwarted by these subcontracted entities.

Section 168.3 Annual Attestation. As noted previously, the regulation should require that the attestation be signed by an officer of the company.

Section 168.4 Analysis and Disclosure Documentation. Here, the company is required to perform and document a baseline parity analysis to demonstrate compliance with MHPAEA. However, under the proposed rule, this critically important information will not be made available to the public and will be available to the Department only by request. Section 168.4(d)(1) We are puzzled about the need for an explicit grant of access when all documents have long been available to the Commonwealth regarding HMOs, PPOs and other health insurance products. Are we to infer that the Commonwealth has not previously taken advantage of its absolute statutory right to all of a health insurer's books and records, when it comes to parity compliance?

Thank you for the opportunity to comment.

Sincerely,



Deb Beck, President/DASPOP
dasdbeck@hotmail.com

cc: Bridget E. Burke, Regulatory Coordinator
David Sumner, Executive Director IRRC
DASPOP members