arizona complete health
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VIA ELECTRONIC MAIL

Dr. Leanette Henagan, DBH, LCSW
Behavioral Health Program Administrator
Arizona Department of Insurance and Financial Institutions (DIFI)
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007
Public_comments@difi.az.gov

Re: Comments on proposed mental health parity rulemaking

Dear Dr. Henagan:

Thank you for allowing the opportunity to provide feedback on the proposed rulemaking related to Jake's Law (SB 1523, Laws 2020, Ch. 4). Jake's Law codified the federal Mental Health Parity and Addiction Equity Act ("MHPAEA") into Arizona law, prohibiting health insurers from imposing less favorable benefit limitations on mental health and substance use disorder ("MH/SUD") benefits than those imposed for medical and surgical ("Med/Surg") benefits. Included within SB 1523, DIFI is required to promulgate rules to operationalize the MHPAEA by setting standards to measure health insurers' compliance with MHPAEA's mandates and by developing forms and worksheets for health insurers to report the specific items related to the MHPAEA.

Arizona Complete Health (AzCH) submitted comments to the initial proposed rulemaking on March 12, 2021 outlining our concerns. Primary among them was a request to mirror state requirements more closely to the federal requirements for MHPAEA. As a health plan serving Marketplace members in multiple states, it is critical that we align as closely to the federal requirements as possible. This provides consistency and clarity to our membership enrolled in Ambetter, our Marketplace program. It also provides greater ease of monitoring and tracking to ensure health plan compliance to one set of rules, rather than multiple. Accordingly, we are very pleased to see that this proposed rulemaking does achieve that result of more closely aligning to the federal requirements. We firmly believe that this will also achieve the important goal of greater transparency when we are all operating under the same rules.

Below are AzCH comments for this rulemaking package.

***Definitions*:**

- "HHS MHPAEA Tool." Please clarify whether this is referencing the DOL Self-Compliance Tool. We think this was the intent, but it was not clear.
- "Medical necessity" or "Medically necessary." It does not seem necessary to create a new

definition for the purposes of this rulemaking. This proposed definition may conflict with existing definitions already in use by the plans.

- "Med/Surg Benefits" and "MH Benefits." These definitions are silent as to the definition of a M/S or MH/SUD condition. It may be useful to clarify the state's intent to enforce parity regarding I/DD conditions (among other diagnoses), noting that these conditions are excluded from the definition for MH/SUD for parity purposes for AHCCCS programs. (https://www.azahcccs.gov/Resources/Downloads/GovernmentalOversight/ArizonaMHPAEAReport.pdf)

R20-6-1302. Medical Necessity Criteria and NQTL Reporting

- (B) Health plans subject to reporting. It appears that the following sentence and paragraph (D) clarify that a separate report for each health plan is only required to the extent that the information to be reported varies. Further clarification of what it means to "vary" may be useful. It may also be useful to divide between FR/QTL reporting (may vary significantly by plan) and NQTL reporting (likely to be substantially the same across plans and products).
- Under (B), we also recommend the following language additions (in red):
    - 1. The health plan offers MH and/or SUD benefits in addition to Med/Surg benefits.
    - 2. The health plan offers MH and/or SUD benefits in at least one of the following…
- (E) Triennial Reports. Triennial reports on "all" NQTL types is simply not feasible (see further comments on this to Exhibit A) and may be overwhelming regarding reporting on greater than four to six different NQTL types. Our recommendation is annual or biannual reporting based on an evolving list of required NQTL types.

Exhibit A, Part II: Medical Necessity Criteria

- Reporting. It is not clear why a separate reporting structure should be required for Medical Necessity criteria. Federal parity guidance treats the process to develop medical necessity criteria the same as any other NQTL type.

Exhibit A, Part III: Identify All NQTLs

- "Identify all NQTLs that are applied to MH/SUD benefits and all NQTLs that are applied to Med/Surg benefits for the plan and reporting year identified in Part I."
    - This is not feasible, given the unbounded scope of the definition for an "NQTL." Federal and state regulators have identified a wide range of different NQTL concepts that have evolved over time and often overlap. Regulators have reserved the right to continue to identify new types of NQTLs. Federal investigations have also required NQTL analyses of specific plan language without identifying the specific NQTL type in question. The examples listed in the federal regulation are clearly noted to be examples and are framed too broadly to be interpreted to be intended to refer to discrete individual limit types (e.g., "(H) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.")
    - To create a manageable scope of reporting for plans to develop and for state regulators to review, it is necessary to stipulate a specific list. This approach will also enhance consistency of enforcement among plans (since plans will not choose between inviting enforcement by analyzing a given NQTL type versus avoiding enforcement by remaining silent).

    - We recommend that the state do so through sub-regulatory guidance to retain flexibility to identify new NQTL types as enforcement priorities evolve.
    - We respectfully request at least 6 months' notice of the list to be required for the reporting period to allow ample time for plans to develop thoughtful and thorough compliance analyses.

Exhibit A, Part IV(A): Inpatient, In Network

- This framework does not align with the federal 5-step framework required by DOL and HHS under the Consolidated Appropriations Act and related guidance. We recommend that the federal 5-step framework be adopted to enhance consistency with federal enforcement and to reduce the burden of developing separate reporting for federal and state regulators.

We appreciate being your partner in promoting transparency related to MHPAEA and how it is implemented. More than ever, MH/SUD treatment services are critical to the overall health and wellbeing for Arizonans. Thank you for all your efforts to support parity and for the opportunity to provide feedback to this important initiative. Please do not hesitate to reach out to me should you need any further information.

Sincerely,

/s/

Monica H. Coury
Vice President, Legislative and Government Affairs

cc: Cheyenne Ross, Vice President, Compliance