ARIZONA PSYCHIATRIC SOCIETY

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March 11, 2021

Arizona Department of Insurance and Financial Institutions (DIFI)
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Attention: Mary Boatright, JD, CHC, Manager, Life & Health Oversight
public_comments@difi.az.gov

Re: Comments to Proposed MHPAEA Rulemaking

Dear Department of Insurance and Financial Institutions,

On behalf of the Arizona Psychiatric Society (APS), which represents over 500 psychiatrist members in the state that serve as advocates for the mentally ill, we thank you for considering our comments in response to the proposed parity rulemaking promulgated by the Department of Insurance and Financial Institutions (DIFI), as required by Arizona Senate Bill SB1523 and ARS § 20-3502 to ensure compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). Our comments are brief, as we are in strong support of the overall proposed rules but do have some suggestions for Exhibit A regarding the nonquantitative treatment limitation (NQTL) reports.

We are pleased to see the detailed and systematic reporting requirements for NQTLs that are delineated in Exhibit A. Exhibit A is broken out into four distinct sections: Section A, medical/surgical benefits; Section B, mental health benefits; Section C, substance use disorder benefits; Section D, pharmacy benefits.

Our suggestions center on subsections B11, C11, and D11, concerning the comparison of the underlying processes, strategies, evidentiary standards, or other factors used applying NQTLs to those benefits versus the same terms for applying NQTLs to medical/surgical benefits.

As you are probably aware, new federal requirements regarding NQTL comparative analyses were signed into law on December 27, 2020 in Section 203 of Title II of Division BB of the Consolidated Appropriations Act, 2021 (P.L. 116-260). Of particular relevance is subsection (a) of Section 203, which added a new subsection (a)(8) to 42 U.S.C. 300gg-26, which is a section in the Public Health Service Act. 42 U.S.C. 300gg-26 is the section of the United States Code that contains the MHPAEA provisions that can be enforced by state insurance departments, such as DIFI.

Notably, subparagraph (A) of this new subsection (a)(8) requires health insurance issuers to perform comparative analyses demonstrating compliance with the NQTL stipulations of MHPAEA. And, it requires issuers to make these analyses available to the "applicable state authority", in this case DIFI, upon request. We have included the full text as an attachment.

Given that issuers in Arizona are now federally obligated to perform the NQTL comparative analyses specified at 42 U.S.C. 300gg-26(a)(8), and DIFI has the authority to request those analyses, we believe that it makes sense for subsections B11, C11, and D11 of Exhibit A to formalize that request process. To accomplish this, the proposed regulations could be amended by merely adding a sentence at the end of B11, C11, and D11:

> [Furnish a comparison to demonstrate that any process, strategy, evidentiary standard or other factor used in applying nonquantitative treatment limits to MH benefits is applied not more stringently than any process, strategy, evidentiary standard or other factor used in applying the treatment limit for Med/Surg benefits in the same classification. ***Such a comparison shall be in the format described at 42 U.S.C. 300gg-26(a)(8)(A)***]

We think this is the correct approach because all issuers in Arizona are now statutorily compelled to perform those analyses and supply them to DIFI upon request (starting on February 11, 2021). And, without specifying that the comparisons required by B11, C11, and D11 follow the federal format, it is possible if not likely that issuers will submit vague comparisons that lack the specificity demanded by 42 U.S.C. 300gg-26(a)(8)(A). One of the prime reasons Congress took this action was because state and federal regulators found that issuers and group health plans had often failed to perform any sort of comparative analyses, or if they did, the analyses were often superficial and did not provide nearly enough detail. If these proposed regulations do not stipulate that the comparisons follow the new federal comparative analysis format, there is a good chance that DIFI will receive comparisons that reveal little to no useful information.

Additionally, the Texas Department of Insurance (TDI) just created a spreadsheet that is designed specifically for collecting the NQTL analyses specified under the new federal format. The TDI spreadsheet is a modified version of the NQTL sheet created by the Pennsylvania Insurance Department in 2019. We recommend that DIFI use this tool to collect the comparative analyses all issuers are now required to perform under 42 U.S.C. 300gg-26(a)(8).

Thank you for this opportunity to provide comment. We look forward to working together to support the implementation of Jake's Law, and we are available to respond to any questions that you may have regarding these comments or related matters.

Respectfully yours,

Jasleen Chhatwal, MBBS, MD
President, Arizona Psychiatric Society

Don J. Fowls, MD
Government Affairs Committee Chair,
Past President, Arizona Psychiatric Society

Attachment: New Federal NQTL Comparative Analysis Format from the Consolidated Appropriations Act, 2021 (P.L. 116-260)

SEC. 203. Strengthening parity in mental health and substance use disorder benefits.
(a) In general.—
(1) PHSA.—Section 2726(a) of the Public Health Service Act (42 U.S.C. 300gg–26(a)) is amended by adding at the end the following:

"(8) COMPLIANCE REQUIREMENTS.—

"(A) NONQUANTITATIVE TREATMENT LIMITATION (NQTL) REQUIREMENTS.—In the case of a group health plan or a health insurance issuer offering group or individual health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits and that imposes nonquantitative treatment limitations (referred to in this section as 'NQTLs') on mental health or substance use disorder benefits, such plan or issuer shall perform and document comparative analyses of the design and application of NQTLs and, beginning 45 days after the date of enactment of the Consolidated Appropriations Act, 2021, make available to the applicable State authority (or, as applicable, to the Secretary of Labor or the Secretary of Health and Human Services), upon request, the comparative analyses and the following information:
"(i) The specific plan or coverage terms or other relevant terms regarding the NQTLs and a description of all mental health or substance use disorder and medical or surgical benefits to which each such term applies in each respective benefits classification.

"(ii) The factors used to determine that the NQTLs will apply to mental health or substance use disorder benefits and medical or surgical benefits.

"(iii) The evidentiary standards used for the factors identified in clause (ii), when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to mental health or substance use disorder benefits and medical or surgical benefits.

"(iv) The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to medical or surgical benefits in the benefits classification.

"(v) The specific findings and conclusions reached by the group health plan or health insurance issuer with respect to the health insurance coverage, including any results of the analyses described in this subparagraph that indicate that the plan or coverage is or is not in compliance with this section.