December 4, 2023

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Daniel Tsai
Deputy Administrator and Director
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Request for Comments on Processes for Assessing Compliance with Mental Health Parity and Addiction Equity in Medicaid and CHIP

Electronically submitted at MedicaidandCHIP-Parity@cms.hhs.gov

Dear Secretary Becerra and Deputy Administrator Tsai:

Thank you for the opportunity to provide comments on processes for assessing compliance with mental health parity and addiction equity in Medicaid and the Children's Health Insurance Program (CHIP). We greatly appreciate the Administration's ongoing efforts to improve patient access to essential mental health and substance use disorder services.

The undersigned organizations represent millions of patients and consumers facing serious, acute and chronic health conditions across the country, including individuals who rely on Medicaid and CHIP for coverage. Our organizations have a unique perspective on what patients need to prevent disease, cure

illness and manage chronic health conditions. Our breadth enables us to draw upon a wealth of knowledge and expertise that can be an invaluable resource in this discussion.

In March of 2017, our organizations agreed upon three overarching principles[1] to guide any work to reform and improve the nation's healthcare system. These principles state that: (1) healthcare should be accessible, meaning that coverage should be easy to understand and not a pose a barrier to care; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package.

We welcome the Centers for Medicaid and CHIP Services' (CMCS) efforts to support access to affordable, high-quality and culturally-competent mental health and substance use disorder services for patients covered by Medicaid and CHIP. The growing need for behavioral health services in the United States, particularly since the pandemic, makes these efforts all the more urgent.[2] Access to mental health care is particularly important to the patients we represent given the frequent co-occurrence of mental health and acute or chronic health needs. For example, one study found that up to one-half of people with cancer experience depression.[3] Another found adults with disabilities – many of whom are covered by Medicaid – are also more likely to experience mental distress than those without disabilities.[4] And there are risks for caregivers, as well. Over half of caregivers of medically complex children say that the routine of caregiving has "severe impacts" on their mental wellness.[5] Below we offer comments in response to your request related to improving mental health parity and addiction equity in Medicaid and CHIP.

Aligning and Improving Non-Quantitative Treatment Limits

Our organizations strongly believe the more than 91 million individuals covered by Medicaid and CHIP – including those in Medicaid managed care and alternative benefit plans (ABPs) –deserve at least the same Mental Health Parity and Addiction Equity Act (MHPAEA) protections as individuals with commercial coverage.[6] As our organizations recently wrote in comments in response to the MHPAEA proposed rule related to commercial coverage (CMS-9902-P), we strongly support many of the Administration's proposals related to non-quantitative treatment limits (NQTL). These include proposals prohibiting insurer and health plans from imposing a non-quantitative treatment limit unless a three-part test is met, assessing provider networks as an NQTL, data collection and evaluation requirements, and strong consequences when a plan is found to be out of compliance with parity requirements.[7]

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[1] Consensus Health Reform Principles. Available at: https://www.lung.org/getmedia/0912cd7f-c2f9-4112-aaa6-f54d690d6e65/ppc-coalition-principles-final.pdf.

[2] N. Panchal, H. Saunders, R. Rudowitz and C. Cox, "The Implications of COVID-19 for Mental Health and Substance Use," KFF, Mar. 20, 2023.

[3] DL Rosenstein, Depression and end-of-life care for patients with cancer, Dialogues Clin Neurosci. 2011;13(1):101-8. Doi:10.31887/DCNS.2011.13.1/drosentein. PMID:21485750; PMCID: PMC3181973.

[4] Cree RA, Okoro CA, Zach MM, Carbone E. Frequent Mental Distress Among Adults, by Disability Status, Disability Type, and Selected Characteristics — United States, 2018. MMWR Morb Mortal Wkly Rep 2020;69:1238–1243. DOI: http://dx.doi.org/10.15585/mmwr.mm6936a2.

[5] 2023 Child Neurology Foundation Patient Advocate Organization Survey.

[6] Medicaid.gov, July 2023 Medicaid & CHIP Enrollment Data Highlights.

[7] PPC comments to Secretary Becerra and Administrator Brooks-LaSure, Re: Requirements Related to the Mental Health and Addiction Equity Act (CMS-9902-P), Oct. 16, 2023. https://www.lung.org/getmedia/3fb5d42e-8da7-4817-901d-d9ce77e24cbe/PPC-MHPAEA-Comments-FINAL.pdf

Consistent standards are particularly critical given that these plans serve individuals and families with lower incomes who are disproportionately Black, Latino, Native American, and from other marginalized and underserved communities. Data show these communities are more likely to struggle with mental health and substance use disorders than white individuals.

Ensuring sufficient networks to provide timely access to covered services remains a top priority for the patients and consumers we represent. Yet inadequate networks for mental health and substance use disorder providers are an acute problem that results in patients experiencing delayed care or forgoing care altogether. Our organizations reiterated our support for improving network adequacy in Medicaid and CHIP in our comments on the Medicaid managed care proposed rule (CMS-2439-P) earlier this year, including support for wait time standards and requirements for conducting secret shopper and enrollee experience surveys.[8] Assessing Medicaid and CHIP provider networks as an NQTL and ensuring appropriate data collection and evaluation, as is currently being considered in the commercial market under the MHPAEA proposed rule, would promote the Administration's ongoing efforts to ensure sufficient network adequacy.

Alignment of MHPAEA requirements would also promote consistency across the commercial and public insurance markets. This would reduce the burden on patients who may experience "churn" as they move between Medicaid and commercial coverage, in particular as the unwinding of Medicaid's continuous coverage requirements continues to unfold. It would also reduce the burden on plans which often offer products in both the commercial and public markets. Accordingly, in support of the Administration's ongoing efforts to improve access to mental health and substance use disorder care, we strongly encourage CMCS to review the proposals within the MHPAEA proposed rule and apply those requirements and protections to Medicaid managed care, ABPs, and CHIP where appropriate and without undue delay.

Finally, we recommend CMCS review and improve prior authorization processes in Medicaid and CHIP, including for mental health and substance use disorder services. Prior authorization is a time-consuming process that can burden providers, divert valuable resources away from direct care, and cause delays in patient access to needed services and treatment. According to a recent study by the Office of the Inspector General, patients enrolled in Medicaid managed care may not be receiving necessary health services due to the high number and rates of denied prior authorization requests, limited oversight of prior authorization denials, and limited access to external medical reviews.[9] Thus, we encourage CMCS to review our organizations' comments submitted in response to the Administration's proposed rule and request for information on improving prior authorization processes (CMS-0057-P) as it reviews NQTL requirements and improvements in Medicaid and CHIP.[10]

Leveraging Measures, Datapoints, and Other Information

[8] PPC comments to Secretary Becerra and Administrator Brooks-LaSure, Re: Medicaid Program; Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality; Proposed Rule - CMS-2439-P, June 29, 2023 https://www.lung.org/getmedia/bfcdc003-2dda-4e76-8a81-25b51d600c60/PPC-Medicaid-Managed-Care-NPRM-FINAL.pdf

[9] U.S. Dept. of Health & Human Services, Office of the Inspector General, Report in Brief: High Rates of Prior Authorization Denials by Some Plans and Limited State Oversight Raise Concerns About Access to Care in Medicaid Managed Care, July 2023.

[10] PPC comments to Secretary Becerra and Administrator Brooks-LaSure, Re: Proposed Rule and Request for Information; Advancing Interoperability and Improving Prior Authorization Processes (CMS-0057-P), Mar. 13, 2023. https://www.lung.org/getmedia/08ff4979-0d42-417a-a781-fb503555145e/031323-PPC-Prior-Auth-Rule-FINAL.pdf

In the request for comment, CMCS asks for measures, datapoints, or other information that could help identify potential parity violations in Medicaid managed care, ABPs, and CHIP. Measures, datapoints, and other information can serve a critical role in identifying potential parity violations and assessing meaningful access to mental health and substance use disorder care in Medicaid and CHIP when paired with accurate reporting and collection and meaningful evaluation.

Our organizations encourage CMCS to review and align the data collection and evaluation requirements within the MHPAEA proposed rule with Medicaid managed care, ABPs and CHIP as appropriate. In addition, we also strongly encourage CMCS to leverage other Medicaid and CHIP measures, data, and information such as Medicaid early and periodic, screening, diagnostic, and treatment (EPSDT) data, Medicaid and CHIP health quality measure data, data available through T-MSIS, managed care data and information, and other relevant measures, datapoints and information that can inform and improve access to mental health and substance use disorder care in Medicaid and CHIP.

Furthermore, we urge CMCS to work with states to collect and employ data on real word experiences, such as through secret shopper surveys and enrollee experience surveys, to inform such analyses. We remain concerned about "ghost" or "phantom" networks, with one state study finding that nearly 60 percent of network directory listings included providers who did not see Medicaid patients, including about 60 percent of mental health providers.[11] Accordingly, we encourage CMCS to go beyond paperwork reviews to ensure the real-world experiences of patients are also captured.

Improving Transparency and Oversight

Finally, we recommend CMCS take additional steps to improve transparency and oversight of parity and access to mental health and substance use disorder care in Medicaid and CHIP. According to a 2021 brief from the Medicaid and CHIP Payment and Access Commission (MACPAC), MHPAEA does not appear to have increased access to behavioral health services for individuals with Medicaid and CHIP, which according to MACPAC may in part be due to how parity is assessed and documented.[12] Improvements to transparency and oversight along with appropriate data collection and evaluation are critical to ensuring meaningful compliance with parity requirements and access to care.

We encourage CMCS to take additional steps to bolster transparency and oversight including publicly posting state Medicaid program and CHIP parity compliance reports and ensuring appropriate oversight and enforcement of Medicaid's EPSDT benefit. In Medicaid managed care, additional steps should include public posting of relevant data at the plan level such as EPSDT and quality measure data, as well as data stratified by race and ethnicity where appropriate.

Moreover, we support additional guidance and technical support to states, providers, and patients to improve access to mental health and substance use disorder care and compliance with parity requirements. This should include information on opportunities for state capacity building, information for patients and providers so that they can better understand and assess what it means to be complaint with MHPAEA requirements, additional guidance to states about how they should address MHPAEA noncompliance, and best practices related to managed care contracting, oversight, and enforcement.

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[11] J. Zhu, C. Charlesworth, D. Polsky, and K. McConnell, "Phantom Networks; Discrepancies Between Reported and Realized Mental Health Care Access in Oregon Medicaid," Health Affairs, July 2022.

[12] MACPAC, Issue Brief: Implementation of the Mental Health Parity and Addiction Equity Act in Medicaid and CHIP, July 2021

Conclusion
Thank you for the opportunity to provide comments. If you have any questions, please contact Theresa Alban with the Cystic Fibrosis Foundation at talban@cff.org.

Sincerely,

ALS Association
American Cancer Society Cancer Action Network
American Kidney Fund
American Lung Association
Arthritis Foundation
Autism Speaks
Cancer*Care*
Child Neurology Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Lupus Foundation of America
Muscular Dystrophy Association
National Alliance on Mental Illness (NAMI)
National Bleeding Disorders Foundation
National Kidney Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
The AIDS Institute
The Leukemia & Lymphoma Society
WomenHeart