



September 22, 2016

Laura Cali
Oregon Insurance Commissioner
350 Winter St. NE
Salem, OR 97301-3883

Cc: Morgan O'Toole-Kartini Clinic; Maree Wacker-DePaul Treatment Centers; Jamie Vandergon-Trillium Family Services

Re: Enforcing mental health parity

Dear Commissioner Cali,

I am writing on behalf of the Tri-County Behavioral Health Providers Association (TCBHPA) which represents 33 community behavioral health providers in the Portland metro area.

The passage of landmark state and federal mental health parity statutes represents a very significant - and hard won - improvement to Oregon's public health system for some of its most vulnerable citizens. Nearly two years has passed since the release of the Oregon Insurance Division's Bulletin of November 2014 regarding mental health parity, and yet we believe enforcement of federal and state mental health parity statutes remains inadequate. At least three of our members, copied above, have experienced some or all of the issues named below and would welcome an opportunity to share our challenges on this topic in more detail.

Specifically, we strongly suspect that *prevailing standards for determining medical necessity* in physical medicine are not being applied to behavioral health treatment. This would be in direct contravention to the legislative purpose of mental health parity. Our main areas of concern:

Guidelines and Transparency

- failing to furnish providers or members with specific medical necessity and/or treatment guidelines, referring to them only in passing and without specific citations
- failure by third party physician reviewers to demonstrate familiarity with said treatment guidelines and failing to refer to during appeals with rendering providers
- failure to issue a formal "framework for decision" when issuing adverse benefit determinations, e.g. physician reviewers routinely refuse to disclose their objections or determination to the rendering provider during telephone appeals. Providers and members are often notified only whether an appeal was upheld or overturned, not the specific clinical grounds for doing so.

Utilization Management: quantitative treatment limits

- using internal claims data to determine length of treatment rather than relying on an impartial review of medical necessity in accordance with an individual’s clinical needs
- unlike property and casualty insurers, behavioral health insurers directly affect the data they purport to use impartially, e.g. shortening treatment through administrative denials, then claiming this shows a “standard of care”


Utilization Management: non-quantitative treatment limits

- utilizing unreasonable utilization management techniques for determining medical necessity at higher levels of care, e.g. insisting on exhaustive, weekly reviews accompanied by frequent administrative denials that can only be overturned via direct physician (aka peer-to-peer) appeals
- insisting peer-to-peer appeals be conducted on a timeframe impractical to a rendering provider’s clinical schedule. Providers are often unable to comply, allowing administrative denials to be upheld without any meaningful clinical review
- using third-party physician reviewers without any demonstrable qualifications to render a clinical opinion e.g. using adult psychiatrists to review pediatric cases
- failing to provide third-party physician reviewers real-time access to a patient’s chart at the time of the review
- insisting a patient demonstrate “treatment failure” at a lower level of care before authorizing a higher level of care
- subsequently using “treatment failure” to justify discharge to a *lower* level of care

For a more detailed description of these and other administrative tactics, please refer to the 9th Circuit Court decision in [Pacific Shores Hospital v United Behavioral Health](#), of Aug 20, 2014. While this case fell under ERISA jurisdiction, the ruling made a compelling case for a clear pattern of abuse; abuses that would also seem to violate Oregon’s parity statute. Note: this case included a physician reviewer licensed in Oregon, Dr. Barbara Center.

We strongly urge the Insurance Division to undertake a market conduct examination to see whether commercial insurers are applying the same prevailing standards for determining medical necessity in behavioral health as they apply to physical health. We understand that failure to apply the same standards would be a violation of mental health parity. Again, several of our member agency representatives would be happy to discuss their experience of difficulties. Thank you for considering our request.

Sincerely,



Drew Henrie-McWilliams, TCBHPA President