



AMERICAN
PSYCHOLOGICAL
ASSOCIATION
PRACTICE ORGANIZATION

September 30, 2015

VIA EMAIL

Mr. Kevin Counihan
Director and Marketplace Chief Executive Officer
Center for Consumer and Information and Insurance Oversight
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Re: 2017 Benchmark Plan Comments

Dear Mr. Counihan:

The American Psychological Association Practice Organization (APAPO) is submitting comments in response to the Center for Consumer Information & Insurance Oversight (CCIIO) and Centers for Medicare & Medicaid Services (CMS) on the proposed Essential Health Benefit (EHB) benchmark plans for 2017. APAPO is an affiliate of the American Psychological Association (APA), the largest scientific and professional organization representing psychology in the United States. APA's membership includes more than 122,500 clinicians, researchers, educators, consultants and students.

In reviewing the proposed EHB benchmark plans for all 50 states and DC, APAPO has identified some concerns that certain states' proposed plans do not comply with the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).¹ Since the Affordable Care Act² identifies mental health and substance abuse services as 1 of 10 essential health benefit categories, our position is that all states must cover mental health services appropriately in compliance with MHPAEA.

We note two different categories of federal parity violations in our review of the proposed benchmark plans: quantitative treatment limitations and non-quantitative treatment limitations. We will outline our concerns about each category below and specify which states' plans, as currently structured, do not appear to comply with parity.

¹ See 45 CFR Parts 146 and 147 -- Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

² Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of

2010.
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Quantitative Treatment Limitations

Quantitative treatment limitations are coverage restrictions that limit benefits based on the frequency of treatment, number of visits, days of coverage or other similar limits in scope or duration. Such treatment limitations conflict with federal parity requirements. Under MHPAEA, health plans and insurance policies that provides coverage for both medical and mental health services may not impose treatment limitations or cost-sharing requirements on mental health services that are separate from or more restrictive than what is applicable to covered medical services. We have concerns about quantitative treatment limitations included in the following states' plans.

ALABAMA

The proposed EHB plan for Alabama – 320 Plan offered by Blue Cross and Blue Shield of Alabama -- limits outpatient mental/behavioral health services to 20 visits per year and inpatient services for mental/behavioral health to 30 days per year. There does not appear to be any corresponding limitation on outpatient or inpatient services for medical services under this plan.

Furthermore, the plan states that “if mental health services [are] provided through [an] Expanded Psychiatric Service (EPS) provider, 30 days of outpatient care [are] covered, if not through EPS 20 days.” It is our understanding that the 320 plan requires care coordination for mental health services through a psychiatrist for a beneficiary to be entitled to the 30 days of outpatient services. Otherwise, the beneficiary would be limited to 20 days of outpatient mental health services if care is not coordinated through an EPS. There does not appear to be a corresponding requirement under medical outpatient visits limiting services based on whether the care is coordinated through a particular provider – e.g., primary care provider.

ALASKA

The proposed EHB plan for Alaska – Heritage Select Envoy offered by Premera Blue Cross Blue Shield of Alaska -- limits coverage of both psychological and neuropsychological testing to a maximum of 12 hours per year. The plan also limits coverage of mental/behavioral health services for both outpatient and inpatient by excluding certain services or certain diagnoses from coverage such as dementia and sleep disorders. There does not appear to be any corresponding limitations on outpatient or inpatient services for medical/surgical services under this plan.

FLORIDA

The proposed EHB plan for Florida – BlueOptions 5462 Plan offered by Blue Cross and Blue Shield of Florida -- limits outpatient mental/behavioral health services to 20 visits per year and inpatient services for mental/behavioral health to 30 days per year. There does not appear to be any corresponding limitation on outpatient or inpatient services for medical/surgical services under this plan.

MISSISSIPPI

The proposed EHB plan for Mississippi – Network Blue Plan offered by Blue Cross Blue Shield of Mississippi -- limits outpatient mental/behavioral health services to 52 visits per year and inpatient services for mental/behavioral health to 30 days per year. There does not appear to be any

corresponding limitation on outpatient or inpatient services for medical/surgical services under this plan.

In addition, the plan appears to exclude counseling services for various purposes including behavioral counseling as well as treatment or testing related to autism. The exclusion for autism services seems to be contrary to Mississippi's state mandated benefits the diagnosis and treatment for autism spectrum disorders applicable to all plans as of January 1, 2016.³

SOUTH CAROLINA

The proposed EHB plan for South Carolina – Business Blue Complete Plan offered by Blue Cross and Blue Shield of South Carolina -- limits outpatient mental/behavioral health services to 25 visits per benefit period and inpatient services for mental/behavioral health to 7 days per benefit period. Furthermore, it appears that this 25-visit maximum for outpatient services includes not only mental health services but substance abuse care, too. There does not appear to be any corresponding limitation on outpatient or inpatient services for medical/surgical services under this plan.

Non-quantitative Treatment Limitations (NQTs)

Non-quantitative treatment limitations are coverage restrictions that limit the scope or duration of benefits for treatment from coverage. If a plan automatically excludes from coverage certain types of treatments or treatment settings for mental health benefits but does not automatically exclude similar types of treatments or settings for medical/surgical benefits, the plan is in violation of the federal parity law. We note our concerns about NQTs for the following states' plans discussed below. The predominant issue is the proposed benchmark plan requiring preauthorization for services after a certain number of visits. To the extent any of those states intends to retain this authorization requirement in its benchmark plan, we urge CCIIO/CMS to scrutinize the analysis supporting application of this NQTL to mental health services. We expect that only a small portion, if any, of medical/surgical services are subject similar authorization requirements.

TEXAS

The proposed EHB plan for Texas – Blue Choice PPO RSH3 offered by Blue Cross Blue Shield of Texas -- limits coverage of mental/behavioral health services by requiring preauthorization for all outpatient and inpatient services. There does not appear to be any corresponding preauthorization requirement on outpatient or inpatient services for medical/surgical services under this plan. While authorization requirements after 8 or 10 mental health visits may be subject to parity analysis or debate, an authorization requirement for the *first* visit for all mental health services is a clear violation.⁴ That was the 2010 determination of the Illinois Department of Insurance with respect to an identical authorization requirement by BCBS Illinois (which is owned by the same parent company as BCBS

³ See 2015 HOUSE BILL NO. 885 enacting a new section under *Miss. Code Ann. §83-9*.

⁴ See US Department of Labor, FAQs ABOUT AFFORDABLE CARE ACT IMPLEMENTATION (PART VII) AND MENTAL HEALTH PARITY IMPLEMENTATION, Q2 (November 17, 2011), available online at <http://www.dol.gov/ebsa/pdf/faq-aca7.pdf>.

Texas). We hope that you will urge Texas to abandon this requirement as it is clearly a violation of federal parity.

ARIZONA

The proposed EHB plan for Arizona – the State of Arizona EPO Employee Health Plan -- limits coverage of mental/behavioral health services for both outpatient and inpatient by excluding certain services or certain diagnoses from coverage such as treatment of mental disorders that have been diagnosed as organic mental health disorders associated with permanent brain dysfunction, or developmental disorders. There does not appear to be any corresponding limitations on outpatient or inpatient services for such disorders under the plan's medical/surgical benefits.

ARKANSAS

The proposed EHB plan for Arkansas – Small Group Gold 1000-1 offered by HMO Partners, Inc. – requires preauthorization for nearly all services (after the 9th visit for outpatient services and for most interventions for inpatient services) except medication management under inpatient and outpatient mental/behavioral health benefits. There does not appear to be any corresponding limitation or preauthorization requirement on outpatient or inpatient services for medical/surgical services under this plan.

DELAWARE

The proposed EHB plan for Delaware – Small Group Shared Cost EPO \$2000/100 Plan offered by Highmark BCBSD Inc. –limits psychological tests to 8 hours per year. The plan also limits coverage of mental/behavioral health services for both outpatient and inpatient by excluding certain services or certain diagnoses from coverage such as treatment for sleep disorders. There does not appear to be any corresponding limitations on outpatient or inpatient services for medical/surgical services under this plan.

IDAHO

The proposed EHB plan for Idaho – Preferred Blue PPO Small Group offered by Blue Cross of Idaho Health Service, Inc. -- limits coverage of mental/behavioral health services for both outpatient and inpatient by requiring preauthorization for nearly all services (after the 10th visit for outpatient services, psychological testing/neuropsychological evaluation testing, and for many inpatient services) except medication management. There does not appear to be any corresponding preauthorization requirement on outpatient or inpatient services for medical/surgical services under this plan.

MICHIGAN

The proposed EHB plan for Michigan – PriorityHMO offered by PriorityHealth – limits coverage of mental/behavioral health services for both outpatient and inpatient by excluding certain services or certain diagnoses from coverage – namely, behavioral therapy for attention disorders for children age 13 and older and even for those age 12 and under, such services appear to be limited to 20 days per calendar year. There does not appear to be any corresponding limitations on outpatient or inpatient services for medical/surgical services under this plan.

Other coverage concerns

We would also like to call to your attention some concerns that we have about several states' plans as the mental health benefits have vaguely defined limitations or exclusions. As currently drafted, these provisions could be misapplied or misconstrued in such a way that mental health benefits are inappropriately restricted.

CONNECTICUT

the proposed EHB plan for Connecticut – Connecticare Flex POS Plan offered by the ConnectiCare Insurance Company, Inc. – allows the carrier to develop exclusions if needed subject to pre-approval by the state's Insurance Department Commissioner. There does not appear to be any corresponding allowance for the plan to develop similar exclusions for outpatient or inpatient services under the medical/surgical benefits.

NEVADA

The proposed EHB plan for Nevada – HPN Solutions HMO Platinum 15/0/90% offered by Health Plan of Nevada Inc. –requires preauthorization for all inpatient and non-routine outpatient non-emergency services for mental health, severe mental illness or substance abuse services require preauthorization. It is not clear as to what constitutes a “non-routine outpatient non-emergency mental service” that would warrant preauthorization. In addition, the plan limits coverage of mental/behavioral health services by excluding certain services or certain diagnoses from coverage – such as therapy for behavior disorders and treatment for ADHD or ADD. In terms of parity, there does not appear to be any corresponding limitations on outpatient or inpatient services for medical/surgical services under this plan.

NORTH DAKOTA

The proposed EHB plan for North Dakota – BlueCare Gold 90 500 offered by Blue Cross Blue Shield of North Dakota – limits coverage of mental/behavioral health services for both outpatient and inpatient by excluding certain services or certain diagnoses from coverage – such as “counseling or therapy services, including bereavement, codependency, marital, family, sex or interpersonal relationships.” While we cannot imagine that North Dakota seeks to exclude “counseling or therapy services,” it is arguable that as written, the plan could be narrowly construed to limit the scope of therapy services covered. Also, inpatient services do not include “benefits for residential treatments for psych[ological] or SUD for ages 21 and over.” There does not appear to be any corresponding limitations on outpatient or inpatient services for medical/surgical services under this plan.

SOUTH DAKOTA

The proposed EHB plan for South Dakota – Blue Select Primary PCP/NonPCP Copay Plan offered by Wellmark of North Dakota – limits coverage of mental/behavioral health services for both outpatient and inpatient by excluding certain disorders from coverage – those “disorders related to early childhood, such as academic underachievement disorder, communication disorders, such as stuttering and stammering” as well as impulse control disorders and sexual identification or gender disorders. There does not appear to be any corresponding limitations on outpatient or inpatient services for

medical/surgical services under this plan. Similarly, this exclusion could be broadly applied as written to exclude treatment for any disorders related to childhood rather than the restriction being narrowly applied to specific examples.

On behalf of APAPO, we appreciate your consideration of the concerns raised in our letter and urge CCIIO and CMS to carefully scrutinize the proposed EHB benchmark plans to ensure that the plans are in compliance with the Affordable Care Act and MHPAEA. In particular, we hope that you will urge the above-referenced states to remove the various quantitative, non-quantitative and vaguely defined treatment limitations from the mental health benefits category of their respective plans. This is a critically important issue. Thank you for the opportunity to comment on this issue.

Sincerely,

A handwritten signature in black ink that reads "Katherine C. Nordal". The signature is written in a cursive, flowing style.

Katherine Nordal, Ph.D.
Executive Director for Professional Practice