AMERICAN
PSYCHOLOGICAL
ASSOCIATION
PRACTICE
ORGANIZATION

October 5, 2011

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

By Email and First Class Mail

Dear Secretary Solis, Secretary Sebelius and Secretary Geithner:

We, the American Psychological Association Practice Organization (APAPO) and the Florida Psychological Association (FPA), are writing out of concern for likely harm to mental health patients due to recent actions by Blue Cross Blue Shield of Florida (BCBS FL or the Company) and to follow up on the August 25, 2011 letter from the Parity Implementation Coalition (PIC), a coalition of mental health provider and consumer groups. The APAPO is an affiliate of the American Psychological Association, the largest scientific and professional organization representing psychology in the United States. APA's membership includes more than 154,000 researchers, educators, clinicians, consultants and students. FPA is the state's largest association of psychologists with almost 1,500 active members. APAPO and FPA have been longtime champions of federal parity legislation.

The PIC letter of August 25, 2011 concerned a number of recent actions taken BCBS FL impacting mental health care. Our letter focuses on the likely harm to mental health patients as a result of BCBS FL's very large cut in network provider reimbursement rates. While we agree with many of the arguments made in the PIC letter, we further believe that provider rate slashing by BCBS of FL -- apparently only for providers of mental health services-- is a clear violation of the non-quantitative treatment limitation (NQTL) provisions of the Interim Final Rules (IFR) under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. We ask your departments to: verify that BCBS FL has not imposed a similar cut on medical/surgical services; confirm our reading of the NQTL provisions; and require the Company to correct this disparity.

Facts

Non-profit BCBS FL is Florida's largest health insurer. In July 2011, the company advised its large network of mental health professionals that it would be terminating all of their contracts and that providers would need to apply to join the network of a company new to them, New Directions. Providers received no assurance that their applications would be accepted. BCBS FL presented New Directions as if it were an unrelated company with whom it had contracted to manage the mental health and substance use disorder benefits under its insurance plan. It did not disclose that it is a part owner of New Directions.

In late July, New Directions sent a letter to BCBS FL network providers. Information in that letter led some providers to believe that they had only 15 days to decide whether or not to accept the New Directions contract, although it was clear that New Directions would not take over mental health management until December 2011 or January 2012. The most notable aspect of the new contract provisions was a dramatic reduction in reimbursement rates.[1] New Directions cut psychologists' rates for the most commonly billed mental health procedure codes by 33 - 54%. This is one of the largest cuts in psychologist rates that APAPO has seen in a decade. Moreover, psychologists in BCBS FL's network reported that they had not had their rates increased in the 10 to 15 years prior to this cut. We understand that New Directions also substantially reduced psychotherapy reimbursement rates for social workers and psychiatrists.

By contrast, FPA and APAPO have seen no indication that BCBS FL has recently imposed, or plans to impose, a similar reduction in the rates for medical/surgical services. The Parity Implementation Coalition has asked the Company about reductions for medical/surgical services but we understand that the Company has refused to respond to their question. We respectfully ask your departments to pose this question to BCBS FL.

[1] The New Directions contract also contained troubling provisions (new to FPA and APAPO) that would have constrained mental health consumers' use of out of network benefits, i.e., forbidding out of network referrals by providers, and forbidding providers who left the New Directions network from ever seeing BCBS FL patients. There is no indication that BCBS FL imposed these constraints on medical/surgical services. Fortunately, in response to an urgent letter from FPA, the Florida Department of Insurance Regulation ordered BCBS FL to revise these provisions (and clarify "unclear" language suggesting that providers had only 15-days to accept the New Directions contract). Although these issues appear to be getting resolved, we mention them because they reflect the intent of BCBS FL and New Directions to constrain mental health benefits in a very disparate way**.**

Parity Analysis

We believe that BCBS FL's drastically-reduced network reimbursement rates[2] -- apparently only imposed on mental health services -- violates the NQTL provisions of the IFR. Paragraph (c)(4)(ii)(C) of the IFR (29 CFR Section 2590.712(c)(4)(ii)(C)) specifically lists among the examples of NQTLs "standards for provider admission to participate in a network, including reimbursement rates." In this case, the slashed reimbursement rates set a standard for network participation that is extremely low.

We have seen no evidence that BCBS is also cutting medical/surgical network reimbursement. If this is true, there is no question that this NQTL is not "comparable" to the network reimbursement for medical/surgical services, and therefore violates the NQTL provisions. (IFR Paragraph (c)(4)(i)).

This is precisely the type of parity problem that the NQTL provisions are designed to prevent. For example, the IFR's inclusion of medical management as an NQTL prevents a plan from replacing an annual limit of 20 sessions with a harshly-enforced re-authorization requirement at 20 sessions that accomplishes the same result. Similarly, including network reimbursement as an NQTL prevents plans from eviscerating mental health benefits through massive reimbursement cuts that harm patients as described below. Allowing plans to evade parity through mental health rate cuts "would undercut the protections that the statute was intended to provide." (75 Fed. Reg. 5413 (February 2, 2010) commentary regarding specialty co-pays).

Likely Impact on Mental Health Patients

Based on APAPO's prior experience, described below, we expect that this rate cut will severely limit the scope of mental health benefits, creating access problems and undue hardship for mental health patients. The cut will:

- Drive many psychologists and other mental health professionals out of the network, especially those with the most training, experience and specialized skills.

- Force many providers who do remain in the network to give priority to scheduling appointments for patients of other payors whose rates are more reasonable and cover the cost of providing services, to the detriment of BCBS beneficiaries who seek appointments.

The likely result will be a network very different from what BCBS FL currently touts in its website: an "extensive" and "expansive" statewide network, offering "access to the best doctors, facilities and more." Instead, the mental health network will:

[2] We refer to the rate cuts as BCBS FL's because it is the entity responsible for parity compliance. Moreover, New Directions is essentially its subcontractor and is its partially-owned subsidiary.

- Have far fewer psychologists, psychiatrists and other highly trained mental health professionals, making it difficult or impossible for patients to get an appointment within a reasonable time;

- Have a dearth of professionals specializing in treating child, adolescent and geriatric populations, and those treating particular disorders, such as eating disorders; and

- Force patients to seek services from out-of-network psychologists and other mental health professionals. That care will likely be subject to higher co-pays and/or co-insurance, or will be borne entirely by patients who have no out-of-network benefits.

This decimated network will not serve the diverse mental health needs of the Company's subscribers – they need a network with a full array of mental health professionals (psychologists, psychiatrists and social workers) with a full range of experience and special skills.

APAPO has seen similar impacts with even smaller rate cuts. For example, in litigation that APAPO supported against another BCBS company, CareFirst BCBS, the Virginia Academy of Clinical Psychologists alleged that the evidence demonstrated that a roughly 30% rate cut caused an exodus of psychologists and other mental health providers from the network; That exodus caused about 370 patients to lose their mental health professional, and care for other patients was sharply disrupted. Similarly, APAPO is aware that in states where Medicaid pays low rates similar to those proposed here, very few psychologists participate in the program, making it difficult for many Medicaid beneficiaries to access needed mental health care.

Conclusion

For many years, health insurers have disproportionately reduced spending on mental health services as compared with total health care costs.[3] We believe that they have been able to do so partly because the stigma associated with mental illness makes those patients reluctant to complain when their care is inappropriate, inadequate or deteriorates. Enforcing the IFR's clear provision regarding network reimbursement will prevent companies from making even deeper cuts and will prevent further harm to these vulnerable patients.

We are concerned that the BCBS FL rate cut is not just bad news for Florida mental health consumers, but part of a larger wave of mental health reimbursement cuts by several other non-profit BCBS companies. We are gathering information on the rate reductions by these other companies to determine if they too may violate the IFR.

In conclusion, we request that your departments verify that BCBS FL's major rate cut for mental health services has not been accompanied by a similar cut in network reimbursement for

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[3] See, e.g., Frank, R. G., Goldman, H.H. and McGuire, T.G. (2009). Trends in Mental Health Cost Growth: An expanded role for management? *Health Affairs*, *28*(3), 649-659. Compare Exhibit 6, showing flat rates for non-prescription mental health costs from 1996-2006 with Exhibit 3 showing overall health spending for the same time period. Note that the mental health costs in Exhibit 3 include rising prescription costs.

medical/surgical services.[4] If BCBS FL has not made similar cuts for medical/surgical services, we further request that you confirm our interpretation that the Company's rate cut for mental health services is a NQTL violation, and that you require the Company to correct this parity violation.

We recognize that this is a complex issue and we welcome a continuing dialogue with your agencies to ensure that the IFR carries out the intent of the parity legislation. If you have questions or would like to further discuss these issues, please contact Alan Nessman at anessman@apa.org or Shirley Ann Higuchi at shiguchi@apa.org. They can also be reached at (202) 336-5886.

Sincerely,

Katherine C Nordal

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Connie Galietti, J.D.
Executive Director
Florida Psychological Association

cc: Mr. Kevin M. McCarty, Commissioner, Florida Office of Insurance Regulation
cc: Ms. Elizabeth Dudek, Secretary, Florida Agency for Health Care Administration
cc: The Honorable Bill Nelson
cc: The Honorable Debbie Wasserman Schultz

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[4] BCBS FL may argue that the cut in mental health reimbursement rates was necessary to control rising health care costs. The first flaw in that argument would be that this does not explain why rates were only cut for mental health services. Second, as noted above, reimbursement of mental health providers has not been a cause of rising health care costs, e.g., psychologists report that BCBS FL has not raised their rates in 10 to15 years. Finally, medical/surgical rates are not the only expenses spared such cost cutting; the same is true of executive compensation. BCBS FL's recently retired CEO had a compensation package worth $4.6 million in 2009.