OASAS NEW YORK STATE
OFFICE OF ALCOHOLISM & SUBSTANCE ABUSE SERVICES
Improving Lives. *Addiction Services for Prevention, Treatment, Recovery*

GOVERNOR
David A. Paterson

COMMISSIONER
Karen M. Carpenter-Palumbo

May 28, 2009

Filed Electronically

Centers for Medicare & Medicaid Services, Department of Health and Human Services
Internal Revenue Service, Department of the Treasury
Employee Benefits Security Administration, Department of Labor

Re: Request for Information
Mental Health Parity and Addiction Equity Act of 2008

Dear Sir or Madam:

Thank you for the opportunity to submit comments on issues concerning the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA").

The New York State Office of Alcoholism and Substance Abuse Services ("OASAS") is dedicated to improving the lives of New Yorkers by leading a premier system of addiction services through prevention, treatment and recovery. As the state agency responsible for planning, developing and regulating New York State's system of services to prevent and, where indicated, provide treatment for chemical dependence (hereafter referred to as substance use disorders), OASAS offers the following comments related to the specific areas set forth in the Federal Register Request for Information:

1. The statute provides that the term "financial requirement" includes deductibles, copayments, coinsurance, and out-of-pocket expenses, but excludes an aggregate lifetime limit and an annual limit. The statute further provides that the term "treatment limitation" includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment. Do plans currently impose other types of financial requirements or treatment limitations on benefits? How do plans currently apply financial requirements or treatment limitations to (1) medical and surgical benefits and (2) mental health and substance use disorder benefits? Are these requirements or limitations applied differently to both classes of benefits? Do plans currently vary coverage levels within each class of benefits?

New York State Insurance Law requires Group Insurers that provide inpatient hospital benefits to provide up to 60 **outpatient** visits for diagnosis and treatment of substance use disorders annually. These insurers must also "make available" up to 30 days of certain **inpatient** services annually (NYS Insurance Law §§32.21, 43.03, 43.22).

- OASAS seeks confirmation that, since MHPAEA does not distinguish between inpatient and outpatient substance use disorder benefits, New York State insurers that provide inpatient hospital benefits would now be required to provide the full range of substance use disorder benefits (i.e., both outpatient and inpatient).

- Does MHPAEA require parity in fee schedules? OASAS seeks confirmation that any fee schedule for substance use disorder benefits that creates a higher financial burden on consumers would represent a violation under the Act.

- MHPAEA does not distinguish between types of medical and surgical benefits, setting the standard for measurement as "substantially all medical and surgical benefits." OASAS seeks confirmation that financial and treatment limitations for the treatment of substance use disorders must be measured against **all categories of benefits** and not compared against a narrower class of benefits (e.g., co-payments for substance use disorder benefits should not be based on a subset of co-payments for more restrictive specialist rates).

- Clarification is requested as to what pre-authorization requirements will be permitted under MHPAEA. If pre-authorization with respect to in-patient hospital visits is required under a plan, must pre-authorization be obtained for all or only some substance use disorder benefits?

- OASAS encourages the Departments to adopt regulations that state that determinations regarding an individual's need for services, level of care and length of stay should be made by qualified treatment professionals and cannot be circumvented by excessive use of medical management tools such as utilization review, unreasonable preauthorization requirements and criteria for evidence-based practice treatment services.

- In New York, OASAS has the statutory authority to license individuals, based on their education, training and experience, as credentialed alcoholism and substance abuse counselors ("CASAC"). New York State law further requires that certain services be provided by CASAC's. OASAS seeks confirmation that MHPAEA does not permit an insurer to deny a benefit based on a claim that services provided by a CASAC are not provided by a qualified treatment professional.

2. What terms or provisions require additional clarification to facilitate compliance? What specific clarifications would be helpful?

- A clarification of the term "substantially all" as used in ERISA §712(a)(3), PHSA §2705(a)(3), and IRS §9812(a)(3) is requested.

- Further clarification of the term "predominant" as defined in ERISA §712(a)(3), PHSA §2705(a)(3), and IRS §9812(a)(3) is needed. When will a financial requirement or treatment limitation be considered the most common or frequent?

3. What information, if any, regarding the criteria for medical necessity determinations made under the plan (or coverage) with respect to mental health or substance use disorder benefits is currently made available by the plan? To whom is this information currently made available and how is it made available? Are there industry standards or best practices with respect to this information and communication of this information?

- In New York, insurers frequently use mental health medical necessity criteria instead of criteria clinically appropriate to substance use disorders (e.g., "Does the insured have homicidal or suicidal tendencies?") Rules governing MHPAEA should clearly indicate that medical necessity criteria determinations for substance use disorder benefits fit within the definition of treatment limitations and must be clinically appropriate.

- OASAS seeks further guidance on how medical necessity criteria for substance use disorder benefits can be measured against the criteria used for substantially all medical and surgical benefits.

4. What information, if any, regarding the reasons for any denial under the plan (or coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits is currently made available by the plan? To whom is this information currently made available and how is it made available? Are there industry standards or best practices with respect to this information and communication of this information?

OASAS is not aware of any industry standard or best practice that is currently employed in New York to inform beneficiaries of the reasons for denials under their plans for covered benefits related to substance use disorders.

- OASAS believes it would be very beneficial to develop and publish industry standards and best practices so that consumers better understand their covered benefits and their rights to obtain information related to any denial of benefits.

- OASAS seeks information and details concerning how insurance plans subject to MHPAEA will be monitored for compliance with the Act. Additionally, clearly defined penalties for non-compliance should be established.

5. To gather more information on the scope of out-of-network coverage, the Departments are interested in finding out whether plans currently provide out-of-network coverage for mental health and substance use disorder benefits. If so, how is such coverage the same as or different than out-of-network coverage provided for medical surgical benefits?

In New York benefits for out-of network coverage vary greatly. Individuals are often unable to receive the appropriate level of care due to the lack of out-of network benefits and geographic limitations for in-network providers. OASAS is pleased that MHPAEA includes the out-of-network parity provisions, as this will surely enable a large number of New Yorker's with substance use disorders to receive clinically appropriate treatment services that are otherwise unavailable.

6. Which aspects of the increased cost exemption, if any, require additional guidance? Would model notices be helpful to facilitate disclosure to Federal agencies, State agencies, and participants and beneficiaries regarding a plan's or issuer's election to implement the cost exemption?

- OASAS strongly supports the development of model notices to ensure consistency and compliance by insurers.

Again, OASAS appreciates the opportunity to comment on the implementation of the new requirements under MHPAEA. Should any additional information from this agency be helpful, please feel free to contact me.

Sincerely,

Robert A. Kent
General Counsel

cc: Karen M. Carpenter-Palumbo
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