

Nurses United for Responsible Services

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May 2, 2010

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Ave., SW
Washington, D.C. 20201

Re: File Code: CMS-4140-IFC

Dear Sirs:

On behalf of Nurses United for Responsible Services (NURS), I am offering comments relative to *File Code CMS-4140-IFC; Interim Final Rules Under the Paul Wellstone and Pete Domenici Mental Health and Addiction Equity Act of 2008 (MHPAEA)*. NURS is the only organization in the Commonwealth of Massachusetts that represents only advanced practice psychiatric nurses (psychiatric clinical nurse specialists and psychiatric nurse practitioners). There are over 1200 advanced practice psychiatric nurses in the Commonwealth. We provide both psychotherapy and psychopharmacology services, have regulatory authority for guardianship and commitment evaluation procedures and have hospital medical staff privileges.

We think these regulations are extremely important and hope they are officially promulgated. The importance of parity has been legally sanctioned in Massachusetts, the first parity law having been passed in 2000; and in 2008 another parity law expanded the scope of the first one. The passage of these laws has helped equalize the insurance treatment for behavioral health, primarily by removing arbitrary day and dollar benefit limitations for certain conditions. ***However, these laws have done little to nothing towards reducing the inordinate micro-management and oversight by insurance carriers.*** There is heavy utilization of insurance and/or carve-out agency reviewing in Massachusetts. This oversight, both in the private and public sectors, is often far more rigorous for behavioral health than it is for medical/surgical services in the areas of pre-admission screenings; concurrent reviews; the application of medical necessity standards; and drug coverage. Clinicians and hospitals repeatedly struggle to get managed care reviewers to approve services that the treating clinicians believe are medically necessary. Providers are constantly questioned and micro-managed by insurance reviewers as to the medical necessity of a given behavioral health service. Evidence of the difficulties our patients and clinicians experience in this regard is demonstrated by the fact that behavioral health is the most consistently appealed health service to our Massachusetts Office of Patient Protection, usually at least double the next highest appealed condition (see www.mass.gov/dph/opp). In Massachusetts, we believe the scrutiny for physical health is nowhere near the level of scrutiny for behavioral health. Because of this situation, NURS has actively supported both current versions (S.482 and H.1079) and past versions of the state bill, *An Act to Further Define Adverse Determinations by Insurers* which would defer the determination of medical necessity of treatment to the judgment of the treating clinician, rather than the insurance carrier and/or its carve-out agency, unless there is a preponderance of evidence to the contrary.

Given the above situation we believe the proposed federal regulations, particularly in the area of “non quantitative” treatment limits, are vitally important and must be maintained in the final regulations. Our understanding of the non quantitative proposed rule is that treatment limitations can be no more stringent for mental health or substance abuse than they can be for medical/surgical benefits. Our Massachusetts experiences would lead us to believe this provision is critical towards implementing true parity because we have seen through nearly ten years of parity laws that removal of day and dollar limits essentially does not lead to parity if the behavioral health services are going to be more rigorously managed, scrutinized and denied by insurance carriers and/or their carve-out agencies. *Parity with medical/surgical benefit management would be a major step forward in providing better access to needed services for the patients we serve and in essence would help lead towards true parity, which is what we believe Congress intended.* We hope that the federal agencies adhere to this language in the final regulations; for without such a provision it is difficult, if not impossible to achieve true parity for mental health and substance abuse services.

We are also requesting that there be clarification in the final regulations that the plans *provide all levels of essential* behavioral health services -- from outpatient, transitional/partial to intensive inpatient levels of care -- just as they do for medical/surgical services. In order to have parity, the scope of services should be comparable for behavioral health and medical/surgical services.

We appreciate the opportunity to provide these comments and would be happy to offer more information, if needed.

Sincerely,

Sharon Reynolds

Sharon Reynolds
Legislative Committee Chair