Mental Health Liaison Group

October 21, 2011

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
Washington, DC 20210

Attention: RIN 1210-AB52
Electronic Submission

To Whom It May Concern:

The undersigned national mental health and substance use disorder organizations in the Mental Health Liaison Group appreciate the opportunity to provide feedback on the proposed rule (76 Fed Reg. 52475, August 22, 2011) establishing summaries of benefits and coverage under the Patient Protection and Affordable Care Act (ACA).

As organizations that advocated tirelessly and successfully for equitable treatment and financial requirements for mental health and substance use disorders in private group health insurance plans, Medicare, SCHIP and under the ACA, we have long recognized the harms that result from discriminatory insurance coverage, including coverage exclusions. Therefore, we strongly recommend the proposed definition of "medical necessity" be amended to ensure that coverage is not jeopardized for people with disabilities, including those with mental or substance use disorders.

The proposed definition of medical necessity excludes a broad range of individuals who will need health care, such as those whose needs are the result of conditions such as a mental or substance use disorder, developmental disability or congenital problem. As currently drafted, the definition of medical necessity ties coverage to "illnesses" and "injuries" but not to physical and mental health conditions that may arise from causes unrelated to either an illness or injury, particularly in the case of people whose conditions are present from birth. As such, the proposed definition will undermine the non-discrimination provisions of the Affordable Care Act by permitting insurers to exclude as not "medically necessary" otherwise covered treatments and services, the need for which arises from a condition rather than an illness or injury.

The definition also permits insurers, which are bound by both the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, to undermine the purpose and provisions of those laws, and creates a conflict with ACA Sec. 1557, the Act's nondiscrimination provision. Nor can such a distinction be justified by ACA Sec. 1563 as a "commonly used" utilization management technique, since current insurer practices have moved away from such arbitrary distinctions in who qualifies for coverage, in order to more effectively focus on the effectiveness

of treatment for a wide range of physical and mental health conditions.

This shift in marketplace practices is discussed by Professor Sara Rosenbaum of George Washington University in a recent blog article. ("Medical Necessity Definition Threatens Coverage of People with Disabilities." Health Affairs Blog, Sept. 16, 2011 at http://healthaffairs.org/blog). Professor Rosenbaum calls the proposed medical necessity definition "the absolute embodiment of the very types of discriminatory practices the Affordable Care Act is intended to stop."

By drawing distinctions based on the means by which health status is classified and separating illness and injury from condition, the proposed rule essentially creates a binding direction on insurers and health benefit plans to adopt a thoroughly outdated definition of necessity, as the Rosenbaum article explains. This type of discredited definition threatens to cause the greatest harm to persons with physical and mental disabilities whose disability rests on a condition that is not classified as either illness or injury in standard coverage parlance.

Recommendation for the Glossary of Health Insurance and Medical Terms:

We propose that the definition of medically necessary be amended to add the word "condition" and replace "medicine" with "clinical practice" as follows "… illness, injury, disease, **condition** or its symptoms and that meet accepted standards of **clinical practice**."

Thank you for your consideration of our views on this important matter.

Sincerely,

American Art Therapy Association
American Association for Marriage and Family Therapy
American Association for Psychoanalysis in Clinical Social Work
American Association for Psychosocial Rehabilitation
American Association of Pastoral Counselors
American Association of Practicing Psychiatrists
American Association on Health and Disability *
American Dance Therapy Association
American Foundation for Suicide Prevention/SPAN USA
American Group Psychotherapy Association
American Mental Health Counselors Association
American Nurses Association
American Psychoanalytic Association
American Psychological Association
American Psychotherapy Association
Anxiety Disorders Association of America
Association for the Advancement of Psychology
Association for Ambulatory Behavioral Healthcare
Bazelon Center for Mental Health Law
Center for Clinical Social Work
Children and Adults with Attention-Deficit/Hyperactivity Disorder

Clinical Social Work Association
Clinical Social Work Guild 49, OPEIU
Confederation of Independent Psychoanalytic Societies
Depression and Bipolar Support Alliance
Eating Disorders Coalition for Research, Policy & Action
The Jewish Federations of North America
Mental Health America
NAADAC, The Association for Addiction Professionals
National Alliance on Mental Illness
National Association for Children's Behavioral Health
National Association of Anorexia Nervosa and Associated Disorders – ANAD
National Association of County Behavioral Health and Developmental Disability Directors
National Association of Mental Health Planning & Advisory Councils
National Association of Social Workers
National Association of State Alcohol & Drug Abuse Directors
National Council for Community Behavioral Healthcare
National Federation of Families for Children's Mental Health
National Foundation for Mental Health *
School Social Work Association of America
Tourette Syndrome Association
Treatment Communities of America
U.S. Psychiatric Rehabilitation Association

*not a MHLG member