



*The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
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October 3, 2023

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration, Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: 1210-AC11

Re: Notice of Proposed Rulemaking, “Requirements Related to the Mental Health Parity and Addiction Equity Act” (Published in Federal Register Volume 88, Number 148, page 51552 on August 3, 2023)

Dear Secretary Becerra, Assistant Secretary Gomez, and Deputy Commissioner O'Donnell,

The Massachusetts Health Connector (“Health Connector”), a state-based Marketplace (SBM) authorized under the Patient Protection and Affordable Care Act of 2010 (“ACA”), appreciates the opportunity provided by the Department of Labor, Department of Health and Human Services, and Department of Treasury (the Departments) to comment on the proposed rule, **“Requirements Related to the Mental Health Parity and Addiction Equity Act”**.

Founded in 2006 as part of bipartisan state health reform, the Massachusetts Health Connector is the longest-running State-Based Marketplace (SBM) in the country. The Health Connector is designed to connect Massachusetts residents and small businesses with high quality, affordable health coverage and to promote universal health coverage in the Commonwealth. Today, the Health Connector serves over 240,000 individuals and over 13,000 small business employees from over 2,200 businesses.¹ The Health Connector’s efforts have contributed to the Commonwealth’s status as the healthiest state in the nation,² with a nation-leading health insurance rate over 97%,³ and among the lowest-cost average Marketplace premiums in the country in 2023.⁴

¹ See Massachusetts Health Connector September 2023 Board Meeting Records (September 2023 Summary Report), at <https://www.mahealthconnector.org/about/board-meetings>

² See <https://wellbeingindex.sharecare.com/wp-content/uploads/2023/09/CWBI-State-Rankings-Report20230828.pdf>

³ Kaiser Family Foundation analysis of U.S. Census Bureau data, at <https://www.kff.org/other/state-indicator/health-insurance-coverage-of-the-total-population-cps/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

⁴ Kaiser Family Foundation analysis of data from Healthcare.gov, state rate review websites, and state plan finder tools. [Analysis of CMS Public Use Files](#).

The Health Connector strongly supports efforts by the Departments to ensure that individuals and families have the same access to mental health and substance use benefits as they do physical health benefits through reinforcing and strengthening the Mental Health Parity and Addiction Equity Act (MHPAEA). As the Departments note in their proposed rule, the mental health and substance use disorder (MHSUD) crisis is worsening across the US, especially post-pandemic, highlighting the critical need to protect and improve access to care. Between August 2020 and February 2021, the percentage of adults exhibiting symptoms of an anxiety or depressive disorder in the U.S. increased from 36.4% to 41.5%. Similarly, overdose death numbers have risen substantially across the country, reaching a then-historic high of 70,630 deaths nationally in 2019 and growing to 107,421 overdose deaths in 2022.⁵ The mental health and substance disorder crisis is also worsening across the Commonwealth. The prevalence of mental health conditions in Massachusetts has increased over 10% from the start of the 2020 pandemic.⁶ The opioid-related overdose death rate in Massachusetts increased to 33.5 per 100,000 people in 2022, 2.5 percent higher than in 2021 (32.7 per 100,000) and 9.1 percent higher than the pre-pandemic peak in 2016.⁷

The Health Connector strongly supports actions proposed by the Departments that will make it easier for residents of the Commonwealth and individuals across the country to access mental health and substance use disorder treatment without barriers. Individuals face significant barriers to accessing needed mental health care and substance use disorder treatment. The proposed rule would help people more seamlessly access the care they need when they need it. As the Departments note, less than 7% of people in need of SUD treatment received care at a specialty facility, and less than 10% received any treatment at all. In 2021, 31.4% of Massachusetts adults reported serious psychological distress, and 28.7% of these individuals reported having an unmet need of mental health treatment.⁸ According to the Health Connector's 2023 Member Survey, 25% of enrolled members have not gotten needed care due to cost and of those reporting delayed or forgone care, 21% reported delaying mental health care or counseling, an increase from 10% in 2022.⁹

To ensure residents of the Commonwealth can access comparable, equitable coverage for MHSUD services, the Health Connector supports the Departments' actions to establish a new, more prescriptive standard for evaluating whether nonquantitative treatment limitations (NQTs), such as prior authorization requirements, complies with MHPAEA. By focusing on outcomes, the proposed new standard for evaluating compliance with MHPAEA will help identify if there are any material differences between access to MHSUD and medical/surgical benefits in practice and more consistently ensure people have equivalent access between their mental health and medical benefits. The Health Connector also appreciates the Departments' efforts to clarify what plans can and cannot do under MHPAEA through updated and new examples.

Reducing barriers to accessing mental health and substance use disorder treatment will help to reduce health disparities, advance health equity, and improve health outcomes for historically underserved populations across the Commonwealth and across the U.S. The Health Connector shares the Departments' concern over the disproportionate impact barriers to MHSUD care may have on individuals and families with low incomes and members of underserved racial and ethnic groups who are more likely

⁵ "Requirements Related to the Mental Health Parity and Addiction Equity Act" (Published in Federal Register Volume 88, Number 148, page 51552 on August 3, 2023)

⁶ Testimony in support of H.1041 and S.675, an act relative to mental health parity implementation, and H.1057, and an act relative to collaborative care. Massachusetts Medical Society: Testimony in Support of H.1041 and S.675, An Act Relative to Mental Health Parity Implementation, and H.1057, and An Act Relative to Collaborative Care. (2021, July 29), at <https://www.massmed.org/Advocacy/State-Advocacy/State-Testimony/Testimony-in-Support-of-H-1041-and-S-675,-An-Act-Relative-to-Mental-Health-Parity-Implementation,-and-H-1057,-and-An-Act-Relative-to-Collaborative-Care/>.

⁷ Department of Public Health (2023), at [https://www.mass.gov/news/massachusetts-opioid-related-overdose-deaths-rose-25-percent-in-2022#:~:text=Boston%20%E2%80%94%20opioid%20related%20overdose%20deaths,of%20Public%20Health%20\(DPH\)](https://www.mass.gov/news/massachusetts-opioid-related-overdose-deaths-rose-25-percent-in-2022#:~:text=Boston%20%E2%80%94%20opioid%20related%20overdose%20deaths,of%20Public%20Health%20(DPH)).

⁸ KFF (2022). Mental Health in Massachusetts, at <https://www.kff.org/statedata/mental-health-and-substance-use-state-fact-sheets/massachusetts/#:~:text=As%20shown%20in%20the%20figure,of%20adults%20in%20the%20U.S.>

⁹ 2023 Health Connector Customer Experience Survey

to face barriers in accessing care. For example, Hispanic individuals in Massachusetts are more likely than all other racial and ethnic groups to report unmet need for health care because of the cost of care, and specifically more likely to report unmet need for behavioral health care due to cost of care.¹⁰ In addition, Health Connector members who reported delaying or not getting needed mental health care were more likely to report being two or more races.¹¹

Increased access to MHSUD care and addressing unmet need could help delay or reverse progression of MHSUD conditions and prevent hospitalization. In Massachusetts, Black patients with behavioral health conditions have higher hospital readmission rates (23.2%) and a higher proportion of emergency department visits (69.7%) associated with excess length of stay compared to other racial and ethnic groups. Among inpatient discharges for behavioral health conditions, Asian patients have the longest average length of stay, at 8.0 days, compared to other racial and ethnic groups.¹² Closing gaps in access to mental health care and substance use disorder treatment is a key component to advancing the Health Connector's health equity goals.

The Health Connector strongly urges finalization of the proposed rule and sincerely thanks the Departments for addressing the challenges individuals and families face in accessing mental health care and substance use disorder treatment in an equitable way. We look forward to continued partnership in strengthening access to comprehensive, affordable health care coverage and services.

Sincerely,



Audrey Morse Gasteier
Executive Director

¹⁰ BCBSMA Foundation (2021). Racism and Racial Inequities in Health: A Data-Informed Primer on Health Disparities in Massachusetts, at https://www.bluecrossmafoundation.org/sites/g/files/cspkws2101/files/2022-03/Health_Equity_Primer_Revised%20Final.pdf

¹¹ 2023 Health Connector Customer Experience Survey

¹² CHIA (2023). Hospital Utilization in Massachusetts. An assessment by Race and Ethnicity, at

<https://www.chiamass.gov/assets/docs/r/pubs/2023/Hospital-Utilization-in-Massachusetts-An-Assessment-by-Race-and-Ethnicity-Report.pdf>