

*Massachusetts
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Testimony to the Health Policy Commission

Re: Proposed Amendments: 958 CMR 3.000-Health Insurance Consumer Protection

Presented by: David Matteodo, Executive Director

Massachusetts Association of Behavioral Health Systems

December 16, 2013

On behalf of the Massachusetts Association of Behavioral Health Systems (MABHS), I appreciate the opportunity offer these comments to the Health Policy Commission regarding proposed regulatory changes to the processes of the Office of Patient Protection. We are generally supportive of these changes with several suggestions. The MABHS represents 43 inpatient mental health and substance abuse facilities in the Commonwealth, which collectively admit over 50,000 patients annually. Our hospitals provide the overwhelming majority of acute inpatient mental health and substance abuse services in the Commonwealth.

The Office of Patient Protection is a vital resource for our facilities. It has been enormously beneficial towards providing some balance to the oversight of inpatient Behavioral Health services. For example, prior to the creation of the OPP, when one of our hospitals was treating a patient, if the Insurance Company determined that the patient no longer needed inpatient care it would deny payment for any subsequent days, even if physician and patient were in disagreement with the Insurer's determination. This denial of coverage would result in many patients discontinuing treatment as they would not have the financial resources to pay for inpatient coverage. The creation of OPP and the attendant appeals provisions that accompanied it have allowed for continued coverage even during the appeal of disputed coverage. This level of balance has been invaluable for our patients.

As OPP is aware, Behavioral Health is by far the most appealed health condition. I know the Commission is aware of this because the most recent statistics from 2012 demonstrate that **Behavioral Health had over three times as many appeals as the next closest condition (Experimental)**. Although I don't know for sure, I would expect that most of those Behavioral Health appeals were for Inpatient care. This is because there is very stringent management of Behavioral Health by Insurer's and "Carve Out" Behavioral Health Management firms. The review of Insurer denials by an independent body such as OPP brings an element of objectivity and fairness into the process.

Proposed Amendments 958 CMR 3.000

The proposed regulations maintain some of the bedrock principles that are vital to consumers and providers, such as timeliness; manageable and objective processes which should help ensure fairness; and consumer/patient protections in a mechanism that can allow essential care to continue throughout the appeal process. The proposed regulations have several positive changes to the current process such as;

- Utilization Review and Medical Necessity Criteria would be available at no charge. This provision is important so that consumers and providers know the rationale behind and Insurers decision.
- A facilitated internal grievance review process should help streamline the process.
- Timelines in general throughout the appeals process are improved and this should help ensure essential care is not disrupted
- The requirement for the Insurer to provide the consumer or authorized representative any new information leading to a denial of coverage is positive.
- The continuation of coverage provisions are maintained and bolstered. This is very important and must be continued by the Commission.

Areas for Improvement/Questions:

- It is not clear why Medicaid Managed Care Organizations are not included in the definition of Carrier. It would be enormously beneficial for MassHealth consumers to have the same consumer protections as other Massachusetts citizens. We strongly believe anyone who has insurance, whether public or private, should have access to the services of OPP, and have filed Legislation to that effect S. 518 and H.2028.
- The proposed regulation should clarify that appeals of Internal Grievances should be conducted by a clinical peer licensed in Massachusetts. Division of Insurance regulations and Chapter 176O specify that in addition to actively practicing in the same or similar specialty, the clinician must hold a “....non-restricted license from a professional licensing board in the Commonwealth”. This provision should be added to the OPP regulations under 3.306 (2) Review of Internal Grievances. Our physicians can often be frustrated with Insurance reviewers from other states not being familiar with Massachusetts’ geography or health delivery system. It is very important that reviewing clinicians, even for the Internal Appeals, be actively practicing in the same or similar specialty and licensed in Massachusetts.

In summary, we support the role of OPP and these regulations should protect and maintain that role: we also hope our suggestions above are adopted in the final Regulations. Until there is true Parity for Behavioral Health, there is a very strong need for our providers and patients to have the ability to seek recourse when Insurers will not cover services. Although our patients are not always successful in appeals, just having the ability to appeal and have an objective review is essential for Behavioral Health.

Thank you for the opportunity to offer these comments. Please do not hesitate to contact me with any questions.