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## MENTAL HEALTH LEGAL ADVISORS COMMITTEE

The Commonwealth of Massachusetts

Supreme Judicial Court

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Health Policy Commission  
50 Milk Street, 8<sup>th</sup> floor  
Boston, MA 02109

Dear Commissioners:

This testimony expands upon the verbal testimony of Mental Health Legal Advisors Committee<sup>1</sup> (MHLAC) at the October 22, 2019 Health Policy Commission (HPC) hearing on annual health cost trends.<sup>2</sup> MHLAC offers suggestions to reduce cost and improve care quality based upon its lengthy interaction with and representation of persons with lived experience of psychiatric challenges and deep understanding of how health care policy affects our clients. MHLAC also offers suggestions on reducing health care costs through means that respect patient preferences and improve outcomes.<sup>3</sup>

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<sup>1</sup> MHLAC is an agency under the Massachusetts Supreme Judicial Court that provides representation to low-income persons with psychiatric challenges. MHLAC also provides information and advice to any Commonwealth resident, including the legislature, other agencies and commissions on mental health legal matters. In this role, MHLAC has extensive hands-on experience regarding the barriers people with psychiatric diagnoses have with respect to accessing health care services and obtaining quality care once those services are obtained.

<sup>2</sup> This written testimony speaks to issues raised by HPC in its most recent Health Cost Trends Report, as well those raised in the October hearings.

<sup>3</sup> Detailed support for each recommendation will be forwarded within the week as Appendix A.

**Integrated care**<sup>4</sup> can endanger access to adequate physical health care for persons with psychiatric diagnoses due to provider bias toward persons with psychiatric challenges and diagnostic overshadowing.

*Proposals:*

- Integrated care systems must be monitored closely to ensure that persons with psychiatric diagnoses are getting physical health care comparable to persons without behavioral health diagnoses.<sup>5</sup>
- Peer workers in health care settings<sup>6</sup> and “Open Notes” should be utilized to lessen implicit bias.
- Patient control of psychiatric information, beyond that protected by HIPAA, should be explored.

**Demand-side incentives**<sup>7</sup> financially burden patients, are of questionable efficacy in reducing overall health care costs, and harm quality of care. Patient out-of-pocket expenditures have grown far more than expenditures by employers and insurers and more than the inflation rate.

- Transparency of prices will not relieve the financial burden on patients because people do not shop for medical care like typical consumer goods.
- Tiering criteria are not open to public review, are primarily based on cost and not quality, are insufficiently granular to ensure optimal care, and do not account for the individual characteristics of each patient.

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<sup>4</sup> Health Policy Commission recommendation #10.

<sup>5</sup> A standard set of quality indicators across healthcare systems could inform efforts to improve health and disability outcomes in persons with psychiatric diagnoses. System factors, such as perceived bias of provider, adherence of care to clinical guidelines, stage of diagnosis for conditions like cancer, number of contacts with physical health care providers, insurer, and other pertinent factors like race and gender, should be correlated.

<sup>6</sup> Health Policy Commission recommendation #9.

<sup>7</sup> Health Policy Commission recommendation #6.

- Higher patient costs lead to avoidance of appropriate use of care, which ultimately leads to more expensive modalities of treatment.<sup>8</sup>

*Proposals:*

- Lower health care costs through the use of alternative providers of care, like peer respite, recovery coaches and peer counselors.
- Expand coverage of traditionally non-medical tools like meditation, exercise, support animals, and transportation to activities that increase social engagement to promote prevention and recovery.
- Require insurers to address social determinants of health by financially supporting, either through coverage or specified contribution, corrective measures.

Insurer funding and coverage of measures that **address social determinants of health** will reduce the cost of health care overall. Limited definitions of what is health-related and minor expenditures by insurers to refer patients to underfunded and unavailable public services are insufficient to change the trajectory of Massachusetts' health care system.

*Proposals*

- Require insurers, including ACOs, to cover and financially contribute to improving access to broadly defined social determinants of health<sup>9</sup>.
- Simultaneously, CHIA or another public partner should engage in a long-term study of strategies used by insurers and health care providers to address social determinants of health.

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<sup>8</sup> The health care system should not increase disease by increasing the financial burdens of consumers. Money, finances, and debt are the most common source of anxiety and are linked to the aggravation of mental health conditions. Financial difficulty drastically reduces recovery rates for common mental health conditions. Financial difficulties also increase demand for health care services. K. Evans, *The link between financial difficulty and mental health problems*, 27 J. Mental Health 487 (2018).

<sup>9</sup> Improving access must be more than just referring patients to public programs.

**Alternative and innovative services**<sup>10</sup> and treatments offer the opportunity to lower health care costs. Unfortunately, insurers rarely cover these services, often claiming that they are not “evidence-based.” Yet offering patients a broad array of options from which to choose increases patient engagement and the potential for recovery, ultimately saving insurers money.

- Providing people with the services they desire increases engagement and the potential for recovery as compared to involuntary or undesirable treatment.
- Meditation, massage, and acupuncture lessen reliance on pain medication, thereby reducing the likelihood of addiction.
- Peer respites reduce unnecessary hospitalization.
- Animal therapy and emotional support and service animals promote and sustain recovery inexpensively.
- Multi-generational housing can facilitate hospital to home transitions and reduce post-discharge expenses.

### *Proposals*

- Funding for research should be targeted to those services and treatments that are not likely to be otherwise funded because they will not produce large profits for corporations.
- Practice evidence should be included in determining whether a modality of treatment is “evidence-based.”
- Insurers should cover meditation, massage, acupuncture, peer respites, animal therapy, and emotional support and service animals, all of which have been shown to have applications that improve outcomes and/or reduce health care costs.

**Alternative payment arrangements**<sup>11</sup> and shared risk are not without negative effects on patient care.

- Some of the negative consequences of placing providers and provider groups in the role of insurers include cherry-picking, manipulation of data to the detriment of research, denial of necessary care, and over-reliance on fundamentally flawed and inapplicable restrictive protocols.

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<sup>10</sup> Health Policy Commission recommendation #10.

<sup>11</sup> Health Policy Commission recommendation #11.

- Outcome measurements currently relied upon do not control harmful practices spurred by capitation and shared risk.
- The ability of patients to effectively contest denials of care is limited, if not eradicated, when doctors make decisions based on personal financial interest or organizational pressure.

### *Proposals*

- Pilot and promote best practices for prevention, maintenance, and recovery that are developed with the participation of persons with lived experience of the conditions to which the practices apply. Options preferred by patients will include low-cost “fixes” that will promote patient engagement and lower health care costs.
- Free providers to make medical decisions based on the best interests of their patients. To start, achieve this by encouraging the use of salaried health care professionals who can decide what is medically necessary for their patients.

### *With respect to organizations that engage in “alternative payment arrangements”:*

- Ensure that patients have the ability to appeal denials of care by their providers to an independent agency and to have access to independent second opinions at no charge, without which the right to appeal would be a charade.
- Use and develop outcome measures, like PROMs, with the participation of relevant patient populations.
- Require individual providers and accountable care organizations to disclose financial incentives under which they operate.

### **Treatment protocols<sup>12</sup> and the designation of services and pharmaceuticals as “low-value”<sup>13</sup> are problematic.**

- Treatment protocols ignore individual circumstances and patient preferences, weakening patient engagement and amenability to provider treatment recommendations.

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<sup>12</sup> Health Policy Commission recommendation #2.

<sup>13</sup> Health Policy Commission recommendation #7.

- The bases for designating services as “low-value” are often flimsy and tainted by financial conflicts of interest.
- Treatment protocols are subject to bias because the data and assumptions upon which they are based exclude or devalue historically disempowered populations (e.g., people of color, women, people with disabilities, the elderly).

### *Proposals*

- Do not permit the rigid use of treatment protocols to deny coverage of services and other care.
- Monitor the impact of artificial intelligence tools on appropriate diagnoses and care.
- Systematically review treatment protocols to ensure that they are based on data that includes for all target populations.
- Do not use QALYs to determine “value” and include a robust representation of persons with lived experience of the condition for which the service/medication would be used in the evaluation of value.
- Do not financially penalize patients who reasonably use a medication that does not have a generic equivalent of equal efficacy for the individual.

**Administrative complexity**<sup>14</sup> experienced by patients and providers due to unnecessary utilization review and unwarranted denials should be addressed, while quality measures to control financial incentives should be strengthened.

### *Proposals*

- Financial consequences should be imposed on insurers for ill-considered denials of care.
- Quality measures that are weakly tied to outcomes should be replaced with patient-reported outcome measurements and outcome measurements that are less amenable to manipulation.

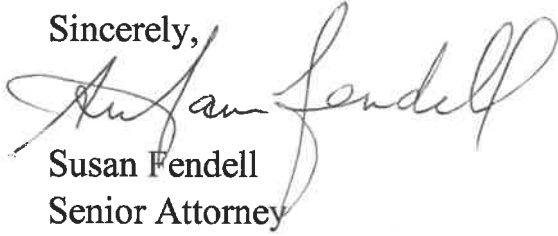
MHLAC appreciates the work HPC and CHIA have done to further the equitable reduction of health care costs while maintaining quality of care. We submit these

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<sup>14</sup> Health Policy Commission recommendation #1.

comments to inform and support your efforts. MHLAC hopes you will avail yourself of our services and expertise in your future endeavors.

Sincerely,

A handwritten signature in cursive script that reads "Susan Fendell". The signature is written in black ink and is positioned to the right of the typed name and title.

Susan Fendell  
Senior Attorney