



# New York State Psychiatric Association, Inc.

400 Garden City Plaza, Garden City, New York 11530 • (516) 542-0077

March 3, 2014

The Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, New York 12224

Dear Governor Cuomo:

I am writing on behalf of the New York State Psychiatric Association, the state medical specialty association of approximately 4,000 psychiatrists. I would like to express the Association's concerns about a new prior authorization requirement being imposed solely on psychotherapy benefits available under the Empire Plan, the health plan for state employees and their families. Effective January 1, 2014, Value Options took over as the new behavioral health administrator for the Empire Plan and announced the reinstatement of a prior authorization requirement for all psychotherapy claims that exceed a 10-visit limit. Value Options has made clear that the prior authorization requirement applies only to psychotherapy visits and not to any other type of claim submitted by physicians, including evaluation and management claims. A similar prior authorization requirement had previously been imposed by Optum, the former behavioral health administrator for the Empire Plan, but had been subsequently discontinued.

As you may be aware, under the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and implementing regulations, nonquantitative treatment limitations (NQTLs) that are applied to mental health and substance use disorder (MH/SUD) benefits must be (i) comparable to and (ii) applied no more stringently than those treatment limitations applied to medical/surgical benefits. The first prong of the test prohibits limitations on MH/SUD benefits that *do not exist* with respect to medical/surgical benefits. The second prong of the test prohibits treatment limitations that exist with respect to MH/SUD benefits but are *applied more stringently* to MH/SUD benefits than to non-behavioral benefits.

As the Empire Plan's prior authorization requirement is imposed solely on claims for psychotherapy services, it appears to violate the first prong of the NQTL test in that it represents a treatment limitation that is imposed unilaterally on MH/SUD disorder benefits. As a result, the prior authorization requirement would represent a per se violation of MHPAEA. In the past, in defense of the prior authorization requirement, Optum has asserted that this requirement was permissible because the Empire Plan also imposes similar restrictions on physical therapy benefits.

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However, NYSPA has repeatedly refuted Optum's assertion of the "physical therapy" argument as a further violation of section (c)(2) of the parity regulations, which states that treatment limitations imposed on MH/SUD benefits may not be more restrictive than the predominant treatment limitation applied to all or substantially all medical/surgical benefits under the same plan. The psychotherapy prior authorization requirement imposed first by Optum and now by Value Options cannot possibly comply with this general parity requirement because the limitation on physical therapy benefits fails to constitute a *predominant* limitation imposed on *all or substantially all* benefits under the plan and represents merely a *de minimis* portion of medical/surgical benefits available to Empire Plan participants. Value Options has not yet responded to our inquiries regarding the newly imposed prior authorization requirement.

In light of the foregoing, we would very much appreciate the assistance of your office in ensuring that the health plan serving our state employees and their families provides a full parity benefit to its beneficiaries and is in full compliance with all state and federal laws relating to parity in behavioral health benefits.

If you would like any additional information, I can be reached at 516-542-0077. Thank you very much for your assistance in this matter.

Sincerely,



Seth P. Stein, Esq.  
Executive Director and General Counsel

Cc: Assembly Speaker Sheldon Silver  
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