

## **New Hampshire Insurance Department**

### Advisory Committee on Behavioral Health and Addiction Services

March 10, 2017 meeting

Room 100, Walker Building, Concord, NH

**Board Members in Attendance:** Dr. Peter Mason, Andrea Rancatore, Matt Veno (HPHC) sitting in for Dr. William Brewster, Stephanie Savard, Ken Norton, Courtney Gray, Michele Merritt, Lucy Hodder, Abby Shockley, Dr. Richard LaFleur, Amelie Gooding, Stephen Kozak, and Christopher Kozak.

**Board Members Unable to Attend:** Senator Dan Feltes, Senator Jeb Bradley, Representative Ed Butler, Representative John Hunt, Dr. Robert Feder, Joseph Plaia, and Dr. Paul Frehner.

Commissioner Roger Sevigny welcomed the group at 9:30 a.m. and discussed the schedule for the next two meetings which will be on April 25 from 1:30 to 3:30 p.m. and on June 7 from 9:30 to 11:30 a.m. in Room 100 of the Walker Building. He explained that a lot is happening in Washington, D.C. and the Department is fortunate to have the NAIC (National Association of Insurance Commissioners), which provides briefings every day.

Referring to the Market Conduct Exam, he talked about the next steps in the process. He explained that the market conduct exam found that carriers are committed to making progress and will continue to move forward. Future exams will move beyond looking at substance use disorder services (SUD) to mental health parity with respect to access to behavioral health services more generally as well. He turned the agenda over to NHID Health Policy Legal Counsel Jenny Patterson.

#### **Substance Use Disorder Market Conduct Exam:**

Patterson explained to the group that the goal of the [SUD Market Conduct Exam](#) was to get a baseline of the carriers' coverage of SUD treatment services during the 1<sup>st</sup> three quarters of 2015. The NHID simultaneously looked at three separate companies –Anthem, Harvard Pilgrim, and Cigna—and looked at several areas that are new to the Department. The NHID is continuing to look forward with parity and to look more broadly at all behavioral health services. This exam did not look at QHPs for the NH Premium Assistance Program (PAP), as this program started after the exam period, and this will be subject of future exams.

The Department applied for consumer protection grant funds and they were approved by the Governor and Executive Council on March 8<sup>th</sup>. The NHID is developing a framework for the next round of market conduct exams and will be working with the same contractor that developed the standards for this exam. This grant will allow NHID to implement exams in a way that will pay for the examiners and the companies will not need to pay for the cost of the exams themselves. For Phase I of the grant, the Department has contracted with one of the contract examiners who participated in the SUD exams to develop protocols for the parity exams. Phase II of the grant will include the execution of the protocols developed. Those Request For Proposals have not yet been developed and the contracts have not been awarded.

Patterson explained that she would provide a high level review of the exam results and will answer questions from the reports if anything is unclear. Carriers will also have time to respond to the exam results.

Patterson reviewed the market conduct exam process and its various stages which are [set forth by statute](#). Insurance carriers were found to be in compliance in many areas, especially where the law is clear. For example, carriers were compliant in the areas of grievances and appeals processes and timeliness. It was found uniformly that prior authorization protocols, which have been an area of public concern, were found to be medically reasonable and followed American Society of Addiction Medicine (ASAM) criteria.

Harvard Pilgrim uses a separate company – United Behavioral Health/Optum – to manage behavioral health care services. An area of concern was Harvard Pilgrim’s oversight of United Behavioral Health/Optum and an inability to provide necessary information to the examiners in a timely manner. This will be the topic of a future market conduct examination. Another concern was the inability to obtain data from Harvard Pilgrim and Optum in order to compare denial rates across carriers. As a result, the Department was unable to do an “apples-to-apples” comparison.

Patterson emphasized the importance of the face-to-face conversations of this committee and how committee members can assist the Department with broadening the focus of future exams to full behavioral health care parity issues.

#### **Carrier Perspectives on Exam:**

**Anthem**—Dr. Richard LaFleur gave his accolades to the Department for tackling this issue. Dr. LaFleur emphasized the importance of addressing the substance abuse crisis jointly – like any public health crisis. He spoke about the importance of integration between behavioral health and primary care and some of the efforts Anthem has taken related to this. Anthem is working to prevent the overuse of opioids, and unfortunately this includes prior authorization. Preliminary results indicate that Anthem is showing fewer denials when using ASAM criteria. Dr. Mason suggested he would like to see the data on prior authorization abuses and how many prior authorization requests are denied. Dr. LaFleur explained that, in literature, there is a 30% prior authorization denial rate for all categories of care.

**Tufts**—Steve Kozak added that Tufts does not like investing in monitoring resources like prior authorization if there is no benefit. They will stop monitoring if the benefit is below a particular threshold.

**Harvard Pilgrim**—Matt Veno explained that they see about 20% “abuses” in prior authorization, but they are not actual abuses. They are a result of the significant variability in the practice of evidence based medicine for SUD and behavioral health care. He understands that is difficult for providers to think of prior authorization as a “resource.”

Dr. Mason argued that carriers should go after the bad actors. Veno explained that carriers do pursue “bad actors” but do not characterize them as bad, because those providers are working on a different model than what evidence suggests is most effective. They would rather work with those providers to improve their practices. Due to treatment capacity shortages, it would be more challenging to eliminate those providers from their network.

Veno discussed quantitative treatment limitations (QTLs) and non-quantitative treatment limitations (NQTLs). QTLs are straightforward and NQTLs are much more complicated. He stated that Harvard Pilgrim takes compliance with mental health parity very seriously and the carrier undertook extensive internal assessment and made important administrative changes as a result of the exam process. He is encouraged to read in the report that compliance is the rule of the day for all carriers.

Patterson explained that overall there is a shortage of SUD providers in the state and that all carriers are looking at how to expand their networks and were discussing actions they could take moving forward.

### **Committee Discussion on Exam**

The Commissioner opened up the conversation for group discussion about the market conduct exam results.

Amelie Gooding commented that she has had great conversations about prior authorization with Anthem and Harvard Pilgrim. They are moving in the right direction toward understanding each other better, and using the ASAM criteria has led to more uniformity. They are getting fewer denials and the process is only getting better. She identified that they still have an issue with UBH, who often does not approve residential treatment. Pharmacy benefit managers add another level of complexity to medically-assisted treatment.

Lucy Hodder applauded the Department for its work and this advisory board. She added that several organizations involved in the committee are also participating in conversations on workforce development in the state and that fee schedules and payment for providers could be part of this discussion. Patterson added that the NHID plans to explore credentialing in future market conduct exams.

Commissioner Sevigny mentioned to the committee that Eireann Aspell, the Outreach Coordinator at the NHID, is developing a mental health parity presentation. Ken Norton said that would be very helpful and offered to help Eireann with outreach efforts.

Gray asked about the timeline for the exam process. Patterson explained that the exam process and timeline is set forth by statute, and that the NHID would be moving forward with new examinations using grant funding. The Commissioner added that market conduct examiners use an NAIC Market Regulation Handbook so that the process is uniform across the states.

Patterson discussed the Commercial Policy Parity Academy that the NHID is participating in with 19 other state insurance regulatory agencies. NH DHHS is participating in a Medicaid parity academy, and a member of the NH DHHS parity academy team is also a member of the NHID’s parity academy team.

Abby Shockley asked to discuss the baseline data on page 26 and 27 of the Anthem exam. An independent reviewer found 6 cases they disagreed with and a corrective action plan was made to reach out to those people, but only 3 were still Anthem members and the NHID withdrew its request for Anthem to reach out to all of those individuals. Patterson explained that none of these individuals had filed appeals and carriers were in compliance with that process.

Michelle Merritt continued the discussion regarding the 6 individuals that were denied the requested level of care. She stated that if the patients paid for the care they needed out of pocket there be retribution for the money they paid towards care that they were incorrectly denied. Patterson responded that those patients would need to file an appeal and emphasized the importance of outreach to consumers to educate them about this right.

Ken Norton inquired about other plans for a similar market conduct examination. Patterson explained the that grant funds awarded will allow the NHID to take a broader look at behavioral health and substance use disorder services and that it would be helpful to get this group's feedback on what issues to look at moving forward. The Commissioner explained that the market conduct process is prescriptive and the NHID decides what to examine, then the warrant is issued.

Merritt added that at the time of the exam a common theme was the insufficient number of providers. She asked the carriers how they feel about the number of providers in their networks now compared to the time of the exam and explained that she is also involved in the workforce development issue.

Tyler Brannen from the NH Insurance Department talked about the new network adequacy model being implemented by the Department. The new model will be service based and will allow the Department to have a greater role in looking at the actual services available in networks. Patterson added that the Department will be able to use claims data to look at how services are actually happening, regardless of the provider's license.

Dr. Mason added that what Brannen is talking about is in parallel with the 1115 Waiver. Anthem has done some Medication Assisted Treatment expansion across their network and that he would like to see that done by other carriers too.

Merritt spoke about the levels of credentialing and asked the committee to keep in mind if there are policy solutions that would allow carriers to contract with lower level credentialed professionals.

#### **Member Updates:**

Gray shared a letter addressed to the members to the Advisory Committee from the 110 members of the NH Provider's Association. The letter highlights continued challenges faces by providers in light of the opioid epidemic.

Norton began a discussion on the emergency room boarding issue. A couple weeks ago NH reached a new high of 68 individuals in ER boarding, and that number has more than tripled since 2005. This issue is related to workforce development limitations and the lack of capacity at NH Hospital, and he questioned whether or not it is a parity violation. We don't treat any other illness this way. For medical

conditions, if it's determined that you need inpatient care you do not wait two weeks for the appropriate level of care. There are two individuals that have been in ER boarding for at least 20 days. The durations of ER boarding stays are continuing to go up. He asked what about network adequacy requirements in terms of inpatient care. The Bureau of Behavioral Health is looking at whether patients on the waiting list are commercially insured. There are 10 individuals with commercial insurance, another 15 that are not known, and then breakout for Medicare and Managed Care. Even placing those 10 individuals with commercial insurance in inpatient care could bring down the number considerably. There are no other forums in the state to address these issues where we have insurers and providers together which is why he wanted to put this out there to the group.

Mike Brown and Paula Rodgers of Anthem shared that they are aware of 1 Anthem member in this situation right now and they are having a meeting at the beginning of next week to problem solve this patient's care coordination. Rodgers added that Anthem does have some inpatient capacity in-network and they are looking for patients who are in ER boarding situations to at least get some appropriate care while they are waiting for inpatient. Hodder added that if it's not a parity issue, it's a stigma issue. Commissioner Sevigny noted that the NHID's jurisdiction covers about half of the market in the state (fully-insured plans) and that the state needs a solution that includes the other half of the market (self-funded employer plans) and traditional Medicaid.

Steve Kozak commented that the committee may all agree on a solution, but there is nowhere for these individuals to go and there is no insurance coverage that will solve the issue – it's a lack of inpatient capacity. Veno added that he was on the DHHS call about the issue and that they will notify Harvard Pilgrim when a member is stuck. Harvard Pilgrim will look for capacity in or out of network. The problem is a gap in between systems.

Andrea Rancatore explained that she calls hospital emergency departments looking for Ambetter/NH Healthy Families members. She may not get a return call, but she may call 2 or 3 times a day. It is a matter of collecting data, which members are there, their status, their options, and do they need inpatient care or do they need a lower level of care that might be better than the ER? Stephanie Savard added that it is a labor intensive process but there must be cost savings compared to keeping patients in the ED long-term. Ken Norton asked about network adequacy at the outpatient level, and said that Hospital Association may be the missing component in these conversations.

#### **Legislative Updates:**

Norton discussed the following proposed legislation:

SB 157: relative to network adequacy and consumer rights under the managed care law.

HB 572: extending the suspension of prior authorization requirements for a community mental health program regarding drugs used to treat mental illness.

HB 443: prohibiting prescription drug manufacturers from offering copayment reimbursement was voted ITL. This bill prohibits prescription drug manufacturers from offering to pay or reimburse an individual for his or her insurance copay.

Merritt discussed SB 158 prohibiting prescription drug manufacturers from offering copayment reimbursement which would remove barriers to MAT. After an initial prior authorization it would require a renewal of prior authorization for another 2 years.

### **Public Comment**

Chelsea Arsenault from ROAD to a Better Life, an outpatient treatment center, talked about an issue their center had experienced with prior authorization for Suboxone. She has discussed this issue with Dr. LaFleur but the situation is becoming increasingly problematic. Anthem uses Express Scripts, which uses covermymeds.com for the process of prior authorization for Suboxone film. They receive denials because buprenorphine is formulary and Suboxone is non-formulary – it does not have an opiate blocker. They must go through a series of questions about why they want Suboxone for the patient, not buprenorphine and then submit for review which takes 48-72 hours, but was initially taking 5-7 days until she spoke with Dr. LaFleur. They are still in the process of getting denied and needing prior authorization, but the turnaround has now improved to 24-48 hours. She feels this timeframe is inexcusable when relapse is imminent. She thinks it is a formulary issue, but is not certain about the root of the problem. They also have had issues with Express Scripts prior authorizations, for similar patients one was approved for 1 month and another patient was approved for 6 months.

Dr. LaFleur explained that the universal form that is now used does not transmit all of the information needed and it is a communication issue. Dr. Mason asked if it made sense for carriers to have a 48 hour grace period for prior authorization, and allow them time to start treatment for those who are most vulnerable. Dr. LaFleur explained that they have removed the prior authorization requirements but the problem is quantity limits.

Roger Sevigny suggested we invite someone from the NH Hospital Association to attend the next meeting. Anthem added that they have a new program called AWARE and Harvard Pilgrim also has a pilot program called Peer Recovery Services that would like to present at a future meeting.

The meeting adjourned at 11:30 a.m.