

**FOR IMMEDIATE RELEASE: January 27, 2020**

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### **NH Insurance Department Releases Results of Mental Health Parity Examinations**

**CONCORD** – Acting New Hampshire Insurance Commissioner Alex Feldvebel today made public three market conduct Examination Reports focused on the compliance of the companies offering coverage on New Hampshire’s Health Insurance Marketplace (HealthCare.gov)—Anthem, Ambetter by NH Healthy Families, and Harvard Pilgrim—under the Mental Health Parity and Addiction Equity Act (MHPAEA/Parity Act) of 2008. These are the first market conduct examinations in any state to look at parity in provider reimbursement practices under MHPAEA.

The Parity Act is a federal law that requires health insurance companies to cover mental health and substance use disorder (MH/SUD) services in parity with medical and surgical (M/S) services. This includes a requirement that any treatment limitations in a benefit plan can be no more restrictive for MH/SUD services than they are for M/S services.

The exams were declared in December 2017, as a follow up to substance use disorder treatment examinations and the Department’s ongoing efforts to address mental health and substance use disorder coverage. The exam reports reflect an 18-month look at the companies’ adherence to the parity law during the exam period of January 2016 to July 2017. The exams reviewed the companies’ non-quantitative treatment limitations (NQTLs). NQTLs are defined as any limitation, often non-numeric, on the scope or duration of benefits for treatment. This included the companies’ operations and management, benefit classifications, medical management standards, benefit design, provider reimbursement, grievance and appeals processes, and claims handling practices. For most of the NQTLs reviewed by the Department, Anthem and Harvard Pilgrim were found to be in compliance with MHPAEA. The primary finding noted by the Department for both companies is related to provider reimbursement practices. Ambetter did not have findings related to parity, but did have findings related to claims handling practices.

The New Hampshire Insurance Department hired BerryDunn Health Analytics Practice Area (BerryDunn) to analyze the companies’ provider reimbursement practices for MH/SUD and M/S services for compliance with MHPAEA. Under MHPAEA, provider reimbursement is considered an NQTL. Any processes, strategies, evidentiary standards, or other factors used to set provider reimbursement rates for MH/SUD services must be comparable to, and applied no more stringently than, the factors used in applying that same limitation to M/S services.

In order to assess the companies’ compliance, BerryDunn analyzed the companies’ provider reimbursement policies, procedures, and responses to written questions and document requests, as well as the ratios of companies’ provider reimbursement amounts to Medicare rates for the same services. Medicare payment rates are developed using a highly detailed, scientific process that is consistent across all services and is based on the resources required to deliver the services. It therefore meets MHPAEA’s comparability requirement and serves as a benchmark that, if adhered to, would provide adequate evidence of compliance. Using NH insurance claims payment data, BerryDunn’s analysis focused on inpatient services and outpatient professional services and

found that Anthem<sup>1</sup> and Harvard Pilgrim<sup>2</sup> reimburse MH/SUD providers at amounts very near Medicare rates, but virtually all M/S provider specialties at amounts much higher than Medicare rates. The analysis also found that Ambetter reimburses both M/S and MH/SUD providers at rates similar to Medicare, minimizing the Department's concerns about a parity violation related to provider reimbursement practices.

Under MHPAEA regulations, a large difference in outcomes, while not determinative, constitutes a strong indicator of potential non-compliance. These results are consistent with a previous [report](#) released by the Department in 2016 and two studies conducted by Milliman ([2017](#) and [2019](#)) that used national data contributed by a number of commercial health plans and show a large disparity between MH/SUD and M/S commercial reimbursement rates when benchmarked against Medicare.

In view of this, BerryDunn examined whether Anthem and Harvard Pilgrim were in compliance with MHPAEA's requirement that the companies be able to document and demonstrate that the processes, strategies, evidentiary standards and other factors it uses to set provider reimbursement rates for MH/SUD services and M/S services are comparable. Ultimately, the Insurance Department found that Anthem and Harvard Pilgrim did not provide sufficient information to demonstrate that it meets the comparability requirement.

Although Anthem and Harvard Pilgrim dispute the Insurance Department's findings, they have entered into separate settlements with the Department whereby the companies agreed to implement Compliance Assurance Plans (CAP) during a two-year monitoring period. Under the CAP, Anthem and Harvard Pilgrim will each: (1) develop a written, analytic framework describing its provider reimbursement practices that is sufficiently detailed to demonstrate comparability of its provider reimbursement practices as written, (2) utilize this framework to re-evaluate its MH/SUD fee schedule to assure that its provider reimbursement practices are comparable as applied, and (3) continue to implement a broad array of initiatives to further develop and improve its MH/SUD provider network.

"I am gratified that, even though Anthem and Harvard Pilgrim disagree with the Department on the examination findings, we have been able to reach agreement about the path forward, and I thank Anthem and Harvard for their constructive approach," said Acting Insurance Commissioner Alex Feldvebel. "I believe the Settlement Agreement and Orders will enhance access to mental health and addiction treatment services in the state and also give the Department the information it needs to ensure compliance with MHPAEA's standards for provider reimbursement. The Department looks forward to continuing to engage insurance companies,

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<sup>1</sup> Both the inpatient and the outpatient professional claims analyses showed a large discrepancy in Anthem-to-Medicare payment ratios between MH/SUD services and M/S services, with inpatient MH/SUD episodes showing a 1.32 ratio versus 2.30 for M/S episodes. MH/SUD professional services showed the lowest Anthem-to-Medicare reimbursement ratio among all professional specialties: 1.06. This can be compared to the M/S primary care ratio of 1.97, the M/S evaluation and management services ratio of 1.53, or the neurological surgery ratio of 2.31.

<sup>2</sup> Both the inpatient and professional claims analyses show a large discrepancy in Harvard Pilgrim-to-Medicare payment ratios between MH/SUD services and M/S services, with inpatient MH/SUD episodes showing a 1.30 ratio versus 2.83 for M/S episodes. MH/SUD professional services showed the lowest Harvard Pilgrim-to-Medicare reimbursement ratio among all professional services: 1.01. This can be compared to the M/S primary care ratio of 1.40, the M/S evaluation and management services ratio of 1.65, and the gastroenterology ratio of 1.89.

policymakers, providers, advocates, and the public to find other avenues to promote access to mental health and substance use disorder services for patients with private insurance coverage.”

The Insurance Department’s examiners completed their work on the exam reports in May 2019. Subsequently, the Department had months of back and forth with the companies, a process that is laid out in state statute and allows examined companies the right to respond, to object to findings, and to request a meeting with the Department to discuss the examination findings.

The Examination Reports and Orders can be found on the Insurance Department [website](#). The NH Insurance Department will present the results of the examinations to the Mental Health and Addiction Services Advisory Committee on Friday, February 14 from 10:00 a.m. to 12:00 p.m. at the [Fred H. Brown Building](#) Auditorium, 129 Pleasant St, Concord.

### **The New Hampshire Insurance Department Can Help**

The New Hampshire Insurance Department’s mission is to promote and protect the public good by ensuring the existence of a safe and competitive insurance marketplace through the development and enforcement of the insurance laws of the State of New Hampshire. Contact us with any questions or concerns you may have regarding your insurance coverage at 1-800- 852-3416 or (603) 271-2261, or by email at [consumerservices@ins.nh.gov](mailto:consumerservices@ins.nh.gov). For more information, visit [www.nh.gov/insurance](http://www.nh.gov/insurance).

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