

December 9, 2019

The Honorable Mitch McConnell
Majority Leader
U.S. Senate 317 Russell Senate Office Building
Washington, DC 20002

The Honorable Charles Schumer
Minority Leader
U.S. Senate 322 Hart Senate Office Building
Washington, DC 20002

The Honorable Nancy Pelosi
Speaker of the U.S. House of Representatives
H-232 United States Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
H-204 United States Capitol
Washington, D.C. 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi and Minority Leader McCarthy,

The undersigned organizations representing the behavioral health community are writing to express our concern with Title III Sec. 305 Timely Bills to Patients within the *Lower Health Care Costs Act of 2019* (S. 1895), and discussions to include the provision within the end of year spending package. Access, coverage, affordability, and patient protections all play significant roles for over 65 million Americans that have a mental health and/or substance use disorder.¹

Sec. 305 sets a 45-day maximum for providers to send a final, adjudicated bill to a patient. If this timeline is not met, providers are faced with significant monetary penalties including refunding the patient for services and fines of up to \$10,000 per day. Although the legislation includes a clarification allowing for providers and payers to negotiate an alternative adjudication timeline, there is no provision which would allow the entities to go beyond the 45-day period for reasons such as appeals for adverse benefit determinations, delays from the payer in coverage determinations, and payer resubmission requests.

Representing providers, families and individuals affected by mental health and substance use disorder, we are intimately aware of the barriers to coverage that are unique to our vulnerable population. Patients and families within our community will frequently appeal denials for mental health and substance use disorder coverage and rely on existing federal laws that permit patients and their authorized representatives (which often in our space include the treatment provider) 180 days to appeal after receipt of a claim and an additional 4 months for appeals in an external review. As drafted, Section 305 severely limits our vulnerable patient population's ability to appeal denials for mental health and substance use disorder coverage to 45-days. In turn, this will leave our vulnerable population with significantly higher out of pocket costs.

The economic burden patients with mental health and substance use disorder face are tremendous. A recent report from [Milliman, Inc.](#) and commissioned by The Bowman Family Foundation, shows the gap in disparities for individuals and families seeking mental health and addiction treatment versus treatment for physical health conditions has gotten worse since the last report iteration for calendar years 2016-2017. Inpatient out-of-network services for behavioral health were over five times more likely than for medical/surgical² and outpatient out-of-network services were nearly six times more likely than for

¹ Substance Abuse and Mental Health Services Administration. (September 14, 2018). "2017 National Survey on Drug Use and Health (NSDUH). Retrieved from: <https://www.hhs.gov/about/news/2018/09/14/samhsa-annual-mental-health-substance-use-data-provide-roadmap-for-future-action.html>

² The Bowman Family Foundation (November 20, 2019). New Report Reveals Worsening Disparities in Access to Behavioral Healthcare for Employer-Sponsored Health Plans. Globe Newswire. Retrieved from <http://www.globenewswire.com/news-release/2019/11/20/1950219/0/en/New-Report-Reveals-Worsening-Disparities-in-Access-to-Behavioral-Healthcare-for-Employer-Sponsored-Health-Plans.html>

medical/surgical.³ Importantly, the report shows that low reimbursement rates are just one part of the problem and health plans limit in-network providers, do not credential new providers in a timely manner, and apply extreme utilization-review tactics that are not based on medically necessary care. Bottom line, individuals with a mental health and/or substance use disorder are spending much more on health care out-of-pocket, increasing the risk of financial insecurity.

Earlier this year, the behavioral health community witnessed a watershed moment in *Wit v. UnitedHealthcare Insurance Company*. In this case, 11 plaintiffs representing over 50,000 patients with over 67,000 claims were denied care. The judge ultimately sided with the plaintiffs as it was found the insurance company was operating under guidelines that were not only unreasonable, they also did not reflect the generally accepted standards of care. Although a huge win for thousands of Americans and their families, the case underscored the pervasive discriminatory practices health plans use to hinder access to care for individuals with mental health and substance use disorder. The emotional and financial toll the plaintiffs and their families suffered is all too common.

Additionally, we are concerned that the existing 45-day after discharge timeline is untenable given underlying federal prompt payment laws which allow payers up to 45 days to make a claim determination and pay providers. This timeline fails to take into consideration time for providers to send claims to payers, regular delays from payers, and industry business practices of sending final bills, risks significant economic impacts on already limited mental health and substance use disorder treatment providers across the nation. We are concerned that such penalties will further restrict already narrow networks for our communities, leading to higher out-of-pocket costs for patients and even greater access to care issues.

As we continue to work together to improve the American health care system, we urge the Committees and Leadership to make changes to the provision in order to protect patients and families with mental health and substance use disorder from higher costs and limited access to care. We thank you for continuing to fight on behalf of patients and urge you to maintain the patient protections we rely so heavily on.

Sincerely,

2020 Mom

American Association for Geriatric Psychiatry

American Association for Psychoanalysis in Clinical Social Work

American Dance Therapy Association

American Foundation for Suicide Prevention

American Group Psychotherapy Association

American Psychiatric Association

American Psychological Association

Anxiety and Depression Association of America

Association for Ambulatory Behavioral Healthcare

Children and Adults with Attention-Deficit/Hyperactivity Disorder

³ *Ibid.*

Clinical Social Work Association
Depression and Bipolar Support Alliance
Eating Disorders Coalition for Research, Policy & Action
Federation of Families for Children's Mental Health
Global Alliance for Behavioral Health and Social Justice
The Jewish Federations of North America
The Kennedy Forum
Mental Health America
The National Alliance to Advance Adolescent Health
The National Register of Health Service Psychologists
NAADAC, the Association for Addiction Professionals
National Association for Children's Behavioral Health
National Association for Rural Mental Health
National Association of County Behavioral Health and Disability Directors
National Association of Social Workers
National Council for Behavioral Health
National Eating Disorders Association
National Health Care for the Homeless Council
Postpartum Support International
Psychotherapy Action Network (PsiAN)
Residential Eating Disorders Consortium
Schizophrenia And Related Disorders Alliance of America
Treatment Communities of America

Cc: Senate HELP Committee
House Energy and Commerce Committee
House Ways & Means Committee
House Education & Labor Committee