

AMERICAN ACADEMY OF  
CHILD & ADOLESCENT  
PSYCHIATRY



BETTY  
FORD



CUMBERLAND  
HEIGHTS



October 13, 2011

Jonathan B. Gavras, M.D., FCCP  
Senior Vice President, Delivery System  
and Chief Medical Officer  
Blue Cross and Blue Shield of Florida  
4800 Deerwood Campus Parkway  
Building 100, 8<sup>th</sup> Floor  
Jacksonville, Florida 32246

Dear Dr. Gavras:

On behalf of the Parity Implementation Coalition (the “Coalition”), we thank for your letter of September 9, 2011. We have reviewed your reply and while it is understood that we disagree on some of the issues around compliance with the Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”), we do think that your offer to establish a continuing dialogue is constructive given the proposed mental health and addiction network changes in Florida.

As you know, the Coalition is currently an alliance of 13 addiction and mental health consumer and provider organizations.<sup>1</sup> As a coalition representing a broad spectrum of providers, practitioners, and patients, you can understand that the issues raised by the proposed changes to the mental health and addiction network are of considerable importance to us. For the record, we do not represent or advise any individual provider or practitioner regarding individual decisions concerning contracts or terms with BCBSF or New Directions. However, we feel that it is essential for us to assure our constituents who intend to contract with New Directions that any changes made by Blue Cross and Blue Shield of Florida (“BCBSF”) and/or New Directions are in compliance with MHPAEA and its Interim Final Rules (“IFR”). Regarding the dialogue and your lawyers’ concerns as stated in your September 9<sup>th</sup> letter, please be advised that the Coalition member involved in a lawsuit with BCBSF has recused itself from any further written or oral communication between the Coalition and BCBSF regarding the proposed network changes in Florida.

Based on your response, we would like to restate, and perhaps clarify, our inquiry to you. First, our letter dated August 24, 2011 does not assert that the proposed network changes that BCBSF has announced and its relationship with New Directions are automatically per se violations of MHPAEA and the IFR.

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<sup>1</sup> Respecting communications with BCBSF, Members of the Coalition are the American Academy of Child and Adolescent Psychiatry, American Psychiatric Association, American Society of Addiction Medicine, Betty Ford Center, Faces and Voices of Recovery, Cumberland Heights, Hazelden, MedPro Billing, Mental Health America, National Alliance on Mental Illness, National Association of Psychiatric Health Systems, National Council for Community Behavioral Healthcare, and TeenScreen at Columbia University.

Second, we did raise what we think are legitimate questions as to whether the proposed changes square with the requirements of MHPAEA and the IFR. On the basis of these questions, we sought information which would substantiate the appropriateness of the proposed changes.

Three things are understood from your reply:

- It is BCBSF's position that the contract terms, managed care standards, credentialing requirements, and payment rates and/or other related matters to be implemented by virtue of the termination of network provider contracts and the transfer of providers to New Directions are in compliance with MHPAEA and the IFR;
- BCBSF is not required to disclose any information which substantiates its determination that the regulatory tests established by MHPAEA and/or the IFR are met.
- BCBSF is continuing to review relevant details in connection with its transition to New Directions, which we presume includes additional review/analysis to ensure compliance with MHPAEA and the IFR.

Regarding the first bullet noted above, the IFR lays out the definition for nonquantitative treatment limitations ("NQTLs"). NQTLs include standards for provider admission to participate in a network (including reimbursement rates) and plan methods for determining usual, customary and reasonable charges. We view the term standards to broadly reference all terms and conditions, including contracts, related to network participation.

By virtue of the designation as NQTLs, these matters are subject to the "comparability and applied no more stringently test" as compared to medical/surgical benefits, as set forth in the IFR. The test is specific in its wording as to comparability and it is not a "good faith" test. The basis for our information request in our August 24<sup>th</sup> letter was shaped by the very nature of this test. In order to properly assess whether the mental health and substance use disorder ("MH/SUD") NQTLs meet the test, one must have a basis for comparison, i.e., the NQTL features in the medical/surgical side which substantiate those being deployed for MH/SUD benefits.

You are correct in your understanding of our original letter that Coalition members, or members of the organizations they represent, have reviewed BCBSF and New Direction manuals and communications. While they may not be comprehensive, they demonstrate asymmetrical NQTLs as between MH/SUD and medical/surgical benefits. Some of these differences are very specific and clear. As a result, the Coalition wrote to you listing ten areas of concern and requested disclosure of information that would support the contention that the MH/SUD NQTLs are in compliance with the law. Our communications with both behavioral providers and medical providers in Florida continue to document that there are material differences with how the MH/SUD networks will be managed and reimbursed and how the medical/surgical networks are being managed and reimbursed.

Given your assertion of compliance and nondisclosure of the requested information, we can only presume that some internal analysis was performed and rationale developed that the comparability test was satisfied. Unfortunately, in our view, nondisclosure of the basis of compliance with the NQTL tests means that BCBSF can unilaterally determine compliance without the basis for same being disclosable to and vetted by parties with standing under MHPAEA. This type of unilateral action is not consistent with the intent of MHPAEA and its implementing regulations.

Our requests for this information was based on our interpretation of MHPAEA and the IFR and the legal support for requiring these disclosures was enhanced by the subregulatory guidance given by the Department of Labor in December of 2010. We have continued our correspondence with the various federal agencies about the need to provide additional detailed guidance that would clarify what types of disclosure are required. We are unaware that any federal agency has taken the position that no disclosure is required which we understand is your current position.

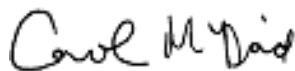
We welcome the opportunity to discuss your internal thinking and the analysis which supports your position regarding MHPAEA and its rules. This is especially relevant in as much as you have indicated that you are continuing to review relevant details in connection with the proposed network changes with the transition to New Directions and MHPAEA. We are reassured that you are clearly stating on the public record that you are or will be in full compliance with all aspects of MHPAEA and the IFR.

We think an in person meeting would be the most productive way to proceed with our dialogue at the outset. Given the short timeframe until the effective date, we would urge that this occur as soon as practicable. We stand ready to meet with you in Jacksonville at any time you designate as convenient for you. Please contact us to arrange the meeting. We look forward to working with you toward the goals expressed in your letter given the applicable law and regulations.

Sincerely,



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