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APA Submits Comments to Ensure Patients Don't Lose Coverage in the Details of the Parity Regulation

ARLINGTON, Va. (May 3, 2010) – The American Psychiatric Association (APA) submitted Interim Final Rule (IFR) comments today on the mental health parity law to help ensure the law is implemented the way it was intended— to provide equal access to mental health care for individuals with mental illnesses.

“The APA worked for years to pass parity—perhaps the most important piece of legislation for our patients,” said APA President Alan F. Schatzberg, M.D. “We are very pleased with the rule, but we need to work with the various federal government departments to properly implement some of the remaining details so full parity is preserved for our patients. We particularly need to ensure that any loopholes that can be used to deny access to parity are eliminated.”

The APA’s comments on the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) were submitted to the Departments of Labor, Health and Human Services and Treasury and recommended the following:

- **Six Benefit Classification Scheme:** The IFR requires that plans have six classes of benefits for all services and that insurers must offer mental health/substance use disorder benefits in any classification for which they offer medical/surgical services. APA supports the scheme and believes the classification system is logical. APA also urges the Departments to clarify that these classifications must cover all of the benefits provided by the plan to minimize any risk that insurers will attempt to invent new categories for the purpose of avoiding the intent of the law. To achieve this, the Departments should clearly state that a plan may not exclude a particular service or benefit simply because it does not fall squarely into one of the six classifications proposed because there is no analog on the medical/surgical side.
- **Single Deductible:** The IFR requires a single deductible for all health care costs. APA strongly supports the requirement that plans offer a single combined deductible for all health care costs as we believe it follows the intent of MHPAEA and will greatly benefit patients. This protection would most directly benefit those with serious and persistent mental illness, many of whom have co-morbid medical and surgical conditions and would have difficulties meeting two separate deductibles. APA believes that separate deductibles only serve as a barrier to accessing mental health treatment and would undermine the law.
- **Non-Quantitative Treatment Limitations (NQTs):** The IFR proposes restrictions on so-called “NQTs,” such as medical management, formulary design, preauthorization, and step therapy, which are means of limiting or denying a patient access to appropriate and necessary care. Even before the law is implemented, APA members have had insurers in multiple states demand that they sign unprecedented agreements to accept prior authorization and related requirements when no such conditions were demanded of physicians on the medical/surgical side. Thus, APA believes that regulation of NQTs is a critically important issue under MHPAEA and that the law requires that

they be regulated in the same manner as quantitative treatment limitations, such as frequency of treatment, number of visits, and days of coverage. APA recommends the Departments finalize the requirements imposed on NQTLs in the rule and also clarify that they are subject to the same “predominant” and “substantially all” standards as quantified treatment limitations. APA also urges the Departments to add to the list of NQTLs which are covered under MHPAEA.

- **Availability of Plan Information:** MHPAEA includes a requirement that plans must disclose the reason for any denial of reimbursement or payment for services with respect to mental health/substance use disorder benefits, if requested. However, patients have encountered significant delays in receiving the required disclosure when requested and APA therefore requests that the Departments clarify this requirement. Specifically, APA urges the Departments to require that information regarding the plan’s medical necessity criteria be provided to the insured within three days of an adverse care decision.
- **Application to Medicaid Managed Care Plans:** APA has significant concerns that the Departments have omitted an essential part of the regulations under MHPAEA, namely the application of these regulations to Medicaid managed care plans. Given the high percentage of Medicaid beneficiaries whose benefits are administered through a managed care program and the high number of Medicaid beneficiaries with mental illness, APA believes the lack of regulation in this area could be confusing at best and also potentially harmful to patients. We urge the Departments to move swiftly to issue regulations for this segment of the population and recommend that these regulations and guidance be consistent with those issued under MHPAEA.
- **Preemption and State Laws:** APA agrees with the Departments that MHPAEA should not supersede the application of stronger state laws on parity and urges the Departments to include this guidance in the final rules.
- **Cost Exemption:** MHPAEA permits an exception to the mental health parity requirements for plans that experience a cost increase of two percent in the first year of implementation of parity and one percent in subsequent years. APA recommends that the Departments clarify in the final rule that any application for the cost exemption must be retrospective and based on actual costs incurred, as opposed to projected or estimated costs.

The American Psychiatric Association is a national medical specialty society whose physician members specialize in the diagnosis, treatment, prevention and research of mental illnesses including substance use disorders. Visit the APA at www.psych.org and www.HealthyMinds.org.

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