October 2, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

SUBJECT: (File Code 1210-AC11), Requirements Related to the Mental Health Parity and Addiction Equity Act; Proposed Rule, Federal Register (Vol. 88, No. 148), August 3, 2023

Dear Secretaries Becerra, Yellen, and Acting Secretary Su:

On behalf of our more than 400 hospitals and health systems, the California Hospital Association (CHA) appreciates the opportunity to provide comments on the Departments' proposed rule that amends regulations implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and proposes new regulations implementing the nonquantitative treatment limitation (NQTL) comparative analyses requirements under MHPAEA, as amended by the Consolidated Appropriations Act (CAA) of 2021.

CHA strongly supports this proposed rule, which clarifies existing mental health parity requirements and strengthens enforcement with respect to NQTLs to ensure patients are not unfairly restricted from accessing critical mental health and substance use disorder treatment. Individuals seeking treatment for behavioral health services often face disproportionate barriers relative to health plan or issuer coverage for medical and surgical benefits, in contradiction with the letter and spirit of MHPAEA.

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Care that is delayed too often means care is denied or avoided entirely, further exacerbating untreated conditions which contribute to preventable inpatient hospitalizations.

CHA appreciates that the Departments have proposed changes that are designed to prevent plans and issuers from designing and implementing NQTLs that impose greater limits on access to mental health and substance use disorder benefits as compared to medical/surgical benefits. The proposed rule includes important clarifications so that the federal Departments and associated state regulators can better enforce existing regulations on the use of NQTLs, while bringing much needed practical clarity for market participants (plans/issuers/providers) and patients alike. Going beyond design, the rule also proposes new requirements to ensure that the actual impacts of NQTLs on access are meaningfully evaluated to ensure they do not inappropriately restrict access to care. This would preserve the ability of plans and issuers to impose NQTLs that are consistent with generally recognized independent professional, medical, or clinical standards, or standards related to fraud, waste, and abuse.

Specifically, CHA supports the proposed framework for assessing whether a plan or issuer has implemented an NQTL that imposes greater limits on access to mental health and substance use disorder benefits as compared to medical/surgical benefits in the same classification, and thus out of compliance with MHPAEA requirements. The steps outlined in this proposed process provide additional clarity on the design, application, and evaluation of NQTLs that will assist regulators in enforcing the parity requirements. With more meaningful enforcement and increased compliance, providers are able to devote more time and resources to patient care as opposed to navigating disproportionally burdensome administrative requirements associated with behavioral health services.

CHA also appreciates the Departments' proposal to add additional examples to the MHPAEA regulation's illustrative, non-exhaustive list of NQTLs, including a specific reference to prior authorization requirements as an example of a medical management standard limiting or excluding benefits based on medical necessity or medical appropriateness. CHA members frequently report that plans require significantly more stringent or burdensome medical necessity requirements with prior authorization requests for patients seeking mental health and substance use disorder treatment, often inappropriately denying payment for services already provided. In the proposed example, CMS cites a plan with a routine approval of medical/surgical inpatient benefits for seven days before the patient's attending provider must submit a treatment plan, while the plan consistently approves inpatient, in-network benefits for mental health and substance use disorder conditions for only one day before the patient's attending provider must submit a treatment plan. **We agree that this is one example out of multiple real-world scenarios experienced by our members that is clearly out of compliance with parity requirements and we strongly support the proposed additions to the list of non-exhaustive NQTLs.**

CHA generally supports the proposed rule's clarification that standards related to network composition are subject to the requirements applicable to NQTLs, as well as the proposed modification to the language on its non-exhaustive list of NQTLs to specify "standards related to network composition, including but not limited to, standards for provider and facility admission to participate in a network or for continued network participation, including methods for determining reimbursement rates, credentialing standards, and procedures for ensuring the network includes an adequate number of each category of provider and facility to provide covered services under the plan or coverage." However, we acknowledge that there are significant shortages in the behavioral health workforce that may challenge

plans and issuers in establishing adequate networks. **We urge the Administration and Congress to invest resources to support behavioral health workforce development so that the promise of parity can be fully realized.**

Finally, CHA supports the proposed rule's implementation of the comparative analysis requirement added to MHPAEA by the CAA of 2021. The CAA requires a demonstration of whether the processes, strategies, evidentiary standards, and other factors used to apply an NQTL to mental health or substance use disorder benefits, as written and in operation, are comparable to and are applied no more stringently than the processes, strategies, evidentiary standards, and other factors used to apply the NQTL to medical/surgical benefits in a classification. The proposed rule would require that plans and issuers collect and evaluate outcome data to measure the impact of NQTLs on access to mental health and substance use disorder benefits compared to medical/surgical benefits to demonstrate parity, and would require that plans provide these comparative analyses to the Departments or applicable state authority upon request. **CHA supports this proposal, which will assist federal and state regulators in enforcing parity requirements and achieving improved compliance with respect to NQTLs.**

CHA appreciates the opportunity to comment on the proposed rule. If you have any questions, please contact me at mhoward@calhospital.org or (202) 488-3742.

Sincerely,

/s/
Megan Howard
Vice President, Federal Policy