February 5, 2018

Jacqueline Cunningham
Virginia Commissioner of Insurance
Bureau of Insurance – SCC
P. O. Box 1157
Richmond, VA 23218

Dear Commissioner Cunningham:

The Psychiatric Society of Virginia, along with the Northern Virginia Chapter of the Washington Psychiatric Society and the American Psychiatric Association are requesting a meeting with the Virginia Bureau of Insurance in the context of the Bureau mandate by which it "licenses, regulates, investigates, and examines insurance companies, agencies and agents on behalf of the citizens of the Commonwealth of Virginia." The Psychiatric Society of Virginia has over 700 physician members who practice the medical specialty of psychiatry within the Commonwealth of Virginia. The Northern Virginia Chapter of the Washington Psychiatric Association represents more than 200 members who practice in the northern cities and counties of Virginia. Both the Psychiatric Society of Virginia and the Washington Psychiatric Association are district branches affiliated with the greater than 37,000 member American Psychiatric Association. Of historical interest, the American Psychiatric Association is the oldest medical association in the United States, having been founded by Dr. Benjamin Rush, a signer of the Declaration of Independence.

We are writing to seek a meeting as soon as possible to discuss with you evidence that suggests that health insurance companies in Virginia are selling plans that potentially violate the Mental Health Parity and Equity Act of 2008 (MHPAEA). As you are aware the final rules (FR) of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) contain the provision that any processes, strategies, evidentiary standards, and other factors used in managing mental health and substance use benefits ("behavioral" benefits) must be comparable to, and applied no more stringently than, those used in managing the "medical/surgical" benefits. This includes medical management standards, prescription drug formulary design, network adequacy, provider fee levels, and step therapies, among other processes. A recent study produced by Milliman (see attached) supports the conclusion that health care companies in Virginia are selling plans that do not have an adequate number of in-network providers to treat beneficiaries' mental health and substance use disorders. As a result, citizens of this state who have mental health and substance use disorders and have purchased these plans cannot directly access the care promised by their health plan for mental health and substance use disorders. Specifically, they are unable to find in-

network providers for treatment, while patients with other medical or physical ailments can. This merits in-depth review for compliance with MHPAEA.

The result for people who do not have a plan with an out-of-network benefit is that they may not be able to secure treatment altogether. Those that purchase a plan with an out-of-network benefit and have the financial means can go out of network to find a provider, but they must pay out of pocket for that portion of the care for which the insurer will not pay (which is usually substantial). The Milliman study also suggests that the health plans may be intentionally limiting access to in-network psychiatrists to treat mental health and substance use disorders by paying these providers (who, after four years of medical school and a year of internship complete an additional three or more years of training in psychiatry) substantially lower reimbursement rates than they pay to other physicians for comparable or identical services. Inadequate reimbursement can be a strong disincentive to participate in a plan's provider network.

Milliman used medical claims data from major insurers covering nearly 42 million lives from 2013 - 2015 and found that nationwide patents used an out-of-network provider for a substantially higher proportion of mental health and substance use disorder care than they did for other physical illnesses. The proportion of inpatient facility services for mental health and substance use disorder care that were provided out of network was 2.8 to 4.2 times higher than for other physical health issues. The proportion of out-patient facility services for behavioral health care that were provided out of network was 3.0 to 5.8 times higher than for physical illnesses. Additionally, the proportion of mental health and substance use disorder office visits that were provided out of network was 4.8 to 5.1 times higher than for physical illness visits, and 3.6 to 3.7 times higher than for physical illness specialist office visits.

In Virginia, the proportion of inpatient facility services for mental health and substance use disorder care that were provided out of network was 2.19 to 4.57 times higher than for other physical health issues. The proportion of out-patient facility services for behavioral health care that were provided out of network was 4.09 to 5.32 times higher than for physical illness in Virginia. The proportion of mental health and substance use disorder office visits that were provided out of network was 5.24 to 6 times higher than for physical illness specialist office visits. These percentages make Virginia a state with one of the highest proportion of behavioral out of network care in the country, as seen on page 5 of the Milliman report.

The study also found that physicians providing physical health and surgical services received higher reimbursement rates than psychiatrists providing mental health and substance use disorder services. Nationwide, primary care providers were paid 20.78% to 22.0% higher rates for office visits than psychiatrists, and medical/surgical specialty care providers (other than psychiatrists) were paid 17.1% to 19.1% higher rates for office visits than psychiatrists. Numerous studies have shown that lower reimbursement rates paid to psychiatrists is a major contributor to lower network participation rates by these providers and, as a result, accessing these services in network is often challenging. In Virginia provider payment levels for primary care office visits were 32.9% to 42.2% higher as compared to payments for psychiatrist office visits.

MHPAEA requires health insurance plans to provide mental health and substance use disorder benefits that are on par with medical/surgical benefits. When patients with mental health and substance use disorder benefits are forced to access out-of-network care at a substantially higher rate, because it is not otherwise available in network, than patients with other medical or physical disorders, it suggests that plans are not providing access to these services in a comparable manner and therefore not complying with MHPAEA. Further, the disparity in provider rates is further evidence that plans are using discriminatory reimbursement rates to limit the number of mental health providers available in their networks. Instead of providing robust access to mental health and substance use disorder benefits, plans in Virginia offer a stark lack of access to in-network care and pay substantially lower rates to psychiatrists, ensuring there will not be enough to provide in-network services.

We would like to request a meeting with you to discuss this situation, its implications for compliance with the federal parity law and solutions to this problem which would significantly improve access to treatment in Virginia for those suffering from mental health or substance use disorders. Please contact me at your earliest convenience to set up a time to discuss these issues.

Sincerely,

John P.D. Shemo

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