

December 4, 2023

The Honorable Daniel Tsai  
Deputy Administrator and Director, Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244  
Sent via email to: MedicaidandCHIP-Parity@cms.hhs.gov

**Re: Request for Comments on Processes for Assessing Compliance with Mental Health Parity and Addiction Equity in Medicaid and CHIP**

Dear Deputy Administrator Tsai:

Thank you for the opportunity to comment in response to CMCS request regarding processes for assessing compliance with mental health parity and addiction equity in Medicaid and CHIP. We appreciate CMCS's attention to this critical issue.

Northwest Health Law Advocates (NoHLA) is a nonprofit consumer advocacy organization in Washington State. For over two decades, NoHLA has worked to advance a health care system in which all Washington residents receive quality, affordable care on an equitable and timely basis, with basic rights and protections.

We fully support the comments and recommendations submitted by The Kennedy Forum and 25 other national advocacy and provider organizations on November 27. We also wish to add the following observations and concerns.

As legal advocates at the state level, we see parity violations again and again, but it is very difficult to get them resolved either individually or systemically. States like Washington whose Medicaid and CHIP enrollees are largely served through managed care depend on maintaining contracts with Managed Care Organizations to meet the needs of the many enrollees – in Washington, hundreds of thousands. The state agency's dependency and fear of losing MCOs means they have limited leverage in contracting with MCOs. Thus, the state agency has a disincentive to enforce parity requirements, especially since there are a whole host of other contract requirements that they must enforce as well. We believe this is at the root of the problem of lack of parity enforcement.

For example, an adult client seeking Applied Behavioral Analysis treatment had to engage in a multi-level appeal process – first an appeal to the health plan, followed by a two-level appeal using the state administrative hearing process, followed by litigation to challenge the state's ABA exclusion for adults in its MCO plans. A court judgment was required. The Court found that the state violated both federal and state parity acts when it

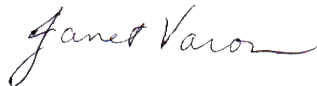
directed MCOs to completely exclude ABA treatment for adults when medically necessary (see attached Order in *Camp v. Birch*).

Another example relates to our state agency's instructions to MCOs to limit the number of Urinalysis (UA) tests conducted by SUD providers. The State Agency has a quantitative limit of only 24 UAs even when outpatient opioid programs use UAs as part of a weekly treatment protocol, which has been shown to be effective. Such impermissible treatment limitations impair access to appropriate SUD treatment, the vast majority of which is delivered through MCOs via state Medicaid programs.

In light of these and other situations, we request that CMCS go beyond the proposed processes for assessing state compliance. CMCS should step in and actively oversee basic MCO compliance with federal parity law. Unlike states, the federal government does not have a disincentive to enforce parity and should be the backstop that Medicaid beneficiaries need to assure vigorous compliance.

Thank you for your consideration of these comments. If you have further questions, please contact me at [janet@nohla.org](mailto:janet@nohla.org).

Sincerely,

A handwritten signature in cursive script that reads "Janet Varon".

Janet Varon  
Executive Director  
Northwest Health Law Advocates

Attachment: *Camp v. Birch* order