WASHINGTON
COMMUNITY
MENTAL HEALTH
COUNCIL

...creating healthy and secure communities through partnerships...

October 31, 2014

The Honorable Mike Kreidler, Commissioner
Washington Office of the Insurance Commissioner
PO Box 40255
Olympia, Washington 98504-0255

Re: R2014-08 Provider Network Rules, phase 2

Dear Commissioner Kreidler:

I am writing on behalf of the Washington Community Mental Health Council to provide comment on the initial exposure draft of provider network rules released on October 15, 2014. The Council is a statewide association of licensed community mental health agencies (CMHAs) that provide a full range of outpatient, evaluation and treatment, and residential and inpatient mental health treatment. Most are also dually licensed by the state to provide outpatient substance use disorder treatment.

The amendment to WAC 284-43-251(3), which changes the term "psychiatric condition" to "mental health or substance use disorder, including behavioral health," is problematic for a number of reasons. First, the term "disorder" is linked grammatically to mental health and substance use but not to behavioral health. It appears that this language was modeled on similar language in the Affordable Care Act; however, the ACA refers to only behavioral health treatment. In this context, the meaning of behavioral health in the WAC is unclear, and the OIC should be explicit that this term includes neurodevelopmental disabilities, such as autism spectrum disorder. In light of the Washington Supreme Court's recent decision holding that the state's 2005 Mental Health Parity Act requires insurance companies to cover medically necessary neurodevelopmental treatment for patients with mental illness, the OIC's provider network rules should clearly state what is required of insurers.

Second, it would be helpful if the OIC provider network WACs used language more consistent with the DSHS rules. WAC 388-877-020 defines behavioral health services as "the prevention, treatment of, and recovery from chemical dependency, mental health, and/or problem and pathological gambling disorders." Although we are not advocating that gambling disorder treatment is required for network adequacy, we strongly believe that "behavioral health" should refer to the *treatment of* mental health and/or substance use disorders. The term should not refer to the disorder itself. Accordingly, we suggest that the OIC amend WAC 284-43-130 to clarify that behavioral health treatment includes mental health and substance use disorder services. Without a clear definition, issuers will have difficulty in determining whether their provider networks are truly adequate in the provision of behavioral health services.

Given the relatively recent requirements for insurance parity for addiction treatment services, network standards should explicitly drive issuers to build their substance use

Member:
National Council for Community
Behavioral Healthcare

600 Stewart Street, Suite 202
Seattle, WA 98101-1217
•
Phone (206) 628-4608
Facsimile (206) 448-2448
E-mail wcmhc@wcmhcnet.org
Website www.wcmhcnet.org
•
Ann E. Christian
Chief Executive Officer

disorder treatment provider capacity as described in WAC 284-43-220(3)(e)(i)(C). Nationally, only 10% of those in need of substance use disorder services receive treatment, and lack of insurance coverage has been a historical barrier. With respect to the language regarding standing referrals, WAC 284-43-251(3) should be amended to state that referrals must be consistent with the enrollee's medical, mental health, or substance use disorder treatment needs and plan benefits. The provider network WACs also must require adequate access to substance use disorder treatment across the state, including outpatient services and opiate substitution programs. Accordingly, we recommend that the OIC amend WAC 284-43-200(11) and add a new subsection (b) that explicitly states adequate networks include these specific substance use disorder services.

Finally, the Council continues to be concerned that the proposed provider network WACs do not explicitly include CMHAs on the list of essential community providers (ECPs). As written, WAC 284-43-221 limits an ECP to the providers on CMS's list, even though CMS states unequivocally that its list is nonexhaustive and may also include entities that serve predominantly low-income, medically underserved individuals. The rule has limited the flexibility needed to provide adequate access for mental health and substance use disorder services. In many communities in our state, CMHAs are the only mental health providers that offer intermediate mental health services, including residential treatment and intensive outpatient treatment. This range of services must be broadly available to all enrollees demonstrating medical necessity. Further, if patients must switch providers because CMHAs are not included in an issuer's provider network, evidence suggests that patients may stop seeking treatment, which can result in expensive emergency room visits, inpatient treatment, or incarceration.

Issuers must also demonstrate that their provider networks have the capacity to adequately respond to psychiatric emergencies. CMHAs provide community-based psychiatric crisis response and crisis stabilization services, and are integral to such a response. Additionally, based on the Washington Supreme Court's ruling that psychiatric boarding of individuals under civil commitment violates state law, health plans will need to ensure that their provider networks have the capacity to respond promptly 24/7 to psychiatric emergencies with both community-based emergency services and inpatient care.

For the above reasons, as well as the information submitted previously (see attached input provided on 2/20/14 and 4/9/14), we strongly suggest that the OIC amend WAC 284-43-221 to include explicit identification of community mental health agencies as essential community providers.

If you have any questions, please do not hesitate to contact me at 206-628-4608, ext. 13 or at jmiller@wcmhcnet.org .

Sincerely,

Joan Miller, J.D.
Policy Analyst