



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Testimony

The Program Review and Investigations Committee

March 7, 2013

Raised Bill No.6517 - AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING THE INSURANCE DEPARTMENT'S DUTIES, MENTAL HEALTH PARITY COMPLIANCE CHECKS AND THE EXTERNAL REVIEW APPLICATION PROCESS

Sen. Kissel, Rep. Mushinsky, Members of the Committee, the Insurance Department appreciates the opportunity to provide written testimony on Raised House Bill No.6517 - An Act Implementing The Recommendations Of The Legislative Program Review And Investigations Committee Concerning The Insurance Department's Duties, Mental Health Parity Compliance Checks And The External Review Application Process

The staff of the Connecticut Insurance Department worked closely with Committee staff over several months to assist in compiling the report upon which this legislation is based and together we identified areas that can be improved and those where effective processes are in place. We provided an extensive formal response to that report on January 14, 2013. Our response was offered in the spirit of collaboration and constructive dialogue to correct and clarify where necessary, particularly where it appeared that some conclusions may have been based on a misunderstanding of the review process for policies, forms and products. We appreciated the review and noted that many of the recommendations provide more tools the Department can use with our established regulatory methods to provide effective consumer protection for our insured citizens. However, we do respectfully oppose some of the legislative proposals which are included in this raised bill.

The Department soundly rejects the premise that the Insurance Department is not fully meeting its regulatory oversight of mental health parity and is not competent to establish proper and full oversight methodology and asks the Committee to reject Section 3 of the proposed legislation. The Department strongly objected to the PRI report statements that alleged the Department was not thorough in its review of forms or that we did not check for compliance with federal or state mental health parity. We believe evidence to validate those assumptions was not included in the report.

Sec. 3 directs the Department to select a compliance methodology for assuring insurer and other entities are compliant with state and federal mental health parity laws. It requires us to assess for fitness the methods set forth by the U.S. Department of Labor and URAC in addition to other methods brought to the attention of the Department through at least one

public meeting at which stakeholders, including but not limited to relevant state agency personnel, health insurance companies and the general public would be invited to provide input and propose compliance check methodology. The bill calls for the Department to submit a report to the Insurance and Real Estate and Public Health Committees detailing our methodology, including an assessment of the public comments received, with written comments and suggestions of the Healthcare Advocate appended to the report. The Department is then compelled to use the compliance check method selected from this process. As we indicated in our response to the PRI Report, lack of specificity in several areas of the federal mental health parity laws creates regulatory challenges and it would be appropriate for the Legislature to set clear, specific rules in statute for carriers to meet and for Department to enforce. The Department recommends these rules be developed from hearings by the committees of cognizance (Public Health Committee and Insurance and Real Estate Committee) for the regulatory agencies (Department of Public Health, Department of Mental Health and Addiction Services and the Insurance Department) that have expertise and have been designated by the legislature to have statutory authority in these areas. Some examples of federal regulations that could be better defined:

- The federal law requires in broad terms that limitations to mental health or substance use disorder benefits services must be comparable to, and applied no more stringently than for medical/surgical services “except to the extent that recognized clinically appropriate standards of care may permit a difference.” The Department does not have psychiatrists or other physicians on staff to help evaluate such differences and the clinical rationales. The Department can and does utilize UConn medical expertise.
- There is a lack of clarity in the federal interim final rules of February 2, 2010 for non-quantitative requirements. These are rules relating to medical management and medical necessity under federal law which are difficult to administer as opposed to prohibitions on quantitative limits (such as dollar or visit limits) which are easy to administer. The three federal agencies responsible for federal mental health laws – the U. S. Department of Labor, Health and Human Services and Treasury – in their February 2010 rules gave examples reflecting simple situations, rather than “reflecting the realistic, complex facts that would typically be found in a plan.” The agencies also solicited comments on additional examples to illustrate the application of the non-quantitative treatment limitation rule. To date, the federal agencies have not provided additional examples or any further guidance. Connecticut may want to consider its own specific requirements for insured plans.

The Department also opposes Sec. 5 of the proposed bill. As we indicated in our response to the PRI Report, the Department can and does quite frequently help consumers who have lost their ID cards. Additionally, we agree that including information in the Consumer Guide that duplicate copies of the ID card or final denial letter can be obtained from the carrier or with the Department’s help is an important addition to the Guide. This information is among the revisions we are making to the Guide. It is important to realize that frequently an insured does not have a final denial letter because he or she has not completed the carrier’s appeals process. The final letter that is being appealed defines the service being evaluated, particularly in behavioral health situations when patients can receive more than one denial for different levels of service or different time frames. Asking HHS to waive the submission of the final denial letter is inconsistent with the External Review process under NAIC rules adopted by HHS as fully meeting the requirements of the Affordable Care Act. We propose

that Sec. 5 be deleted and as an alternative, section 38a-591g(c)(2)(D)(i) of the current statute be amended to read as follows:

A copy of the description of both the standard and expedited external review procedures the health carrier is required to provide, and including any forms used to process an external review or an expedited external review; highlighting the provisions in the external review procedures that give the covered person or the covered person's authorized representative the opportunity to submit additional information and a statement that the covered person or the covered person's authorized representative may request, free of charge, a copy of the notice of final adverse determination or adverse determination or a copy of the covered person's health carrier identification card or both from the health carrier or seek free assistance from the Office of the Healthcare Advocate in obtaining these documents.

This recommendation would maintain the requirements, but offer free assistance from the Office of Healthcare Advocate to those individuals needing assistance in obtaining the required documentation.

These recommendations may be intended to enhance and improve how the Department operates and enforces mental health parity, but we believe sections 3 and 5 are misguided and unnecessary and reflect a lack of understanding about how the Department currently exercises its regulatory oversight. We believe these requirements would actually undermine what we do and what we have worked so hard to accomplish and we ask that you reconsider their enactment.

We look forward to working with the Committee on this proposal.

