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MEMORANDUM

To: Representative Anne Donahue, House Committee on Health Care

From: Steven M. Costantino, Commissioner, Department of Vermont Health Access

Cc: Hal Cohen, Secretary, Agency of Human Services

Date: March 8, 2016

Re: DVHA Proposal Regarding Prior Authorization for Psychotherapy

In your memo regarding the DVHA budget proposal to require prior authorization for psychotherapy visits in excess of 24 per calendar year, you indicate that the proposal is prohibited by state parity law. This memo responds to that point.

Mental Health Parity

While requiring prior authorization after 24 visits may constitute a restriction under the Vermont parity law,¹ the proposal is permissible because it does not impose a greater burden on access to psychotherapy than for access to treatment for other health conditions.

Vermont's mental health parity law prohibits any rate, term, or condition that places a greater burden on an insured for access to treatment for a mental condition than for access to treatment for other health conditions.² Prior authorization is not enumerated in the statute as such a condition. However, even if requiring prior authorization after a certain number of visits is a condition that places a burden on a beneficiary's access to treatment, the proposal would not place a greater burden on access to psychotherapy than access to other treatment.

1. DVHA uses similar utilization controls for other covered services. For example, prior authorization is required for rehabilitative therapy services for beneficiaries age 21 and older are limited to 30 visits per calendar year.³ This limit represents a total annual combination of any of the following services: physical therapy, occupational therapy, and speech/language therapy. It is also required for physician office visits in excess of 5 per

¹ Federal mental health parity law (MHPAEA), while helpful in the analysis, does not apply to fee for service Medicaid.

² 8 V.S.A. § 4089b(c)(1).

³ Medicaid Covered Services Rule 7317.1.

month.⁴ The threshold at which prior authorization is imposed is based on clinical evidence and utilization data.

2. DVHA is mandated to manage utilization of services and to conduct utilization review. Federal regulations require utilization review for waiver services to receive FFP (federal financial participation).⁵ State law requires DVHA to consider the recommendations of the Clinical Utilization Review Board (CURB) with respect to implementation of evidence-based clinical practice guidelines; “such mechanisms may include prior authorization, prepayment, postservice claim review, and frequency limits.”⁶ The Medicaid covered services rule gives DVHA discretion to implement utilization controls⁷ including use of prior authorization where the “department determines that use of the health service needs monitoring to manage the expenditure of program funds.”⁸
3. The proposal would not violate federal parity law if it applied. Federal regulations establish the following requirement for parity in treatment limitations such as prior authorization: “any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.”⁹ In this case, DVHA has used the same strategies and standards in proposing to apply a prior authorization requirement to outpatient psychotherapy as to other medical benefits.

⁴ 7301.1.1.

⁵ 42 C.F.R. § 456.501.

⁶ 33 V.S.A. § 2031.

⁷ 7107.

⁸ 7102.1.

⁹ 45 C.F.R. § 146.136(c)(4).