

## MENTAL HEALTH LEGAL ADVISORS COMMITTEE

The Commonwealth of Massachusetts

Supreme Judicial Court

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Dear Members of the Conference Committee on Payment Reform:

Mental Health Legal Advisors Committee, an agency under the Supreme Judicial Court that is charged with providing assistance on mental health legal matters to persons throughout the Commonwealth, asks that you support certain provisions and principles found within the recent Healthcare Payment Reform bills passed in the House and the Senate. Based on our experience over a lengthy period of time, we are concerned about practical ramifications of the failure to include these provisions, of which we urge you to take due note: Specifically,

- 1) **ACO appeals should be consistent with well established procedures under sections 12 through 14 of chapter 176O**, as these procedures are well established (H4155, lines 2889 through 2896).
- 2) We support **H4155, line 2892**, which permits and **independent second opinion**. This is a vital provision that will create a check on denials of necessary care that are financially

motivated. Inappropriate denials can have serious personal and financial consequences for the Commonwealth. Denial of care may result in the consumer's loss of employment, the cost of which will not be borne by the ACO, but by the individual and the Commonwealth. A second opinion of a medical provider may be the only way to persuade a decision maker of the necessity of a service. Further, without such a second opinion, a consumer wrongly denied care will not be able to marshal evidence essential to their appeals.

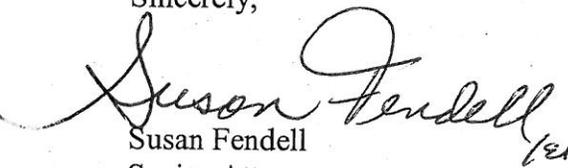
- 3) Additionally, with respect to appeals, MHLAC supports **Section 172 of H4155**, requiring Accountable Care Organizations and patient centered medical homes to designate an **independent third party as an ombudsman to advocate for patients**, as well as allowing **patients to choose who will act as their advocates**. In some cases, the patient may choose the third party ombudsman; in other cases, the patient may feel more comfortable with a family member or peer.
- 4) **Consumer choice of health care provider is particularly important for persons with mental illness**. Scientific literature is replete with evidence that the therapeutic alliance is essential to successful mental health treatment. A genuinely therapeutic relationship may take years to establish and is not transferable to a new provider in the short term, or in some cases, at all. The loss of effective therapy can result in baneful, and expensive, consequences (e.g. hospitalization). Therefore, MHLAC asks that the final payment reform bill include both
  - a. **S2270, Section 162, lines 4715 to 4717 and 4750 to 4751** provisions that ACOs establish mechanisms to protect provider choice, including establishing parameters for out-of-ACO care, and
  - b. **H4155, Section 121, lines 2146 to 2149** which calls upon the Office of Patient Protection to establish procedures and rules relating to appeals of restrictions on consumer choice.
- 5) MHLAC strongly supports **Section 62 of H4155** (beginning on line 2111) that makes it clear that **medical necessity criteria are subject to appeal** to the office of patient protection **and may not be hidden** from the public by claims that they are proprietary. (H4155, lines 2111-2122). Medical necessity criteria define what care is truly available through an insurer or Accountable Care Organization. These criteria can severely constrict covered services. It is unfair to consumers to ask them to choose between insurers and ACOs without full disclosure of the coverage afforded. And straight-forward disclosure of what criteria are used will allow providers to expeditiously recommend services, saving time and money for the provider and insurer and avoiding what can be damaging delay of services to patients. For these reasons, MHLAC also supports **deleting the last line of section 144 in S2270** because allowing insurers to declare criteria to be proprietary is not in the public interest.
- 6) MHLAC strongly supports the creation of the **17 member Behavioral Health Task Force** and the breadth of its charge. As there are variations in the membership of the

Task Force between the two versions, we recommend the **consolidation of the House and Senate versions** so that any entity or group mentioned in either one will have representation.

- 7) MHLAC believes that **consumers must be protected** from unforeseen or unintended consequences of payment reform. Therefore, we support **Section 162, lines 4723-4725 of S2270**, which ensures that payment methodologies do not create incentives to deny medically necessary care. Likewise, we support **Section 80, lines 2084-2090 of S2270**, which grants the Office of Patient Protection authority to establish safeguards for consumers. .
- 8) MHLAC supports **Sections 167A and 167B of H4155** which require insurers to post **medical necessity and utilization review criteria on their website**. The language also ensures the checks and balances necessary to ensure that decisions about medical necessity and authorizations for care are based on current scientific recommendations.
- 9) We appreciate House and Senate recognition that **continuity of care is essential across the medical profession**. (See S2270 Section 146 and H4155 Section 169.) We are especially concerned that the word "physician" in Chapter 176O § 15(d) be replaced with the word "provider" to actualize what appears to be the legislature's intent.

We appreciate the magnitude of the task before the Conference Committee. Please let us know if MHLAC can be of assistance to you.

Sincerely,

  
Susan Fendell  
Senior Attorney