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**New York State Attorney General Letitia James  
NY Mental Health Crisis Hearing  
June 22, 2022**

Thank you for convening this critically important hearing on New York's Mental Health Crisis and for the opportunity to provide testimony. The Legal Action Center (LAC) is a non-profit organization that uses legal and policy strategies to fight discrimination, build health equity, and restore opportunities for people with substance use disorders, arrest and conviction records, and HIV or AIDS. LAC convenes the New York State Parity Coalition and works with national partners to fight for fair insurance coverage of mental health and substance use disorder treatment through robust enforcement of the federal Mental Health parity and Addiction Equity Act (MHPAEA) and state parity laws. We are also a specialist organization with the Community Health Access to Addiction and Mental Health Program (CHAMP), New York's ombudsman program for mental health and substance use disorder insurance coverage. We appreciate the opportunity to provide input into critical improvements in New York State to increase access to needed mental health services.

We applaud Attorney General James and her predecessors for efforts to address the problems and inequities in the mental health system and in particular, the enforcement actions over the years against insurers for denying coverage of life-saving mental health (MH) and substance use disorder (SUD) treatment. This decades long crisis is not only due to coverage issues, and it has been exacerbated by the COVID-19 pandemic due to loss of in-person services, community connections, the economic downturn as well as the stress and collective grief brought on by such an immense loss of life. Children and adolescents and Black Indigenous and People of Color (BIPOC) communities have been hit especially hard.

MHPAEA and companion New York State (NYS) insurance laws are intended to ensure that consumers have access to MH and SUD services at the same level as medical/surgical services. The requirements are complex, and consumers are often unable to determine when their rights have been violated. Instead, regulators including the state's Department of Financial Services (DFS), the Department of Health (DOH) and other state agencies as well as the U.S. Department of Labor (DOL) and Health and Human Services (HHS) need to engage in regular reviews of plan policies and activities to identify discriminatory insurance practices.

The New York Attorney General (NYAG) has been a national leader in conducting investigations and enforcing MHPAEA since it was enacted in 2008. Most recently in 2021 with an unprecedented joint action with the U.S. Department of Labor (DOL) against United Healthcare for unlawfully denying coverage to 20,000 New Yorkers for mental health and substance use treatment by improperly reducing reimbursements for mental health providers but not for medical providers providing the same services and for using discriminatory utilization review criteria.<sup>1</sup> This settlement was an important step, providing restitution to consumers who were denied care and requiring United to remediate their practices. Your predecessors were similarly proactive, entering into settlements with several insurers for a variety of discriminatory coverage practices that violated MHPAEA and other insurance laws. (See settlement with [Emblem Health](#), [Excellus Health Plan](#), [ValueOptions](#), [Cigna](#), and [MVP](#)).

Ensuring health care consumers have non-discriminatory coverage of mental health care requires constant monitoring and enforcement by regulators and it can become something of a whack-a-mole situation. For example, the AG settlement with Cigna in 2014 (linked above) was due to the practice of refusing coverage of medically necessary nutrition counseling for individuals suffering from eating disorders while permitting coverage of nutrition counseling to treat medical conditions, such as diabetes. The AG found this violated NY's parity law called "Timothy's Law."<sup>2</sup> As advocates, LAC continues to hear from patients and families that insurers in the state are still denying coverage of nutrition counseling for individuals suffering from eating disorders, even though the NYAG already determined this violates the law. It is an incredible burden on patients suffering from mental illness and their families to be aware of past legal actions during their time of need.

Providers, consumers and their families and other advocates regularly share stories with LAC about other challenges they face in accessing care that they need. We have heard from families whose insurance policies say they cover certain types of mental health treatment, like residential care, but the insurer doesn't actually contract with any providers. They report denials of continued care because their condition has improved, or rejections of coverage because they are not "suicidal enough." There are many more examples where health plans are making coverage determinations based on standards that are more stringent than standards used to make coverage determinations of medical/surgical care.

Other New York executive agencies with authority to regulate public and private insurers have similarly focused on parity enforcement in recent years to address some

<sup>1</sup> <https://ag.ny.gov/press-release/2022/attorney-general-james-provides-136-million-consumers-who-were-denied-mental>

<sup>2</sup> N.Y. Ins. Law §§ 3221(l)(5)(B)(i); 4303(g)(2)(A).

of these barriers. In December of last year, DFS secured \$3.1 million in fines from Aetna, Oscar and Wellfleet for violations of MHPAEA and NYS law discovered after regulators reviewed parity reports that insurers are required to submit to the state pursuant N.Y. Ins. L. §343 (“Parity Reporting Act”). In fact, these reports, which include comparisons of certain MH/SUD coverage activities (like prior authorizations, utilization reviews, etc) and medical/surgical coverage activities, may indicate other parity violations.<sup>3</sup>

DOH, in partnership with OMH, recently completed the third phase of a process to analyze compliance with MHPAEA among Medicaid and CHIP programs in the state.<sup>4</sup> This report is likely one of the only in the country to conduct a comparative analysis of all non-quantitative treatment limitations (NQTL). NQTLs are provisions that are not expressed numerically, but otherwise limit the scope or duration of benefits including medical necessity criteria, prior authorizations, concurrent reviews, or reimbursement rates. This report found that no managed care plan in the state is parity compliant in all NQTLs. Therefore, there are no Medicaid managed care members in New York State that are able to receive the full spectrum of MH/SUD coverage without being subject to policies that limit the availability of benefits in some way.

All of these recent enforcement activities are moving towards a world where plans are complying with parity laws, but much more needs to be done to hold plans accountable. When access to treatment is so limited and coverage is inaccessible, it becomes virtually impossible for individuals with mental illnesses to obtain the care they need. That is why we urge the NYAG to increase the monitoring and enforcement of insurance and parity laws.

Thank you.

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<sup>3</sup> See [https://www.dfs.ny.gov/apps\\_and\\_licensing/health\\_insurers/mh\\_sud\\_parity\\_reporting](https://www.dfs.ny.gov/apps_and_licensing/health_insurers/mh_sud_parity_reporting)

<sup>4</sup> <https://omh.ny.gov/omhweb/bho/docs/nys-mhpaea-report.pdf>