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The Center for Health Law and Policy Innovation of Harvard Law School advocates for legal, regulatory, and policy reform in health and food systems, with a focus on health, public health, and food needs of systemically marginalized individuals. Our broad range of initiatives includes a focus on increasing access to care here in the Commonwealth and across the nation. We submit the following comments in response to the Request for Information: Seal of Approval 2023 Policy Development.

Response to RFI Section 1.2.1, Question 1:

We commend the Health Connector for prioritizing health equity when it considers future approaches to health coverage. The Health Connector, and the plans sold on it, serve an important role in providing health care to middle and low income individuals and families. For example, compared with the statewide population, ConnectorCare members are more likely to be people of color and immigrants.¹ Thus the Health Connector is in a unique position to serve historically underserved communities and address systemic racism and inequities in the health care system.

In this context, we urge the Health Connector to examine the integrity of public-facing prescription drug coverage information. Prescription drug coverage is a vital part of ensuring health care plans are robust and can serve a broad array of people in the Commonwealth. However, prescription drug coverage information can be misreported depending on whether a person seeks out information from the Health Connector or from the Issuer's plan documents.² For example, using the Health Connector's Plan Comparison Tool, a consumer would see that Emtricitabine is not covered by Allways Health Partners Complete HMO 2000 25/50/ER300 whereas a consumer who looks to the corresponding PDF formulary would find that Emtricitabine is indeed covered on Tier 2. The reverse also occurs. For example, Health New England Silver A II reports that it does not cover Emtriva or Epivir, but will cover its generic forms (emtricitabine and lamivudine) on Tier 1. The Health Connector's Plan Comparison Tool reports that Emtriva (capsule) and Epivir (capsule) are covered with Tier 3 cost sharing.

Inconsistent or incorrect information about formulary coverage can put consumers living with chronic conditions at a disadvantage, particularly those who may have lower levels of health insurance literacy and/or do not have the time to inquire further to confirm a plan's actual coverage

¹ For example, in 2018, the ConnectorCare population was 16% Hispanic, 9.6% Asian, and 29% immigrants, whereas the Massachusetts population was 12.4% Hispanic, 7.2% Asian, and 16.8% immigrants. Connector's 2018 Customer Experience Survey.

² To note, certain key HIV medications were not searchable on the Health Connector, including Biktarvy, Dovato, and Vemlidy. Since these medications are recommended under treatment guidelines for treatment-naïve people living with HIV, it is critical that consumers are able to accurately determine whether they drugs are covered by a particular plan, in order to effectively manage their health care needs.

of medications. This may have a disproportionate impact on communities of color and immigrants³ who may be less likely to understand or be confident in insurance-related activities.⁴

We thus also recommend the Health Connector prioritize health insurance enrollment and utilization in its focus on health equity in the Commonwealth. A survey of new enrollees on Connecticut's and Washington's state-based Exchanges in 2015 observed racial disparities in enrollment experiences. The study found that compared to white respondents, non-white respondents were more likely to experience difficulties when selecting the most affordable and suitable plan and wish that they had help with their plan choice.⁵ The Health Connector's plan standardization, particularly with co-payments instead of co-insurance for prescription drug costs, can help enormously with plan comparison, and we encourage the Health Connector to determine whether racial disparities exist in terms of enrollment and utilization of Health Connector plans and to identify what policies can be implemented to decrease barriers to enrolling in and using care.

Response to RFI Section 1.2.1, Question 3(a):

As [Commonwealth officials are well aware](#), Massachusetts is in the midst of a crisis of mental health access. The exacerbating effect of the pandemic has been well documented, with [national data indicating](#), for example, that emergency department visits for suspected suicide attempts among girls aged 12 to 17 up nearly 51% between 2019 and 2021. While the crisis has its roots in a host of factors, some of which are outside of the scope of the Health Connector's mandate, there are policy reforms available to the Health Connector to mitigate access barriers.

The Health Connector should collaborate with its state partners in the Department of Insurance and the Attorney General's Office, as well as with its federal partners in the Department of Health & Human Services and the Department of Labor to strengthen enforcement of mental health parity laws. In particular, federal agencies are charged with making meaningful the Biden Administration's prioritization of mental health parity, as illustrated in the [2022 Mental Health Parity and Addiction Equity Act Report to Congress](#), issued just last week. Health Connector plans are subject to both the federal Mental Health Parity and Addiction Equity Act (MHPAEA),⁶ as well as the

³ Achieving health equity necessarily involves ensuring all people have access to health care, regardless of immigration status. Some non-citizens remained barred from enrolling in plans sold on the Health Connector, regardless of use of premium tax credits, but remain eligible for other Massachusetts programs depending on age, income, and other factors. MLRI, *Understanding Non-citizen's Eligibility for Health Coverage from MassHealth and the Health Connector* (Jan. 2022), <https://www.masslegalservices.org/system/files/library/Understanding%20eligibility%20of%20non-citizens%202022.pdf>. We encourage the Health Connector to engage with stakeholders to determine whether non-citizens have a seamless enrollment experience if they come to the Health Connector seeking health care coverage.

⁴ See, e.g., Victor G. Villagra et al., *Health Insurance Literacy: Disparities by Race, Ethnicity, and Language Preference*, 25 *American J. of Managed Care* e71, e72 (2019); Jean Edward et al., *Significant Disparities Exist in Consumer Health Insurance Literacy: Implications for Health Care Reform*, 3 *Health Literacy Research and Practice* e250, e252, e254 (2019); Sharon K. Long et al., *Large Racial and Ethnic Differences in Health Insurance Literacy Signal Need for Targeted Education and Outreach* (Feb. 6, 2014), <https://perma.cc/6WRF-UTCJ>. Racial disparities in health insurance literacy can also be found in Massachusetts specifically. See Jean Edward et al., *The Impact of Health and Health Insurance Literacy on Access to Care for Hispanic/Latino Communities*, 35 *Pub. Health Nursing* 176, 179 (2018).

⁵ Anna D. Sinaiko et al., *Consumer Health Insurance Shopping Behavior and Challenges: Lessons From Two State-Based Marketplaces*, 76 *Med. Care Rsch. and Rev.* 403, 419, 421 (2019); Pew Rsch. Ctr., *Internet/Broadband Fact Sheet* (June 12, 2019), <https://perma.cc/Q558-EDFJ>.

⁶ Pub. L. 110-343, 122 Stat. 3765 (2008).

Massachusetts Mental Health Parity Law (MMHPL),⁷ with enforcement authority fractured among a host of agencies. While Connector plans typically comply with general requirements of the MMHPL to cover “biologically based mental disorders” in the 13 categories set forth in the statute,⁸ meeting the law’s mandate to provide *non-discriminatory* coverage requires closer scrutiny.

The Health Connector is particularly well positioned to analyze insurance plan design, network and rate adequacy, and utilization review mechanisms that constitute discrimination in the provision of mental health coverage because they are out of parity with their medical/surgical counterparts. These plan components are key contributing factors to the current crisis of access for mental health services in the Commonwealth. The workforce problems [identified by the Health Policy Commission](#) as lying at the heart of the crisis would be addressed, at least in part, by increased attention to the rate and network adequacy of mental health coverage in insurance plans. To begin this process, the Health Connector should work with insurers and federal partners to review plans’ internal comparative analysis of [non-quantitative treatment limitations](#). Congress required insurers to create such comparative analysis in the Consolidated Appropriations Act of 2021, to improve enforcement of MHPAEA.⁹ Despite an effective date in February 2021, the agencies’ [recent report to Congress](#) observed that insurers are largely ignoring this requirement.¹⁰ Requiring insurers to live up to the requirements of MHPAEA by creating these analyses, and to work together with the Health Connector to improve mental health coverage where the analysis reveals shortcomings is a key step in overcoming the Commonwealth’s mental health access crisis. The Health Connector could also require publication of these internal analyses to plan members to improve transparency and improve understanding of coverage and plan design.

As it so frequently has, Massachusetts should lead the way on making the promise of health insurance meaningful for all. The Health Connector should contribute to this promise by collaborating with its state and federal partners to improve insurer compliance with state and federal parity law. As the front-line regulator certifying these plans, the Health Connector is well positioned to push these improvements forward.

Response to Section 1.2.1, Question 4:

The Center for Health Law and Policy Innovation is an active member of the Massachusetts Trans Health Coalition (MTHC). We support the recommendations made within the comments submitted by the MTHC, including the recommended actions for plans sold on the Health Connector as summarized below:

- Establish gender-affirming care advisory councils;
- Remove Gender Dysphoria letters requirement for gender-affirming care;

⁷ St. 2008 c. 256, St. 2000 c.80 (modifying Mass. Gen. L. ch. 32A, § 22; Mass. Gen. L. ch. 175, § 47B; Mass. Gen. L. ch. 175, § 108E; Mass. Gen. L. ch. 176A, § 8A; Mass. Gen. L. ch. 176B, § 4A-4B; Mass. Gen. L. ch. 176G, § 4B; Mass. Gen. L. ch. 176G, § 4M.

⁸ Mass. Gen. L. ch. 175, § 47B (West)

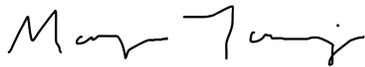
⁹ Pub. L. 116-260 (Dec. 27, 2020).

¹⁰ “Despite the CAA’s February 2021 deadline for plans to perform and document their comparative analyses, many plans and issuers stated that they were unprepared to respond to the Departments’ requests and had not started preparing their comparative analyses by the February 2021 deadline. None of the comparative analyses EBSA or CMS have initially reviewed to date contained sufficient information upon initial receipt. EBSA has issued 80 insufficiency letters addressing over 170 NQTLs, identifying specific deficiencies in the comparative analyses and requesting additional information to remediate those deficiencies.”

- Require standardized transparency regarding prior authorization requirements for gender affirming care;
- Implement procedures to manually review all rejections of coverage that are due to sex marker issues, prior to a member receiving notice of the coverage denial;
- Train plan employees who evaluate claims data on how to fix sex-marker coding issues;
- Publicize Issuer efforts to ensure potential enrollees and members who are transgender or gender diverse are treated in a respectful, nondiscriminatory manner;
- Publicize Issuer efforts to ensure network providers meet a similar standard (including what actions will be taken if a provider is reported to be transphobic or discriminatory on the basis of gender identity);
- Conduct regular needs assessments to ensure plans sold on the Health Connector are appropriately covering care necessary for transgender and gender diverse members; and
- Ensure plans cover services furnished outside of Massachusetts when consumers are not able to access care in a timely manner from providers with a plan's network.

Please reach out to us if we can provide any additional information.

Sincerely,



Maryanne Tomazic

mtomazic@law.harvard.edu

Clinical Instructor

Center for Health Law and Policy Innovation, Harvard Law School