Kansas providers say insurer audits violate patient confidentiality, parity

Confidentiality and parity violation issues are at the heart of major concerns Kansas providers contracted with Blue Cross and Blue Shield (BCBS) are having regarding the insurer’s auditing process. BCBS says it is examining medical records to determine if the documentation that was submitted supports the codes billed.

BCBS of Kansas contracted with New Directions, as the utilization review organization, as part of its Outpatient Practice Management Program to review behavioral health claims.

Providers, meanwhile, say patients are being compromised. “My primary concern is that this is a violation of patient confidentiality and privacy,” Susan Eyman, Ph.D., a psychologist in private practice in Lawrence, told MHW. “The second concern is that as a doctor, they are not respecting my right to plan treatment services for my patients.” Eyman added that BCBS is refusing to answer specific questions that might aid in treatment planning or to more fully understand their concerns.

Eyman explained that in the fall of 2015, BCBS of Kansas and New Directions refused to authorize long-term psychotherapy. In the summer of 2016, many psychologists and social workers received letters stating...

Vermont legislator jump-starts dialogue on nonprofit executive compensation

A Vermont state senator suggests he will judge the success of his proposed bill to rein in executive compensation in nonprofit organizations on the volume and quality of the dialogue it generates. Admitting that a proposal that would affect state-funded mental health agencies and other nonprofits stands little chance of passage at present, State Sen. Christopher Pearson nevertheless thinks it is time for a statewide conversation on income equity.

“This is not about going after nonprofits,” Pearson told MHW. Instead, he wants the state to address if rich compensation packages for nonprofit executives “are a sensible use of tax dollars.”

Pearson, who is dually endorsed by the state’s Democratic and Progressive parties, says his newly introduced bill would require all nonprofits that receive at least $1 million in public funding to formally justify any executive salary that exceeds the $167,000 paid to the state’s governor. There would be a state waiver process to allow nonprofit organizations to pay their executives in ex-...
they saw patients “more than average” for their “peer group” and would be subject to review, Eyman stated. “They won’t tell me what the average number is,” she said. “I have asked repeatedly what the average number of sessions for specific diagnoses is. I have also asked repeatedly about the makeup of this ‘peer group,’ but they refused to answer either question.”

She added, “Confidentiality is absolutely essential in establishing a therapeutic relationship and providing people with safety in addressing their mental health issues.”

which amounted to thousands of dollars, she added.

**Cost containment issue**

“New Directions and BCBS are not clinicians,” said Eyman. “Medical decisions should be made by the doctor and patient together, not by an insurance company whose primary goal is to contain cost.”

Karen Bellows, Ph.D., a clinical social worker in Topeka, said BCBS officials informed providers that the policy of requiring therapy notes was an outgrowth of the federal parity law. “It’s about cost containment,” Bellows told *MHW*. “They don’t want whether a psychotherapy service is medically necessary. BCBS has hired a contractor that could look at the records and deem the sessions medically unnecessary, she said. It’s as though patients “are being told that their pain and suffering are not significant. This is harmful to people who are already traumatized,” Bellows said.

One provider who spoke to *MHW* on the condition of anonymity said she concurs with the other providers who raised concerns about the background and judgment of the reviewers. “Auditors are not peers; they’re not trained, credentialed or licensed to practice psychotherapy,” she said, adding that she cannot understand how they could be in a position to determine whether a service is medically necessary.

“When providers provide minimum necessary documentation in response to an audit, BCBS KS claims they do not have adequate information and they then deny the already reimbursed services claiming they are not medically necessary,” she said. “BCBS KS expects mental health providers to prepare their notes in SOAP format (Subjective, Objective, Assessment, Plan).” The SOAP note is designed for the medical side, not mental health, and is not the supported format of the American Psychiatric Association,
she said. If it is used in mental health, the information provided would far exceed minimum necessary, the provider said.

**Parity concerns**

Violation of the federal parity law is a major concern, said Eyman. “Does a person with diabetes have to go for review with someone who is not a doctor — someone who says this person should be done with their treatment by now?” she said. Depression, anxiety and bipolar disorder are chronic diseases, she said.

“The issue of parity is that mental disorders should be treated like physical diseases in the same way,” she said. There are no limits to how many years a person with diabetes can go to a doctor. Which person should make those decisions, she said — doctors or insurance companies whose mandate is to cut costs?

**Insurer responds**

BCBS of Kansas two years ago, in an effort to reduce the administrative burden on providers, did away with prior authorizations for most outpatient treatment services, Mary Beth Chambers, spokesperson for BCBS of Kansas, said in a statement. “We also put in place a retrospective claim review process that helps us understand utilization trends,” she said. “The data provides an objective means to compare practice patterns.”

Chambers added, “We did this as part of an ongoing effort to assure quality outcomes by reducing variations that do not result in better member outcomes. The results do not characterize one provider’s clinical performance as being better or worse than another; rather, it calls out notable differences. If we found a notable difference, a New Directions clinician coordinated a meeting to have an open dialogue with the provider to understand more about that patient’s particular situation. The meetings concluded in October 2016.”

If subsequent claims data reveal a continuing trend, New Directions’ Fraud, Waste and Abuse team performs a claims integrity audit, said Chambers. “The audit examines the medical records to determine if the documentation that was submitted supports the codes billed,” she said. “New Directions does not perform a medical necessity review. In other words, they do not evaluate if the service was necessary.”

Chambers added, “We certainly understand provider and member concerns about confidentiality; however, payors and their partners have always had full legal authority to receive documentation to support treatment for which claims are being filed. Both Blue Cross and Blue Shield of Kansas and New Directions comply with all aspects of HIPAA [Health Insurance Portability and Accountability Act] and HITECH [Health Information Technology for Economic and Clinical Health Act] and remain steadfast in safeguarding the highly personal behavioral and medical information that we receive.”

**Providers, advocates challenge department on parity violation**

The Kansas Insurance Department (KID), in a Jan. 24, 2017, letter, responded to the executive director of the National Association of Social Workers (NASW) Kansas Chapter’s concern that the Outpatient Practice Management Program by New Directions does not comply with the Mental Health Parity and Addiction Equity Act of 2009 (MHPAEA). Julie Holmes, director of the KID Health & Life Division, noted feedback from Blue Cross and Blue Shield of Kansas that indicated the insurer has similar programs in place on the medical/surgical side.

“Some examples include a quality improvement project to limit the use of imaging for low back pain which included identifying providers by specialty that were performing imaging studies and providing targeted education and meetings with Blue Cross Blue Shield professional relations representatives, if needed,” Holmes wrote. “A similar program with meetings and training workshops was rolled out dealing with contracting chiropractors and other providers who perform spinal manipulations.”

“After a thorough and thoughtful review of this issue, KID has determined that Blue Cross Blue Shield of Kansas does have in place similar utilization, documentation guidelines and expectations for the medical/surgical providers,” Holmes wrote, adding that it does not appear Outpatient Practice Manager Program Overview is in violation of the federal MHPAEA.

In response, Sky Westerlund, LMSW, executive director of the NASW Kansas Chapter, noted that the examples cited in the Holmes letter, and provided by Blue Cross and Blue Shield of Kansas to demonstrate parity in treatment, “are very narrow.” More specifically, “limit the use of imaging for low back pain” is describing a specific intervention for a specific condition, and “contracting chiropractors” refers to a particular group of providers, Westerlund wrote, adding that such an example “appears to apply to one form of benefits (imaging) and one group of providers (chiropractors) rather than being inclusive and applicable to all providers of all medical/surgical benefits.”

Westerlund wrote, “We believe the examples fall short of demonstrating that mental health benefits are administered in a way that is on par with the medical/surgical benefits.” Westerlund’s letter was also signed by Rick Cagan, executive director of the National Alliance on Mental Illness Kansas, and Dan Wise, Ph.D., president of the Kansas Psychological Association.
Montana providers ponder future of service delivery after cuts

Targeted case management services for adults and children with mental illness and developmental disabilities are among the Department of Public Health and Human Services programs being cut in Montana, prompting closures and forcing some providers to determine new ways of delivering much-needed services.

The Montana legislature last year passed bills that affected many of the programs children and adults with mental illnesses rely on to live and work in the community. The budget cuts are based on a two-year budget the legislature passed in 2017.

The South Central Montana Regional Mental Health Center completely shut down its case management unit, Barbara Mettler, the center’s executive director, told MHW. Case management services took a 30 percent hit, equal to the 2.99 percent cut on the Medicaid rate, she said. “Our rates are low already. There’s no fat left to cover the costs. Everything has been cut across the board,” she said.

Following the shutdown, the mental health center transferred some minor case management services to one of the center’s other programs, she said.

Approximately 3,500 clients are served annually at the center, she noted. “We provide services to 11 counties over 25,000 square miles,” Mettler said. “Montana is a huge state with a very small population.”

Transitioning services

At the time of the cuts, the center had 200 clients for its case management services. The center has 20 full-time employees on its case management team. Mettler said rather than lay off employees, the center opted to transition them to fill existing positions in its other programs, including the PACT (Program of Assertive Community Treatment) team and Project Homeless Connect.

Some of the clients who will no longer be receiving case management services have been placed in PACT for a higher level of care, said Mettler. Other patients have transitioned to the one remaining program providing case management, while the rest are seeking services elsewhere in Billings, she said.

Mettler noted that assessment rates were cut from $282.50 to $89.71 per hour, while group therapy rates were reduced from $24.27 to $17.55. Providers received an hourly increase from $67.90 to $76.04 for individual therapy for substance use/abuse, she said. Meanwhile, the cuts were to be effective Oct. 1, 2017. However, because the rates were protested, they didn’t go into effect until Jan. 1, she said. The state will be reducing the rates to recoup the difference, she said.

At press time, Montana providers were expected to go to Helena to testify about the cutbacks, Mettler said.

Aware Inc.

Aware Inc., a nonprofit based in Anaconda, delivers services for children and families as well as people with mental health and developmental disabilities. The organization will no longer provide targeted case management services for adults with developmental disabilities or case management services for youth with mental illness, said Lawrence Noonan, public policy officer for Aware Inc.

“We’re currently figuring out how to deliver those services,” Noonan told MHW. “We have to think outside of the box, get creative and adjust our delivery model.”

The cuts will impact the organization’s home support services for people with mental illness, many of whom are children, he said. Behavioral health specialists go to their homes about once a week and work with the children with more extreme behaviors and help them get out of crisis, said Noonan.

“Aware has a strict mission and belief that people with developmental disabilities and mental illness can live in the community and be with family,” he said. “We have to get creative in [our ability] to keep delivering those services,” said Noonan. “We want to continue servicing all the clients who count on us.”

The organization provides adult management services to about 800 people, he said. The number of consumers served via Aware’s other programs is in the thousands, Noonan noted. “We provide services in Montana, a very rural state,” he said. “We’re pretty spread out.”

Noonan said Aware is looking at its administrative functions. “Maybe the future of the system has less brick-and-mortars,” he said, explaining one way of cutting back on overhead costs. It may decide on...
virtual-type offices, Noonan said.

Aware has a number of consumers with developmental disabilities and mental illness who work in-house or in stand-alone businesses. “We find employment for clients within and outside the community,” he said. Aware needs to determine what it can do to retain services, Noonan added. “We’re taking a hard look at our productivity goals,” Noonan said.

Advocates sue Connecticut over civil commitment issues

Connecticut civil commitment patients are denied periodic reviews and are unnecessarily institutionalized due to the state’s lack of community support and services, including supportive housing, a lawsuit filed by state advocates alleges. Additionally, patients have remained in institutions for months or years after they were declared ready for discharge, according to the complaint.

The lawsuit, *Gloria Drummond v. State of Connecticut*, was filed Jan. 25 against the state Department of Mental Health and Addiction Services by Connecticut Legal Rights Project Inc. The nonprofit agency provides legal services to low-income individuals with mental health conditions who reside in hospitals or the community.

The complaint names Drummond, and all others similarly situated — individuals who have been indefinitely civilly committed. “The proposed classes of people are not getting the periodic review they’re entitled to,” Kathleen M. Flaherty, executive director of Connecticut Legal Rights Project, told *MHW*.

Flaherty added, “There are people put in the state hospital against their will and deprived of their liberty when they’ve committed no crime.” The class members are civilly committed in state-operated mental health facilities, including the Community Mental Health Center in New Haven and Capitol Region in Hartford, she said. Those institutions and other state-operated inpatient psychiatric facilities around the state are named as defendants.

The lawsuit aims to “establish policies and procedures in state-operated inpatient psychiatric facilities to ensure a timely periodic review and to require the state to measure the need and create capacity for residential supports and services in the community so that a person shall be discharged to the most integrated setting appropriate with their needs within a reasonable time of not meeting state standards for civil commitment.”

**Supreme Court decision**

Flaherty pointed to a 1977 state Supreme Court decision in *Fasulo v. Arafeh*, which requires the state to provide involuntarily confined patients who were civilly committed for treatment of mental illness periodic judicial review of their commitments. The review must be through state-initiated recommitment hearings. Due process further requires the state to bear the burden of proving the necessity of continued confinement, according to the decision.

“This is what the process needs to be,” said Flaherty, referring to the Supreme Court’s decision. “If I were a legislator and the Supreme Court says that the [current] law is unconstitutional, I would have taken steps to amend that law. It’s been 40 years.

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We’re waiting for the right thing to be done.”

Rather than determine whether a patient is “discharge-ready,” they’re not making decisions until the person is ready to be discharged,” said Flaherty. “That’s not supposed to be part of the analysis. The law is very clear. Discharge planning should be done upon admission. They should let you go or they should be petitioning the court to review your care. That’s not what’s happening.”

A spokesperson from the state Department of Mental Health and Addiction Services referred *MHW* to Connecticut Attorney General George Jepsen’s office. “We will review the complaint and respond at the appropriate time in court,” Jaclyn M. Severance, spokesperson for the attorney general, told *MHW*.

**Community integration**

The complaint notes that the state and treatment plan shall “presume that supportive housing, community housing with services wrapped around the individual based on the individual’s preferences and needs, is the most integrated setting.”

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The complaint asks that the state establish and maintain a mental health system that has the capacity at all levels of care, with a priority for supportive housing, so that institutionalized patients in state-operated psychiatric facilities may be discharged within a reasonable period of time.

The plaintiffs’ “rights to community integration are being violated,” said Flaherty. “We’re kind of attacking the system from both sides: we’re getting stuck on the front end and stuck on the back end.”

“The state has made huge strides toward its investment in developing additional supportive housing units,” said Flaherty. There are particular subsets for people who are homeless, according to federal guidelines. “Unfortunately, our clients do not fit the definition of chronic homelessness. So all that great work in Connecticut isn’t enough,” she said.

According to the compliant, the state is ordered to ensure that at each involuntary civil commitment hearing, the treating psychiatrist will testify within a reasonable degree of medical certainty when it is likely that the patient will stabilize and no longer be a danger to self or others or gravely disabled or be able to receive community supports and services in a less restrictive setting.

Said Flaherty: “Ultimately, we want the state to meet its legal obligation to the people that they’re serving. Patients should not be held any longer than they need to be.”

Joint Commission issues new advisory for ‘second victims’

The Joint Commission has released “Quick Safety,” a new advisory form to provide health care organizations with research, recommendations and resources on how to address and support “second victim” experiences.

After a patient suffers an adverse event, the health care providers directly involved can suffer from difficulty sleeping, reduced job satisfaction, guilt and anxiety, as well as other emotional and physical harm. In addition, recurrent memories can contribute to more serious consequences, such as burnout, depression, post-traumatic stress disorder and suicidal ideation — all of which affect medical judgment, said officials. This is called “second victim” syndrome, and it is estimated that nearly half of health care providers experience the impact as a second victim at least once in their careers, they said.

In addressing second victims, the Joint Commission is talking about unsafe events that may cause harm to patients needing health care, Lisa Buczkowski, associate director of quality and patient safety at the Joint Commission, told MHW. The patient is the first victim, she said. The second victim could be a nurse, physician or therapist, she noted. The advisory, she noted, does not involve individual discipline. “It’s not punitive,” she said.

“When something doesn’t go the correct way, it can lead to concerns or issues the provider has,” she said. “A second victim can experience both emotional and physical harm in how they feel about themselves. It can impact how they can work with others.”

Health care providers may have made a medication error that caused harm, or a patient may have committed suicide, she said. The provider may have tried to provide treatment, but the patient still may have carried out a self-inflicted harmful event, she said. The Quick Safety is a way of drawing attention to an issue and allowing health care providers to share their personal experience as a victim, Buczkowski noted.

The “Quick Safety” offers several safety actions for health care organizations to consider, including:

- Instilling a just culture for learning from system defects and communicating lessons learned.
- Engaging all team members in the debriefing process and sharing of the lessons learned from the event analysis.
- Providing guidance on how staff can support each other during an adverse event (i.e., how to offer immediate peer-to-peer emotional support or buddy programs).
- If the employee assistance program (EAP) is the sole source of support for second victims, consider creating supplemental programs after evaluating the EAP’s structure and performance.

Organizations in which all levels of health care providers work should also consider the rest of the staff following an incident, she noted. “We encourage organizations to also step back and look at the secondary victim and help them get the [support] they need,” said Buczkowski, citing EAPs and counseling programs offered through human resources departments.

Vermont from page 1

cess of the governor’s salary, but those not submitting an explanation for their higher executive compensation would no longer be eligible for state funding support, Pearson said.

It remains unclear as to how many nonprofit organizations in Vermont currently pay their administra-

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Mental health is an area that would be likely to come under increased scrutiny if Pearson’s bill were to become law. In 2015, the mental health sector faced review from the Vermont State Auditor’s Office after word spread of a $650,000 retirement package being offered at one of the state-funded nonprofit mental health agencies.

Pearson acknowledges the essential service role of nonprofits, and suggests via his comments that a number of organizations would be able to demonstrate the validity of high executive salaries. “These are complex issues,” he said.

But he added that when he sees a nonprofit executive’s compensation in excess of $2 million, “That is not saying to me that these are fixed, immutable costs.”

**Unfair targeting?**

A public policy representative at the National Council of Nonprofits was quoted in a *Burlington Free Press* article as saying that efforts to control salaries should not serve to single out the nonprofit community.

“It’s wrongheaded to impose arbitrary rules or to treat nonprofits as something other than the independent provider of services that they are,” said David L. Thompson, the national organization’s vice president of public policy.

The National Council for Behavioral Health’s most recent review of member community mental health organizations’ Form 990 tax return information found an average CEO salary of $206,000, National Council President and CEO Linda Rosenberg, M.S.W., told *MHW*. That figure is up from $191,000 in 2014. “Organizations have gotten more complex,” Rosenberg pointed out.

She suggests that legislative moves to rein in compensation can be contradictory because leaders maintain the same high expectations for these organizations as they try to see salaries and benefits reduced. Even the salaries of the highest-earning National Council member organization CEOs, in hospital systems, can make sense from the perspective that these organizations are as complicated to run as many for-profit corporations, Rosenberg said.

She said of such legislative initiatives, “It’s a knee-jerk reaction. They feel good, but you’ve got to be careful.” Nonprofit behavioral health organizations already are struggling to compete for talent in an environment of essentially full employment for those in professional roles, she said.

### Bill logistics

Pearson’s bill would require the state to establish rules governing how the process of evaluating nonprofits’ executive salaries would work.

Pearson believes it is unlikely that his bill, for which he did not seek co-sponsors, will advance in the legislature this year. He did say, however, that he has received some words of encouragement from individuals at all points on the political spectrum in the state, giving him hope that the dialogue on this subject will continue.

He added that he has made income inequality a priority issue for some time, addressing it in other areas such as tax policy and the state’s minimum wage.

### STATE NEWS

**Dallas mental hospital to close before state shuts it down**

Timberlawn Behavioral Health System, a psychiatric hospital in Dallas, says it is voluntarily closing its doors just after state officials threatened to shut down the aging treatment center because it was too dangerous for patients, the Associated Press reported Jan. 19. The hospital’s CEO, James Miller, wrote to staff saying the intention to close the facility came after “completing a comprehensive, careful review.” Miller said

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the hospital made the decision to close back in December, before the state threatened to confiscate its license and fine it $600,000. He cited a decreased patient population and the cost to refurbish aging buildings on the campus as reasons for the closure. The hospital is appealing the sanctions. Investigators found that in recent years the hospital has faced a series of safety issues. In 2014, a suicidal patient was left alone and killed herself. In 2015, a female patient reported she was raped by another patient. Last year, a teenager who was a victim of past sexual abuse reported another teen patient entered her hospital room and raped her. Colette Riel, the sister of the Timberlawn patient who died by suicide, said the hospital’s closure means no one else will get hurt at the facility. The hospital is expected to close in February, Miller told federal officials.

Nevada mental health home providers on notice after audit

A state audit shows filthy and unsafe conditions in 37 “community-based living arrangement” homes where the state places adults with mental illness in Nevada, the Las Vegas Review-Journal reported Jan. 22. Nevada health officials announced Jan. 22 that several providers have been put on corrective action plans by the Department of Health and Human Services a week after an audit revealed people with mental illness are living in taxpayer-funded homes filled with feces and filth. On Jan. 18, inspectors began investigating 142 homes for the consumers with mental illness after a state audit revealed atrocious conditions, including human waste, rodents, dirty walls and mattresses, broken glass, expired medication and mildew. Bureau of Healthcare Quality and Compliance officials said state case managers were checking the homes every month but did not note the squalid conditions. The state’s community-based living arrangement program gives home providers $1,450 per client per month to house clients with mental illness. It was unclear Jan. 22 how many homes were put on 10- and 30-day corrective action plans following the inspections. Robin Reedy, executive director of the National Alliance on Mental Illness Nevada, said state inspectors should check the homes monthly, instead of relying on case workers.

Coming up...

The University of South Florida is hosting its 31st Annual Research & Policy Conference on Child, Adolescent and Young Adult Behavioral Health March 4–7 in Tampa, Fla. Visit www.cmhconference.com for more information.

The National Association of County Behavioral Health and Developmental Disability Directors will hold its 2018 Legislative and Policy Conference March 5–7 in Washington, D.C. For more information, visit www.nacbhdd.org.


The 2018 annual meeting of the American Psychiatric Association is being held May 5–9 in New York City. Visit www.psychiatry.org/psychiatrists/meetings/annual-meeting for more information.


In case you haven’t heard...

Amazon is diving into health care, teaming up with Warren Buffett’s Berkshire Hathaway and the New York bank JPMorgan Chase to create a company that helps their U.S. employees find quality care “at a reasonable cost,” ABC News reported Jan. 30. The leaders of each company, Amazon’s Jeff Bezos, Buffett and JPMorgan Chase’s Jamie Dimon, offered few details and said the project is in the early planning stage. “The ballooning costs of healthcare act as a hungry tapeworm on the American economy,” Buffett said in a prepared statement. “Our group does not come to this problem with answers. But we also do not accept it as inevitable.” The new company will be independent and “free from profit-making incentives and constraints.” The businesses said the new venture’s initial focus would be on technology that provides “simplified, high-quality and transparent” care. It was not clear if the ultimate goal involves expanding the ambitious project beyond Amazon, Berkshire Hathaway and JPMorgan Chase. However, JPMorgan Chase’s Dimon said Jan. 30 that “our goal is to create solutions that benefit our U.S. employees, their families and, potentially, all Americans.”