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PSYCHOLOGICAL
ASSOCIATION
Services, Inc.

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ASSOCIATION



By Electronic Mail

October 8, 2024

Dr. Amar A. Desai, CEO
Optum Health
11000 Optum Circle
Eden Prairie, MN 55344

Dear Dr. Desai:

American Psychological Association Services¹ and the American Psychiatric Association write to urge that you cease nationwide the recent barrage of prepayment reviews (PPRs) that Optum has inflicted on our members. We have grave concerns about how – during the nation’s continued mental health crisis and heightened concerns about patient privacy -- these PPRs may disproportionately impact mental health patients’ access to care, and unnecessarily put their privacy at risk in a way that we believe violates the HIPAA minimum necessary rule. These PPRs have even caused some patients to stop treatment.

We are also troubled by the enormous financial and administrative strains that these PPRs impose on our members, many of whom are in small practices with limited financial cushion and administrative support. Payment delays and the excessive burden of responding to these PPRs are unsustainable.

We have had issues over the years with Optum’s practices that impact psychologists, psychiatrists and their patients but we have never seen the level of widespread frustration and outrage from our members that these PPRs have created.

¹APA Services is the companion organization of the American Psychological Association, which is the nation’s largest scientific and professional nonprofit organization representing the discipline and profession of psychology, as well as over 157,000 members and affiliates who are clinicians, researchers, educators, consultants, and students in psychological science.

Factual Background

In August, we started hearing reports from members that Optum, without any warning or explanation, began sending PPR letters to a large number of psychiatrists and psychologists. Optum's letters state that claims that they or their patients have submitted will not be paid until they submit extensive patient records. More disturbing is that **Optum will take up to nine weeks** to review those responses and decide whether to pay the claims.

As detailed in Section 2 below, the standard letter seeks "all medical records" that support the services at issue, for the vague purpose of ensuring that "any claim payment is accurate."

The PPRs are novel in that they heavily targeted out-of-network psychologists and psychiatrists who had not been subject to similar reviews or audits in the past. Clinicians reported that Optum had for many years been able to process mental health claims without requests for patient records.

The many impacts of these PPRs on patient access to mental health care, patient privacy and clinicians are outlined below.

1. Concerns about Parity and Access to Mental Health Care

We are gravely concerned about the repercussion of Optum's PPRs on patient access to care during the country's ongoing mental health crisis.

First, American Psychiatric Association's outreach to medical/surgical professional groups indicates that Optum's PPRs are only impacting a narrow range of medical/surgical providers. If Optum's PPRs are indeed targeting mental health providers more heavily than medical/surgical providers, we seriously question what parity analysis supports the application of this aggressive non-quantitative treatment limitation to such a disproportionately narrower share of medical/surgical versus mental health providers.

Second, we have numerous reports from our members, as well as [media reports](#), of Optum patients stopping mental health treatment because of fears that Optum will not reimburse them. It is troubling that Optum would put insureds in this position of suspending care that Optum had been covering - coverage that patients may have relied upon in deciding to continue with their insurance - due to financial concerns. Even where patients have not stopped treatment, the uncertainties of the PPRs impact patients. For example, one psychiatrist reported that the patient she had been treating for a serious eating disorder, who had been stable and thriving, began to experience worsening symptoms due to concerns about how she was going to afford the outstanding costs.

Third, we are concerned that Optum's use of PPRs will further impede patients' access to in-network and out of network (OON) care from psychologists and psychiatrists. The recent RTI study found that patients of psychologists are 10.6 times more likely, and patients of psychiatrists are over eight times more likely, to be forced to go OON than patients of specialty physicians. Last December's [report by the New York Attorney General](#) found inadequacies specifically with Optum's networks.² Psychology leaders in states most affected by the PPRs confirm that assessment of inadequate networks.

Many of our members have already cited PPRs and similar oppressive audits, claw backs and reviews, and difficulties obtaining timely reimbursement, as barriers to participating in Optum's network. This message is reinforced by the recent [NASEM Report](#) and [media reports](#) on how these tactics have caused mental health professionals to avoid or leave networks. Section 3 provides further detail on the burden that these prepayment reviews impose on our members.

Psychologist and psychiatrist members have also told us that these tactics have caused them to stop taking patients who are using their OON insurance benefits. Those members report that they had left insurance networks to avoid these oppressive tactics, yet now, as OON clinicians, they are subject to the same arduous burdens.

Finally, these PPRs have a disparate impact on mental health patients because, as detailed in the next section, privacy is much more of a concern for mental health patients than for most med/surg patients. These PPRs either use those concerns against patients by discouraging them from pursuing care or reimbursement to protect their privacy, or put their privacy at risk by unnecessarily transmitting and putting in Optum's control so much of their mental health information as discussed next.

2. HIPAA Minimum Necessary/Patient Privacy

We believe that Optum's PPRs unnecessarily invade patient privacy in violation of the HIPAA minimum necessary rule. In American Psychological Association Service's survey of psychologists about the PPRs (Psychologist Survey), 93% of respondents (in response to a question about the impacts of the PPRs) had concerns about patient privacy.³

Under the HIPAA minimum necessary rule (45 CFR § 164.502(b)), Optum is obligated to seek only the minimum information necessary to accomplish the purpose for which

² We understand that in some cases Optum conducts PPRs on mental health networks of other insurers, such as Wellmark BCBS in Iowa. In those situations, the PPRs are impacting access to mental health care in the *other insurers'* network.

³ American Psychological Association Services conducted this informal survey between late August and late September and received over 270 responses.

information is sought. The fact that Optum has for years been able to process OON mental health claims without the extensive patient documentation it now requires before payment is a strong indication that such extensive documentation is not, in fact, necessary.

The standard PPR letter seeks “all medical records that support the services” at issue. The only stated reason for the review is the vague blanket statement that the review will “help ensure that any claim payment is accurate.” Among the many documents listed is the request, regarding office visits, for “all available documentation for the services rendered.” In the letter, Optum does not identify any documentation or treatment issues of concern, nor does it direct the professional to any Optum guidance about its documentation expectations in general, or what documentation is necessary to support coverage for services.

This combination of vague statement of purpose and extremely broad description of documents sought fails to justify the extensive information sought. Nor does it provide clear guidance to psychologists and psychiatrists as to the type and breadth of information Optum seeks. We believe that Optum’s vague and formulaic language does not meet the requirements of HIPAA, and further, fails to offer providers sufficient information to identify the records necessary for Optum’s review.

The documents sought in some reviews encompassed the entire patient record, and in other cases providers would reasonably interpret the broad language of the letter as asking for the entire record. 45 CFR 506(d)(5) states that a covered entity may not “**request** an entire medical record except when the entire medical record is **specifically justified** as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request” (emphasis added.) Optum has not provided such specific justification.

In our view, Optum’s approach violates the minimum necessary standard and is particularly egregious given the sensitivity of mental health records. The standard is important in any healthcare context, but is especially crucial for mental health records, which often contain highly sensitive information that patients are not comfortable sharing with anyone other than their therapist.

Those minimum necessary concerns are heightened further by the fact that these PPRs put a huge amount of sensitive MH information in the hands of Optum, which includes Change Healthcare – the entity that just seven months ago suffered the nation’s most infamous cyberattack on health information. That connection makes both patients and their mental health professionals particularly concerned about the privacy issues here.

3. Financial and Administrative Burdens on mental health professionals

Many of our members are in small practices with limited financial cushion and administrative support. According to a National Academy of Sciences study, behavioral health providers remain more likely than medical and surgical providers to work in small-group or solo practices, with limited capacity and support for billing, claims processing, network contracting and credentialing, and other administrative activities.⁴ These limitations mean that the PPRs disproportionately impact our members and their ability to serve your subscribers. We have extensive complaints from members about these impacts. Below are just a few examples.

Financial Burdens

The payment delays and reductions from the PPRs came on top of what has been a financially challenging year for our members due to other reimbursement delays beyond their control. Many were already reeling from months of not getting reimbursed from multiple insurers due to the massive cyberattack on the part of Optum that is Change Healthcare. Optum adding further cash flow problems on the heels of the Change Healthcare payment stoppage is outrageous. Some members reported that the PPRs delayed reimbursement significantly longer than the 9-week limit stated in the letters. In the Psychologists Survey, 44% of respondents (to a question about provider impacts of the reviews) had concerns about whether the PPRs would impact their ability to stay solvent.

Administrative Burdens

Our members have complained about the myriad ways that these reviews are burdensome, aggravating, and unfair. As one psychologist put it:

Optum has many policies that obstruct access to help/information when you are in the process of PPR. Once I was caught between two departments who accused me of [improper billing] when I had clear proof I [to the contrary, they] offered no way to resolve the issue. I finally got to a higher up person who approved the claim but it took many hours of confusion and frustration to get paid. It was very demoralizing and costly to me.

Another psychologist reported having “passed” the initial PPRs on multiple patients and eventually getting fully reimbursed, only to have claims for one of those patients subject to another PPR. She spent 45 minutes on hold and then another 30 minutes on the phone

⁴ National Academies of Sciences, Engineering, and Medicine. 2024. Expanding behavioral health care workforce participation in Medicare, Medicaid, and Marketplace plans. Washington, DC: The National Academies Press. <https://doi.org/10.17226/27759>

trying to find out why she was targeted for another PPR. Eventually she was told that random claims can be targeted by the algorithm for small variations in billing practices, including a minor *decrease* in billing (which might happen merely because the patient is sick or goes on vacation). A review or audit system that continues to harass those clinicians who have done well on the first review is deeply flawed and counterproductive.

That complaint highlights how little the burden of these reviews is connected to ensuring quality care. That disconnect is also shown in the many reports of frivolous documentation problems noted in the reviews, such as the failure to list their provider type below their signature, although the provider type is clear from the bills a clinician submits.

Both stories highlight the extensive time that these PPRs consume -- time clinicians should be devoting instead to patient care. Many psychologists have reported spending 20 hour or more hours responding to the PPRs, and some have reported hundreds of hours of clinician and staff time wasted.

Many clinicians have wasted time retransmitting records to Optum due to Optum's flawed system for receiving the documents requested. Our members complain that Optum claims documents are lost, despite their faxing or mailing the documents as Optum requested. When members call, there is no recourse and they are forced to re-submit the documents.

Optum's lack of transparency, clear direction and clear communication channels exacerbates the burdens on psychologists and psychiatrists. The PPR letters do not tell clinicians why they were selected, the specific purpose of the reviews, or give clear guidance on what patient records Optum seeks. Nor do they include a phone and email contact for a live person to answer questions. When clinicians have questions, they spend significant additional hours navigating Optum's electronic phone system, where calls are often dropped, and questions not satisfactorily answered by offshore call centers.

Conclusion

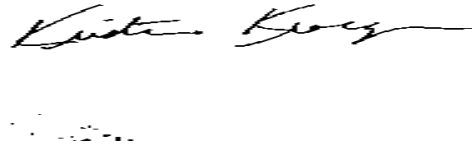
We urge Optum you to cease these onerous PPRs and take other appropriate measures to increase mental health patients' access to in-network and OON psychologists and psychiatrists. We want to fix this problem to enhance patient access to providers of their choosing both in and outside of networks. Stopping the PPRs will also protect patient

privacy, and let our clinicians focus on meeting the mental health needs of your subscribers rather than the meritless burden of these reviews.

Sincerely,



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CC: Dr. Jeffrey Meyerhoff, Senior National Medical Director, Optum Behavioral Health