February 12, 2013

Commissioner Joseph G. Murphy
Deputy Commissioner Kevin Beagan
Division of Insurance
1000 Washington Street, 8th Floor
Boston, MA 02118

Jean Yang, Executive Director
Commonwealth Health Connector
100 City Hall Plaza, 6th Floor
Boston, MA 02108

RE: Mental Health Parity and the Massachusetts Benchmark Plan

Dear Commissioner Murphy, Deputy Commissioner Beagan and Director Yang:

We write today to express our appreciation for your work in identifying the Massachusetts benchmark plan, and also to express our concern that the benchmark plan chosen to determine Essential Health Benefits (EHB) in Massachusetts does not currently comply with the federal Mental Health Parity and Addiction Equity Act (MHPAEA). We are aware that the Division of Insurance and the Connector are each working through separate processes regarding parity and EHB, and want to urge each entity to address this issue.

The Patient Protection and Affordable Care Act (ACA) took a major step toward ensuring high-quality health coverage for all Americans with its requirement that most health insurance plans meet a minimum floor of coverage, or EHB. We believe that the EHB is a critically important opportunity to address the health needs of those individuals with mental illness or substance use disorders.

We commend the Division of Insurance (DOI) and the Connector for their thoughtful approach to determining EHB for Massachusetts, and for considering stakeholders' comments throughout the process. However, we believe that further regulations are necessary to ensure that all individuals – particularly those with chronic illnesses and serious and persistent behavioral health conditions – have access to a comprehensive range of medically necessary treatment services.

The 2008 federal parity law was a watershed moment for those living with mental illness and addictions, ensuring for the first time that health plan issuers could not impose discriminatory limitations on the behavioral health treatment services they covered. The ACA goes one step further, by requiring most plans to cover mental health and addictions services – and to do so at parity with medical/surgical benefits. As you know, in guidance released November 2012, the U.S. Department of Health and Human Services (HHS) expressly reiterated that mental health and addictions parity applies to EHB. 77 Fed. Reg. 70,651 (Nov. 26, 2012).

Nonetheless, HHS's selected approach to defining EHB presents several challenges when it comes to parity. The DOI has selected a small group Blue Cross Blue Shield HMO plan as our benchmark plan for the purpose of establishing EHB. Since this is a small group plan, the 2012 version of the plan must comply with our Massachusetts parity law but is not subject to MHPAEA. It appears that the chosen benchmark plan falls short of MHPAEA compliance in two important ways. First, the plan provides coverage at parity only for certain diagnoses listed in state law as "biologically-based" behavioral health conditions. Other conditions not on this list are to be covered for a minimum of 24 outpatient visits per year, and 60 days of inpatient

treatment per year. Second, since Massachusetts law does not address non-quantitative treatment limitations, the benchmark plan is not currently required to provide parity in non-quantitative treatment limitations, as would be required under MHPAEA.

HHS has not outlined a specific process for states to determine benefits that must be added to their plans to satisfy federal parity requirements, so it is essential that DOI and the Connector take action to ensure all EHB plans comply. We are also urging HHS to issue further guidance to states regarding this issue.

This problem is compounded by a lack of information about treatment limitations and exclusions in the information shared about the chosen HMO Blue benchmark plan. These documents do not provide enough detailed information for the state and stakeholders to conduct a complete parity analysis of the plan.

Massachusetts is faced with the question of how to supplement the mental health and substance use disorder category when a limited number of benefits is already in place – a question that the HHS rule does not answer. We do not know when or if further HHS guidance is forthcoming; therefore, we request that the DOI and the Connector use their rule-making authority to issue regulations or sub-regulatory guidance to insurance carriers that plan to offer Qualified Health Plans in 2014. We ask that this guidance clarify that, while the current incarnation of the Massachusetts benchmark plan is not in compliance with MHPAEA, any Qualified Health Plan offered through the Connector will be required to comply with MHPAEA as directed by HHS.

Thank you for your consideration.

Best,

Association for Behavioral Healthcare
Boston Public Health Commission
Children's Mental Health Campaign
Disability Policy Consortium
Health Care for All
Health Law Advocates
Massachusetts Association of Behavioral Health Systems
Massachusetts Mental Health Counselors Association
Massachusetts Organization for Addiction Recovery
Massachusetts Psychiatric Society
Mental Health Legal Advisors Committee
National Alliance on Mental Illness - Massachusetts
National Association of Social Workers - Massachusetts Chapter

cc: Ashley Hague, Chief of Staff and Assistant General Counsel, Health Connector
Kaitlyn Kenney, Director of Policy and Research/National Health Reform Coordinator, Health Connector