799 9th Street NW
Suite 210
Washington, DC 20001

T (202) 354-2600
vizientinc.com

vizient®

October 17, 2023

Submitted electronically via: www.regulations.gov

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, NW
Washington, DC 20201

Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Lisa M. Gomez
Assistant Secretary of Labor for the Employee Benefits Security Administration
Office of Health Plan Standards and Compliance Assistance
U.S. Department of Labor
Room N-5653
200 Constitution Avenue, NW
Washington, DC 20210

Re: Requirements Related to the Mental Health Parity and Addiction Equity Act (CMS-9902-P)

Dear Secretary Becerra, Deputy Commissioner O'Donnell, and Assistant Secretary Gomez,

Vizient, Inc. appreciates the opportunity to comment on the proposed rule, "Requirements Related to the Mental Health Parity and Addiction Equity Act" (hereinafter, "Proposed Rule") issued jointly by the Departments of Treasury, Labor, and Health and Human Services (collectively, the "Departments"). We applaud the Departments for issuing this Proposed Rule, as improving access to care for mental health and substance use disorders (MH/SUD) is critical to improving patient care.

Background

Vizient, Inc. provides solutions and services that improve the delivery of high-value care by aligning cost, quality, and market performance for more than 60% of the nation's acute care providers, which includes 97% of the nation's academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than $130 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

As the Departments are aware, an aim of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) is to increase access to mental health treatment for those covered by group or individual health plans by ensuring that treatment for mental and behavioral health is comparable to treatment for covered

medical/surgical conditions.[1] The Proposed Rule seeks to strengthen those protections by ensuring that mental and behavioral health benefits are not subject to greater restrictions than medical/surgical benefits under a health plan. Vizient applauds the Departments for identifying opportunities to improve access to MH/SUD benefits.

While the Proposed Rule includes policies that, if finalized, would help ease barriers to MH/SUD services, Vizient encourages the Departments to continue to identify opportunities to also increase and support the MH/SUD workforce. While the Proposed Rule is specific to group health plans and issuers of health insurance, Vizient encourages the Departments to consider how best to expand these policies to include other payers, such as Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). In addition, Vizient offers recommendations for the Departments to consider as they look to future rulemaking to supplement the provisions outlined in the Proposed Rule.

Growing Demand and Need for Access to Mental Health Services

Recent data from the Centers for Disease Control and Prevention demonstrates that the United States is suffering a mental health crisis, which has been exacerbated by the impacts of the COVID-19 Public Health Emergency (PHE).[2] According to the Health Resources and Services Administration (HRSA), over 160 million Americans live in a mental health professional shortage area,[3] and despite efforts to increase access to and utilization of mental health professionals, many adults with private coverage struggle to find meaningful access to in-network providers.[4]

Data from Sg2, a Vizient company, shows that untreated mental health conditions can negatively impact care for patients with chronic conditions. As shown in Image 1, the presence of a comorbid behavioral health diagnosis can increase both the average length of stay (ALOS) and 30-day readmission rates for patients with complex chronic conditions such as congestive heart failure and septicemia.

[1] https://www.congress.gov/congressional-report/110th-congress/house-report/374
[2] https://www.cdc.gov/mmwr/volumes/70/wr/mm7013e2.htm?s_cid=mm7013e2_w
[3] https://data.hrsa.gov/Default/GenerateHPSAQuarterlyReport
[4] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4707657/

CARE Family	WITHOUT BH DIAGNOSIS		WITH A COMORBID BH DIAGNOSIS		
	ALOS (Days)	30-Day Readmit Rate	Incremental ALOS (Days)	Incremental 30-Day Readmit Rate	Incremental Direct Variable Cost
Acute Renal Failure	5.8	17.1%	0.6	0.9%	$776
COPD	4.6	17.8%	0.3	2.7%	$575
Congestive Heart Failure	6.2	18.2%	0.7	2.8%	$2,362
Coronary Heart Disease	4.9	10.9%	0.7	1.9%	$907
Stroke	8.4	14.3%	2.2	0.4%	$3,020
Septicemia	8.4	16.4%	1.9	1.3%	$3,848

Image 1 – Data from Sg2's Impact of Change Report shows the impact to cost and length of stay for chronic conditions when a comorbid mental health condition is present. **Note:** Analysis excludes 0–17 age group. Stroke = Ischemic Stroke, Hemorrhagic Stroke—Intracerebral Hemorrhage, Hemorrhagic Stroke—Subarachnoid Hemorrhage, and Hemorrhagic Stroke—Subdural Hematoma CARE Families. **Sources:** Data from the Vizient Clinical Data Base/Resource ManagerTM used with permission of Vizient, Inc. All rights reserved. Q1 2019–Q4 2022. https://www.vizientinc.com; Sg2 Analysis, 2023. **Sources:** Impact of Change®, 2023; HCUP National Inpatient Sample (NIS). Healthcare Cost and Utilization Project (HCUP) 2019. Agency for Healthcare Research and Quality, Rockville, MD; Proprietary Sg2 All-Payer Claims Data Set, 2021; The following 2021 CMS Limited Data Sets (LDS): Carrier, Denominator, Home Health Agency, Hospice, Outpatient, Skilled Nursing Facility; Claritas Pop-Facts®, 2023; Sg2 Analysis, 2023.

Additionally, according to the Sg2 Impact of Change 2023 forecast, behavioral health discharges are expected to grow substantially faster than medical/surgical discharges in the next 10 years in both the inpatient and outpatient settings. As shown in Image 2, demand for inpatient behavioral services is expected to grow 8% over 10 years, the highest growth of any service line. Further, as shown in Image 3, outpatient demand for mental health is expected to grow 26% over 10 years, outpacing the general service line growth.

We offer these insights for the Departments' consideration regarding the growing demand for mental health services. We encourage the Departments to consider this information in finalizing Proposed Rule policies that will be able to meet both current and projected care needs.

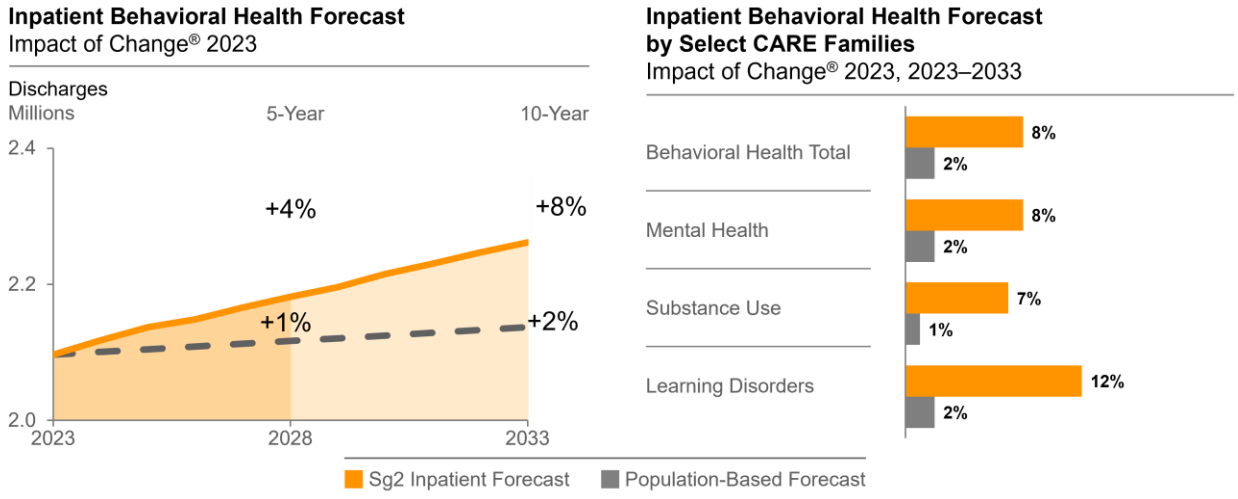

Image 2 – Data from Sg2's Impact of Change shows inpatient demand growth for behavioral health. Behavioral health inpatient demand overview. Analysis excludes 0–17 age group and includes the behavioral health service line. Discharges include patients with primary behavioral health diagnoses but do not necessarily reflect discharges from designated psychiatric beds. CARE Families included within the mental health and substance use service line can be found in the Impact of Change Methodology component of the 2020 Behavioral Health Forecast Outlook. Learning Disorders also include ADHD and autism. ADHD =

attention deficit hyperactivity disorder. **Sources** Impact of Change®, 2023; HCUP National Inpatient Sample (NIS). Healthcare Cost and Utilization Project (HCUP) 2019. Agency for Healthcare Research and Quality, Rockville, MD; Claritas Pop-Facts®, 2023; Sg2 Analysis, 2023.

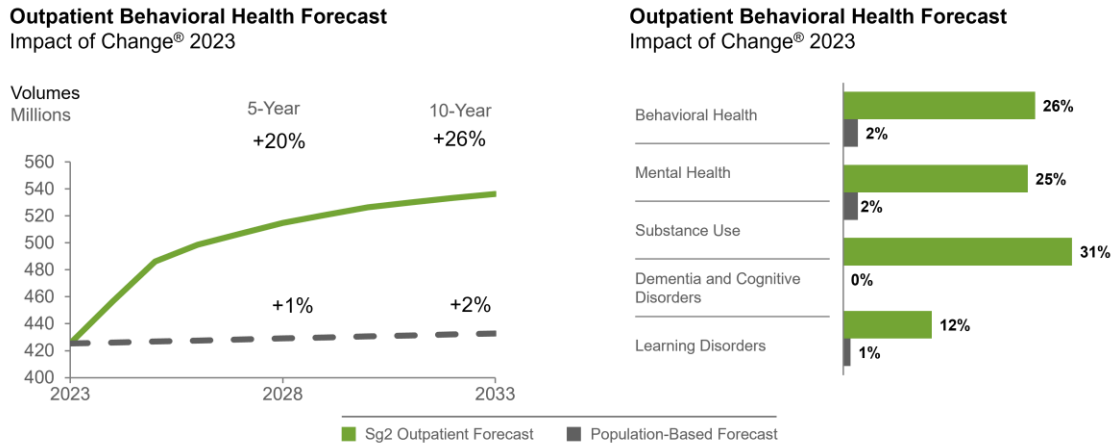

Image 3 – Data from Sg2's Impact of Change Report shows outpatient growth for behavioral health services. Outpatient demand overview. Analysis excludes 0–17 age group and includes the behavioral health service line. Discharges include patients with primary behavioral health diagnoses but do not necessarily reflect discharges from designated psychiatric beds. CARE Families included within the mental health and substance use service line can be found in the Impact of Change Methodology component of the 2020 Behavioral Health Forecast Outlook. Learning Disorders also include ADHD and autism. ADHD = attention deficit hyperactivity disorder. **Sources** Impact of Change®, 2023; HCUP National Inpatient Sample (NIS). Healthcare Cost and Utilization Project (HCUP) 2019. Agency for Healthcare Research and Quality, Rockville, MD; Claritas Pop-Facts®, 2023; Sg2 Analysis, 2023.

Proposed Changes to Non-Quantitative Treatment Limitations (NQTLs)

The Departments propose changes to prevent plans and issuers from designing and implementing Non-Quantitative Treatment Limitations (NQTLs) that impose greater limits on access to mental health and SUD benefits as compared to medical/surgical benefits. NQTLs are processes, strategies, evidentiary standards, or other criteria that limit the scope or duration of benefits for services provided under a plan. Under these proposals, plans and issuers would not be permitted to impose an NQTL unless the following three criteria are met: (1) the NQTL is no more restrictive as applied to mental health and SUD benefits than to medical/surgical benefits; (2) the plan or issuer satisfies requirements related to the design and application of the NQTL; and (3) the plan or issuer collects, evaluates, and considers the impact of relevant data on access to mental health and SUD benefits relative to access to medical/surgical benefits and takes reasonable action as necessary to address any material differences in access shown in the data to ensure compliance with the requirements of MHPAEA. Also, in the Proposed Rule, the Departments provide additional detail regarding these criteria. Vizient supports the agency's efforts to improve implementation of MHPAEA, including by providing greater clarity related to NQTLs, which may ease barriers to care that result from overly restrictive NQTLs. Vizient also offers additional considerations for the Departments' consideration regarding definitions and examples of NQTLs, use of outcomes data and network adequacy.

Definitions and Examples of NQTLs

The Departments propose to issue an illustrative, non-exhaustive list of NQTLs and examples of NQTLs to further demonstrate the rules as proposed. The proposed rules also add a specific reference to prior authorization requirements as an example of a medical management standard limiting or excluding benefits based on medical necessity or medical appropriateness.

Vizient strongly supports the inclusion of prior authorization as an NQTL with respect to mental health and SUD benefits. As stated in previous comments, Vizient is concerned that prior authorization and utilization management practices can create a barrier to patients accessing medically necessary care. In addition, Vizient is aware that barriers related to prior authorization are particularly pronounced for patients seeking coverage for mental and behavioral health services. Therefore, Vizient believes including a reference to prior authorization as a specific NQTL that might limit or exclude benefits for mental health or SUD treatment will help provide more protection to patients seeking mental health or SUD treatment. Vizient encourages the Departments to explore other protections for patients, including provisions that provide greater transparency and streamline the prior authorization process, like those proposed by the Centers for Medicare and Medicaid Services (CMS), to further ease barriers and support patient access to mental health or SUD services.

Required Use of Outcomes Data and Network Composition

The Consolidated Appropriations Act of 2021 (CAA, 2021) requires a demonstration of whether the processes, strategies, evidentiary standards, and other factors used to apply an NQTL to mental health or SUD benefits are applied no more stringently than when applied to a medical/surgical benefit. The Departments believe that outcomes data should be collected and analyzed as part of the analysis of whether an NQTL is more restrictive to mental health and SUD benefits than to medical/surgical benefits.

Further, the Departments are specifically concerned about NQTLs related to standards for network composition (e.g., standards for provider and facility admission and methods for determining reimbursement rates), as these standards are critical to ensuring parity in access to mental health and SUD benefits for participants and beneficiaries. The Departments note that there is a growing disparity between in-network reimbursement rates for mental health and SUD providers and medical/surgical providers, as well as a concern that often beneficiaries have little or no choice for mental health and SUD providers and must utilize out-of-network providers as compared to medical/surgical providers.

To address the network composition concerns, the Departments propose to require plans to collect data related to NQTLs related to network composition, including in-network and out-of-network utilization rates (including provider claims submissions), network adequacy metrics such as time and distance data, and provider reimbursement rates. Plans that identify a material difference in access to mental health and SUD providers as compared to medical/surgical providers would need to provide this data in a comparative analysis and also consider what action has been or could be taken to mitigate the differences. If data collected demonstrates that an NQTL shows material differences in access to mental health or SUD providers as compared to medical/surgical providers, a plan or issuer would not be in compliance with the regulations.

Vizient supports several of these proposed changes, as network adequacy is a significant barrier to accessing mental health and SUD benefits. While the Departments also acknowledge the complexities associated with growing and maintaining an adequate network of mental health providers, Vizient also emphasizes the importance of ensuring plans provide adequate reimbursement. Providers continue to face significant financial strain and Medicare reimbursement continues to be inadequate, often failing to accurately account for factors such as inflation, among other concerns noted in Vizient's recent comments to CMS. While we appreciate the Departments' acknowledgement of reimbursement disparities, we note that aligning or comparing reimbursement with Medicare rates could be challenging, as these rates are often inadequate. We encourage the Departments to work more closely with providers to

identify additional approaches to improve provider reimbursement rates as one way to help expand networks.

In addition, as noted above, demand for mental and behavioral health services is projected to grow in both the inpatient and outpatient settings over the next several years. Although workforce issues persist in all service lines, it is critical that additional attention be paid to the persistent shortages of mental and behavioral healthcare professionals. For example, Vizient encourages the Departments to take further steps to extend the workforce and increase access to mental health by supporting access to telehealth, the use of non-physician practitioners such as therapists, licensed clinical social workers, and clinical psychologists, and integrated health models that incorporate behavioral health into primary care. Also, Vizient recommends the Departments consider other long-term opportunities to bolster the workforce, such as through additional funding for education and other efforts to minimize workplace violence and promote well-being.

Expand the Use of Telehealth for Mental and Behavioral Health Services[5]

Since the COVID-19 public health emergency, the use of telehealth services for mental health services has grown substantially. The CAA, 2021 permanently expanded access to telehealth for mental health services, and Congress and CMS continue to explore ways to integrate permanent telehealth services into standard practice for many different service lines, including behavioral health and SUD services. Data from the Clinical Practice Solutions Center (CPSC)©, developed by the Association of Academic Medical Centers (AAMC) and Vizient, shows that more than half of behavioral health services were provided by telehealth in 2022. Many patients were able to access these services because of the waivers provided by CMS during the PHE. Currently, several Medicare telehealth flexibilities are only in place until December 31, 2024. This includes flexibilities such as waiving the requirement that a patient seeking mental health telehealth services receive an in-person visit within the first 6 months of treatment and annually thereafter. Given the important role of Medicare policy for other insurers, Vizient encourages the Departments to work with Congress and CMS to advance more permanent policies and flexibilities, including removal of the in-person visit requirement, for telehealth for mental and behavioral health services to increase access.

Vizient also encourages the Departments to support access to audio-only telehealth services for mental health, including by ensuring coverage and adequate reimbursement for these services. Coverage of these services is critical to addressing disparities, as about one-third of adults with household incomes below $30,000 per year do not have access to a smartphone, and 44 percent do not have home broadband services.[6] Establishing permanent payment rates and working with Congress to ensure permanent access to audio-only telehealth visits that are equivalent to rates for services provided in-person are crucial steps for expanding access to behavioral healthcare and increased network adequacy for plans.

[5] Although the Proposed Rule specifically refers to these services as “mental health and substance use disorder” services, we are using the terms mental health and behavioral health to be inclusive as to the types of services potentially covered by the provisions of this and future rulemaking.

[6] https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-incomeamericans-make-gains-in-tech-adoption/

Conclusion

Vizient welcomes the Departments' efforts to update the regulations related to the MHPAEA and appreciates your commitment to stakeholder feedback. We believe this provides a significant opportunity to help inform the Departments on the impact of specific proposals.

Vizient membership includes a wide variety of hospitals ranging from independent, community-based hospitals to large, integrated healthcare systems that serve acute and non-acute care needs. Additionally, many are specialized, including academic medical centers and pediatric facilities. Individually, our members are integral partners in their local communities, and many are ranked among the nation's top healthcare providers. In closing, on behalf of Vizient, I would like to thank the Departments for providing us the opportunity to comment on this important Proposed Rule. Please feel free to contact me, or Emily Jones at Emily.Jones@vizientinc.com, if you have any questions or if Vizient may provide any assistance as you consider these recommendations.

Respectfully submitted,

Shoshana Krilow
Senior Vice President of Public Policy and Government Relations
Vizient, Inc.