Commissioner James V. McDonald, New York State Department of Health
Corning Tower, Empire State Plaza,
Albany, New York 12237

Commissioner Ann T. Sullivan, New York State Office of Mental Health
44 Holland Avenue, 8th Floor
Albany, NY 12208

Commissioner Chinazo Cunningham, New York State Office of Addiction and Support Services
1450 Western Avenue, 4th Floor
Albany, NY 12222

September 15, 2025

Dear Commissioners McDonald, Sullivan and Cunningham:

We write to express our concern about the recent announcements by Healthfirst, Fidelis Care, and UnitedHealth Medicaid Managed Care Plans (MMCPs) to implement policies to require concurrent review for Children and Family Treatment and Support Services (CFTSS). These policies will not only limit children's access to necessary behavioral health services and create major administrative burdens for providers but may also violate the federal Mental Health Parity and Addiction Equity Act.

In May 2025, Fidelis Care notified providers in their network that as of July 1st, 2025, they would begin requiring concurrent review authorization after the 3rd visit for several CFTSS behavioral health services. Similarly, In July 2025, Healthfirst notified providers that they would implement a similar concurrent review authorization requirement for two CFTSS services, Community Psychiatric Supports and Treatment (CPST) and Psychosocial Rehabilitation (PSR).

The Department of Health's Provider Manual for CFTSS Services, updated in August 2025, provides guidelines for utilization management. These guidelines permit MMCPs to conduct concurrent authorization for CFTSS services after the 3rd visit. The announcements by Healthfirst and Fidelis Care are consistent with these guidelines, however, the guidelines also indicate that plans that opt to conduct prior or concurrent reviews should coordinate with

providers to determine the requirements and workflows. It is unclear if such coordination occurred.

The CFTSS Provider Manual referenced above includes guidelines for conducting utilization review. The guidelines provide that plans may implement concurrent review of CFTSS services after the first three visits, directing the MMCPs to "ensure prior and concurrent review activities do not violate parity law."[1] These guidelines, however, do not provide specific instructions on how to analyze whether these practices are in compliance with parity regulations, nor do they instruct MMCPs to certify compliance to the Department of Health (DOH). A blanket utilization management policy that applies exclusively to mental health or substance use disorder benefits is a parity "red flag" warranting further investigation to determine if a similar policy applies to medical/surgical ("M/S") benefits in a manner that complies with parity.

The federal Mental Health Parity and Addiction Equity Act ("MHPAEA") requires that there are no "separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits." 29 U.S.C. § 1185(a)(3)(A)(ii) and that the "treatment limitations applicable to such mental health and substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan," 29 U.S.C. § 1185(a)(3)(A)(ii). Specifically, for non-quantitative treatment limitations (NQTL) such as utilization management, plans may not:

> " impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification."[2]

The Centers for Medicare and Medicaid Services (CMS) has provided additional clarity that it is insufficient to merely show that a plan applies a utilization management requirement to both MH/SUD and M/S benefits without doing a more complete analysis in its 2017 FAQ.[3]

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[1] New York State Department of Health. *Children's and Family Treatment and Support Services (CFTSS) Services and Billing Manual*. August 2025. VI: *Utilization Management Guidelines for CFTSS for Medicaid Managed Care Plans (MMCP)*. https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/updated_spa_manual.htm#_bookmark11

[2] 78 Fed. Reg 68240, available at: https://www.federalregister.gov/d/2013-27086/p-788

[3] Center for Medicare and Medicaid Services. *Frequently Asked Questions: Mental Health and Substance Use Disorder Parity Final Rule for Medicaid and CHIP*. October 11, 2017. https://www.medicaid.gov/federal-policy-guidance/downloads/faq101117.pdf

> Q7. If a state or managed care plan has a prior authorization requirement for some outpatient medical/surgical benefits, and a prior authorization requirement for some outpatient MH/SUD benefits, does the state or the managed care plan have to conduct the NQTL analysis to determine if the prior authorization requirement for outpatient MH/SUD benefits complies with parity?
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> A7. Yes. It is not sufficient to note that prior authorization applies to both M/S and MH/SUD benefits. Instead, it is necessary to analyze the processes, strategies and evidentiary standards as written and in operation associated with prior authorization for M/S and MH/SUD benefits within the same classification.

Thus, Healthfirst, Fidelis Care, United and any other plans that choose to implement concurrent review for CFTSS as allowed by New York's guidelines not only must indicate that this policy is not exclusive to MH/SUD benefits, but also must perform an analysis of the processes, strategies, and evidentiary standards as written and *in operation* to ensure the policy complies with parity.

For a consumer or provider to assess whether the concurrent review requirements for CFTSS services violate MHPAEA, they would need to know whether there are concurrent review requirements for M/S benefits in the same classification as CFTSS and/or whether the concurrent review process for CFTSS is applied more stringently than to M/S benefits in the same classification. Therefore, without plans providing these disclosures, the Department of Health, as the oversight agency of MMCPs, must ensure that these concurrent review requirements, or any other utilization management processes, actually comply with parity, as required by federal regulations. 42 CFR § 438.920(b)(2).

In fact, the federal parity regulations require states to provide an updated documentation of compliance with parity and publicly post the information on the state's Medicaid website *prior to any* change in managed care benefits. 42 CFR 438.920(b)(1). A blanket policy for concurrent review of an entire subset of MH/SUD services – with no evidence of a comparable policy change for M/S services – is a change in benefits that requires updated documentation of parity compliance, especially because of how it will impact children's access to services as well as the provider's ability to deliver services.

We request that Department of Health (DoH) to immediately direct Healthfirst, Fidelis Care, United, and any other plans that have already or that are intending to implement blanket concurrent review for CFTSS to cease implementation until DoH can document that it complies with MHPAEA and post documentation on the state's Medicaid website, in accordance with federal regulations. Additionally, we request the DoH to direct such plans to engage in further coordination with providers to ensure any implemented policy minimizes the burden to providers and does not act as a barrier to care for their patients.

Please feel free to reach out with any questions at: lauri@nyscouncil.org or ckhaikin@lac.org

Sincerely,

Christine Khaikin, J.D.
Senior Health Policy Attorney

Lauri Cole, Executive Director
New York State Council for Community Behavioral Healthcare

cc: Nicholas Cartagena, JD, General Counsel, Office of Mental Health
Trisha Allen, JD, General Counsel, Office of Addiction Supports and Services
Sue Montgomery, Director, Office of Health Insurance Programs, NYS DoH