It used to be that New Year’s Day was a pleasant low-key holiday. However, in the years following the completion of my residency, it has become particularly unpleasant and now has morphed into being marginally less so. I am, of course, referring to the annual requirements of wrestling with “Managed Care” and their arbitrary requirements. In the early days, all such patients had to be recertified for episodes of care since the approval process applied to calendar years. Of course, the Managed Care companies never had enough staff to manage the flood of requests that came in. My favorite memory was when a “Care manager” person, in an irritated voice, said that we would have to wait because they were so busy. I simply replied that I had to see my patients; they needed to be “approved” in order to have their treatment paid for, and it was the company that had caused this problem, not me— not the patient but the company. After a few years they began to “grant” approvals that would carry into the new year. However, most policies only allowed 10 visits, and required that additional visits also be certified. Thus, all patients seen monthly would run out of approved visits in the fall. It is difficult to believe that the MBAs that run these companies could not figure out that there were 12 months in the year. Then, as now, I firmly believed that the requirements to constantly recertify were designed to wear down clinicians and allow companies to reject payment for sessions 11 and 12 in the event physicians may not have gotten around to recertify in the Thanksgiving and Christmas/Hanukkah season.

Enter the New York State Psychiatric Association (NYSPA). With the requirement of Parity between “Physical” and “Mental,” or, more accurately, with the elimination of discrimination between and among illnesses, such recertifying was no longer the case. Or so I thought. In the first year following Parity, I was routinely told that I still had to have all Mental Health visits undergo prior approval to make sure that the patient would get the “maximum benefit.” I asked if the patient would not get the maximum if they simply came in to see me without prior approval. Initially I was told that they may not. When I asked for a copy of the policy in writing, I was told that no, the patients would receive their “maximum.” Parenthetically, there is no maximum for mental health unless there is the same maximum for medical illnesses.

That brings us to today. I no longer have to get prior approval for treatment, but I do need it for meds. I had to get approval for lorazepam 1 mg a day; I have to list the meds, dose and dates of med trials and, required that additional visits also be certified. Thus, all patients seen monthly would run out of approved visits in the fall. It is difficult to believe that the MBAs that run these companies could not figure out that there were 12 months in the year. Then, as now, I firmly believed that the requirements to constantly recertify were designed to wear down clinicians and allow companies to reject payment for sessions 11 and 12 in the event physicians may not have gotten around to recertify in the Thanksgiving and Christmas/Hanukkah season.

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President's Column

(Continued from page 1)

Enter NYSPA. Psychiatry bills now consist of two parts: An E&M code (99-- --) and a talking-with-the patient code (908-- --). The reimbursement varies based on the complexity of the service and the time spent with the patient. NYSPA has templates that help practitioners to provide the required documentation in a very concise form. These templates are available to APA members at the NYSPA website (https://www.nyspsych.org/).

New York Enacts Historic Parity Reforms

[Editor’s note: The following is excerpted from the New York State Psychiatric Association (NYSPA) website to inform you of the changes referred to in the President’s Column and Karl Kessler’s report on the fall meeting.]

NYSPA is extremely pleased to report that the 2019-20 New York State Budget … includes landmark provisions aimed at enhancing parity for New Yorkers suffering from mental health conditions, substance use disorders and autism spectrum disorders. These provisions, called the Behavioral Health Insurance Parity Reforms (BHIPR), represent a comprehensive overhaul of the New York Insurance Law and seek to eliminate discrimination in coverage of care and treatment for mental health conditions, substance use disorders and autism spectrum disorders. The budget provisions apply to all health insurance and health benefit plans offered in New York State, including individual plans, group plans and HMOs.

The following is a list of key provisions:

- Coverage for all mental health conditions, substance use disorders and autism spectrum disorders, as defined in the most recent edition of DSM or ICD;
- Prohibits preauthorization and concurrent review of substance use disorder services during the initial 28 days of inpatient and outpatient treatment;
- Prohibits preauthorization and concurrent review of psychiatric inpatient services for persons under the age of 18 for the first 14 days;
- Prohibits prior authorization for formulary forms of prescribed medications for treatment of substance use disorders;
- Clinical review criteria applied by utilization review agents must be approved/designated by OMH or OASAS, where applicable;
- Medical necessity criteria must be made available to insureds, prospective insureds, or in-network providers upon request;
- Prohibits taking any adverse action in retaliation against a provider filing a complaint, making a report, or commenting to a government body regarding policies and practices that violate this statute;
- Requires insurers and health plans to post additional information regarding their in-network providers of mental health and substance use disorder services, including whether the provider is accepting new patients as well as the provider’s affiliations with participating facilities certified or authorized by OMH or OASAS; and
- Provides additional funding resources for staffing at DFS and DOH to handle oversight and enforcement of parity.

Self-insured plans are not subject to these new provisions but remain subject to the federal parity law and regulations.

The BHIPR provisions take effect January 1, 2020 and apply to all policies issued, renewed, modified or altered after that date.

These reforms are monumental and represent a hard-fought victory for NYSPA and the broader mental health and substance use disorder community.
The APA Assembly November 2019 Meeting
Reported by C. Deborah Cross, MD
APA Assembly Representative, PSW

The APA Assembly met in Washington, DC from Friday, November 15 at 12:30 pm until Sunday, November 17 at 11:30 am. As usual it was a very packed meeting. And, as I have explained in prior reports, the meeting was broken up into segments including: a) the various Area Councils meeting individually, b) the Assembly meeting as a whole in four separate Plenary sessions (one Friday afternoon, two on Saturday and the fourth on Sunday morning), c) Reference Committee meetings (five of them) meeting individually, d) Assembly Work Groups, and e) various individual Committee meetings. (See prior reports for a fuller description of all of these – or contact me directly).

The Assembly, as I have explained in prior reports, is a liaison between the general membership (all of you reading this) and the Board of Trustees and Officers of the APA, as well as the various Components (Committees) of the APA. Part of the way the Assembly fulfills this function is to hear reports from various areas in the APA. Every Assembly meeting numerous individuals from these various entities give a report to the full Assembly. That means that the APA President (our own Bruce Schwartz from the Bronx DB) gave a summary of the actions of the Board of Trustees since our last meeting in May. The APA President Elect, Jeffrey Geller from Massachusetts, is a member of the Joint Reference Committee (JRC) and his report listed their actions since May (the JRC is a sort of “clearing house” for all the action papers, Position Statements, and Practice Guidelines, etc. which the APA with its various Components, Assembly, other Committees, etc. are working on, to make sure that everyone gets input prior to any finalization and being sent for final action to the Board). Then the Treasurer, Gregory Dalack from Michigan, gave a report on the APA finances. And finally (just for that segment of the meeting), the Chair of the APA Political Action Committee reported on what had been happening in their arena since May. Later in the meeting, Saul Levin, the CEO and Medical Director of the APA, also updated the Assembly on various topics, which included announcing that the 2020 CMS reimbursement schedule currently calls for planned increases in E/M reimbursements. And of course, there was always some time devoted to questions and answers with each of the speakers.

Among the Actions taken during this Assembly were votes to approve the following Actions Papers:

- To develop an APA Position Statement Addressing Harmful Consequences of the Rise of White Supremacy;
- To propose an APA Position Statement Regarding Mental Health Screening and Access to Mental Health Care for Civil Immigrant Detainees of U.S. Homeland Security;
- To Address Workplace Intimidation and Bullying at the VA;
- To Have the APA Develop a Toolkit Supporting the Recruitment and Hiring of Psychiatrists’
- To Oppose Social Security Disability Mental Evaluations by Chiropractors and other Non-Qualified Examiners;
- To Support Public Education Efforts by APA to Increase Responsible Disposal of Prescription Medication;
- To Address Variability in State Law Concerning Emergency Holds for Psychiatric Evaluation;
- To Improve Access to and Ease of Searching other APA Position Statement Database;
- To Urge Greater APA Accountability for Climate Change Using Carbon Offsets and Becoming Carbon Neutral;

And for APA to Join as a Signatory to the US Call to Action on Climate, Health and Equity.

The following Position Statements were approved by the Assembly (and will go to the BOT):

- Proposed Position Statement: Disaster Preparedness and Response for Older Americans
- Proposed Position Statement: Mental Health of Foreign Nationals on Temporary Protected Status
- Proposed Position Statement: Addressing Racial and Ethnic Health Disparities in Substance Use Disorder Treatment in the Justice System
- Proposed Position Statement: Diversity and Inclusion in the Physician Workforce
- Proposed Position Statement: Transitional Aged Youth

The Assembly has several Committees and Work Groups, some of whom gave reports also, which may be of interest to some of you. The Committee on MOC (Maintenance of Certification) mentioned that there were 3 pending lawsuits against ABMS, ABIM and ABPN on anti-trust concerns. There was also discussion that the APA is actively exploring its own pathway to MOC as a “benefit of membership.” The Committee on Public and Community Psychiatry is currently focused on developing a position statement on involuntary hospitalization of SMI adults.

One of the highlights of the meeting was the presentation of the

(Continued on page 4)
The APA Assembly November 2019 Meeting

(Continued from page 3)

Profile of Courage Award by Patricia Westmoreland, MD, President of the Colorado Psychiatric Association, to Pamela McPherson, MD for her work with immigrant families in border issues. Dr. McPherson is a mental health expert for the Office of Civil Rights and Civil Liberties at the Department of Homeland Security. She wrote to the Senate Whistleblower Caucus and to Congress about the long-term psychiatric consequences of separation of children from immigrant families. She has published articles in the news media. She also received The Ridenhour Prize for Truth-Telling and the Physician for Human Rights Award, and was interviewed on “60 Minutes’. Dr. McPherson describes herself as a whistleblower and recognizes the value of APA in protecting her rights to speak out in protecting the rights of children where they may be infringed.

The next meeting of the Assembly will be in Philadelphia at the APA Annual Meeting from Friday, April 24, to Sunday, April 26, 2020. All Assembly meetings are open to any APA member, so if you are coming to the Annual Meeting you might want to plan to stop by and see your Assembly representatives at work.

C. Deborah Cross, MD
deborahcross@usa.net

Risk Management Resolutions for 2020
Charles D. Cash, JD, LLM
Assistant Vice President of Risk Management, PRMS

My colleagues and I decided that conducting a practice check-up would make a great and fairly easy-to-do set of New Year’s resolutions. Here are my suggested resolutions for 2020:

1. Take a look at your state’s medical practice act and any associated regulations.
   - Are you up to speed on any new laws that may affect your practice?
   - Do you know how to initiate the involuntary admission of a patient?
   - Do you know your state’s mandatory reporting requirements?
   - Have you visited your state medical board’s website lately?

2. Take a look at your malpractice policy.
   - Do you have coverage for all of the activities and types of treatment that you are currently engaged in?
   - Does your carrier have up to date information with regard to all of your practice locations?
   - Have you made your carrier aware of all incidents or circumstances likely to result in a claim (such as a patient suicide or injury, bad treatment outcomes, etc.) per the terms of your policy?

Have a wonderful and prosperous 2020!

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The APA Area II (NYSPA) Fall Council Meeting
Reported by Karl Kessler, MD
APA Representative, PSW

The Area II Council of the American Psychiatric Association (also known as the New York State Psychiatric Association or NYSPA) Fall Meeting was held on October 26, 2019 at the LaGuardia Marriott Hotel in East Elmhurst, New York. Some of the highlights of the meeting are given below.

Note that comments in brackets are developments that occurred subsequent to the Fall Meeting.

I) THE PARITY REPORT ACT: The NY legislature passed a law mandating the submission of data and information from New York State insurance companies and health plans so that the state can make evaluations of compliance with federal and state parity laws (the laws that mandate that mental health and substance abuse disorders are not treated in a different manner from other medical disorders). The goal is to ensure that the parity laws are being complied with. Data collection began on July 1, 2019. The first report will be published sometime in 2019 and every two years thereafter.

II) The legislature renamed the New York State Office of Alcoholism and Substance Abuse Services as the Office of Addiction Services and Supports.

III) New York’s “RAISE THE AGE LAW” went into effect for 17-year-olds on October 1, 2019 (the first phase went into effect for 16-year-olds on October 1, 2018). The law stipulates that all misdemeanor charges will be handled in Family Court. Felony charges would begin in a newly established Youth Part of the Superior Criminal Courts, where they would be presided over by a Family Court judge. Non-violent felony charges would be transferred to the Family Court under most conditions. Violent felony charges would remain in the Youth Part of the Criminal Court but are also eligible for transfer to the Family Court. Youth sentenced to one year or less will be housed in new specialized secure juvenile detention facilities or Office of Children and Family Services secure facilities. Youth sentenced to more than one year who are under 18 would be housed in adolescent offender facilities established by the Department of Corrections and Community Services.

IV) Two bills passed the legislature (S4808 and S5935) that prohibit insurers from requiring prior authorization for the initial or renewal prescriptions for all buprenorphine products, methadone or long-acting injectable naltrexone, used for detox or maintenance health treatment of substance use disorders. [The governor signed S4808, the bill to remove the prior authorization requirements for commercial insurers, but he vetoed S5935, the legislation to remove these requirements for Medicaid.]

V) A bill passed the legislature (S2849A) that significantly curtails the abilities of insurers for making midyear pharmacy formulary changes, with some exceptions. This bill is pending delivery to the governor. [The governor vetoed this bill.]

VI) The NY STATE BUDGET, which was passed into law in March 2019, contains provisions aimed at enhancing parity for New Yorkers with mental health conditions and substance use disorders. These provisions are called the “Behavioral Health Insurance Parity Reforms” (BHPR). Their goal is to eliminate discrimination in insurance coverage for treatment of these conditions (that mental health and substance use disorders will be treated the same as other medical conditions). The reforms codify and broaden New York State’s existing mandates for health insurance coverage and establish more uniformity among the current diverse provisions of insurance law that is related to such coverage. These reforms apply to all health insurance and health benefit plans offered a New York State.

The information below is taken directly from FY 2020 NEW YORK STATE EXECUTIVE BUDGET, HEALTH AND MENTAL HYGEINE, ARTICLE VII LEGISLATION, MEMORANDUM IN SUPPORT:

Among the provisions enacted through the Budget are the following:

- Prohibits preauthorization and concurrent review of SUD [Substance Use Disorders] services during the initial 28 days of inpatient and outpatient treatment;
- Prohibits preauthorization and concurrent review of for the first 14 days of psychiatric inpatient services for persons under the age of 18;
- Prohibits prior authorization for formulary forms of prescribed medications for treatment of SUD;

[The NY Office of Mental Health issued a Memorandum dated December 30, 2019, regarding prior authorization for (Continued on page 8)
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The APA Area II (NYSPA) Fall Council Meeting

(Continued from page 6)

psychiatric inpatient services for persons under the age of 18, which can be found on their website, which stated, among other things:

Chapter 57 of 2019 added new provisions to the Insurance Law that prohibit an insurer from requiring preauthorization or from performing concurrent review during the first 14 days of an inpatient admission for the treatment of a mental health condition of an individual under the age of 18… the law applies to health insurers that provide comprehensive health insurance coverage, including insurers participating in the Medicaid Managed Care, Child Health Plus, and Essential Plan Programs, and their utilization review agents that perform utilization review (collectively, “insurers”). The law is effective January 1, 2020 and applies to policies and contracts issued, renewed, modified, altered, or amended on or after such a date.

The issue is more complicated than stated above. The Memorandum also states that, “In order for the provisions to apply, the hospital must notify the insured in accordance with the notification method established in their provider agreement.”

It is worth reading the 2-page Memorandum in full.] ■

THE PSYCHIATRIC SOCIETY OF WESTCHESTER

PRESENTS ITS

33rd ANNUAL

LEGISLATIVE BRUNCH

ON

SUNDAY, JANUARY 26, 2020

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