



January 3, 2017

The Honorable Thomas E. Perez  
Secretary  
United States Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Sent Electronically via [e-ohpsca-mhpaea-disclosure@dol.gov](mailto:e-ohpsca-mhpaea-disclosure@dol.gov)

Dear Secretary Perez,

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists nationally. The members of NAHU work on a daily basis to help individuals and employer groups purchase, administer and utilize health insurance coverage. Our association appreciates the willingness of the Departments of Labor, Health and Human Services and Treasury ("the Departments") to seek comments from stakeholders about implementation of the Patient Protection and Affordable Care Act (ACA) and the implementation guidance you have issued to date. Specifically, we are writing about "FAQs on Affordable Care Act Implementation, Part 34" issued on October 27, 2016, and your request for information and comments about coverage requirements and plan disclosures with respect to mental health and substance abuse disorder benefits.

NAHU members help employers of all sizes offer and manage both fully insured and self-insured group coverage options, and providing employees and their dependents access to mental health and substance abuse services is an important part of group health benefit design. In addition, NAHU members routinely advise their employer clients about their compliance obligations in operating a group health insurance arrangement in accordance with both state and federal laws and related regulatory requirements, and we are aware that ensuring compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPEA) and its related rules is one of the most difficult areas for employer group plans to navigate. In particular, understanding and ensuring appropriate treatment of non-quantitative treatment service limitations (NQTLs) as they relate to MHPEA rules is very difficult for most employers and their plan administrators. Smaller plans with fewer compliance resources particularly struggle with the complexity of the MHPEA rules, but the complexity concerns in this area extend to plans of all sizes.

Employer group plans subject to ERISA must always be ready to provide plan participants and beneficiaries with information about the processes, strategies, evidentiary standards and other factors used to apply a NQTL with respect to medical/surgical benefits and mental health and substance abuse disorder benefits under the plan upon request, which is a very high compliance bar for virtually all employer group plans to navigate. Employer group plans that contract with issuers of fully insured coverage often rely on their issuer to be compliant with the MHPEA requirements, including the correct formulation of NQTLs and related disclosure requirements, even though they do have their own liabilities. Furthermore, employer group plans that operate or participate in self-funded health coverage arrangements normally rely on third-party vendors to help them with plan-design elements and to process and administer claims, so



they too are dependent on third parties with regard to the required analyses necessary to document the reason for any denial of reimbursement or payment for services with respect to mental health and substance abuse disabilities. Accordingly, NAHU feels that it would be extraordinarily helpful if the Departments were to take action to make the MHPEA disclosure processes simpler and more uniform for all stakeholders. Since most Americans receive their health insurance coverage through fully insured health insurance plans, NAHU believes that greater coordination by the Departments with state regulators, who ensure the compliance of all fully insured policies with federal and state mental health parity requirements through market-conduct examinations and their policy filing and review processes, would also be very sound policy.

Specifically, NAHU believes that making model forms available for plan administrators, plan beneficiaries and state regulators to use would be extremely beneficial. The use of a model form for consumers not only would provide plan beneficiaries a guide as to what to look for with regard to the treatment of their claims and benefits for mental health and substance abuse disorders, but would also serve as a compliance guide and checklist for plan administrators and regulators. In terms of quantity of forms, NAHU believes that streamlined forms and disclosures are always better, as they are easier to prepare and keep timely. A single, simple form would also be more manageable for consumers to process. Overwhelming and confusing consumers, who are normally not familiar with health plan design constructs and terminology, in the name of consumer protection is something that NAHU believes should be avoided whenever possible. In addition to model forms for consumers to use to request NQTL information from a plan administrator, NAHU also suggests that the DOL provide plans and issuers with model response forms that can be adapted by the plans based on circumstances. Furthermore, guidance with specific examples about acceptable MHPEA methodologies for plans to review is also always helpful.

With regard to providing model forms to state regulators, NAHU strongly encourages you to provide sample materials and best practices for communications to both issuers and state regulators. NAHU also believes that the Departments should devote greater resources to working with state regulators and their professional association, the National Association of Insurance Commissioners (NAIC), to ensure consistency in market-conduct examinations and policy-review processes relative to parity. Direct communication and working through the NAIC's collaborative and deliberate processes for model form and guidance development would engage every state and a wide range of other stakeholders, likely being beneficial for all involved.

In addition to working with issuers and state regulators, since approximately one-third of working Americans receive their health coverage through self-funded plans, NAHU believes that the Departments need to engage in a concerted education campaign designed to assist those operating self-funded plans directly. Providing clear and consistent educational materials to employers and their plan administrators through webinars, publications, checklists and sample communications about how to operate a fully compliant health plan with regard to both mental health and substance use disorder benefits and all other requirements is the best and most efficient way to ensure group benefit plan compliance, and this strategy would help both fully insured group benefit plans and self-funded plans. Reaching out not just to employers and health plans, but also to organizations such as NAHU that represent agents, brokers, general agents and consultants, and providing user-friendly materials that could be distributed and communicated to members would also be a helpful and efficient way of reaching large numbers of health plan enrollees and plan administrators.



Thank you for the opportunity to provide input on the implementation of consumer protections related to the MHPEA. If you have any questions about our comments or need more information, please do not hesitate to contact me at (202) 595-0787 or [jtrautwein@nahu.org](mailto:jtrautwein@nahu.org).

Sincerely,

A handwritten signature in black ink, which appears to read "Janet Trautwein". The signature is written in a cursive style.

Janet Stokes Trautwein  
Executive Vice President and CEO  
National Association of Health Underwriters