



June 22, 2018

The Honorable Alex Azar
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable R. Alexander Acosta
Secretary of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: Proposed Guidance Regarding the Mental Health Parity and Addiction Equity Act (MHPAEA)

Submitted Electronically via E-OHPSCA-FAQ39@dol.gov

Dear Secretaries Acosta, Azar and Mnuchin:

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 benefits specialists. The members of NAHU work on a daily basis to help individuals and employer groups purchase, administer and utilize health insurance coverage. As such, we are pleased to have the opportunity to provide comments on the proposed guidance related to employer group health plan compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA) released by the Departments of Health and Human Services, Labor and Treasury (the Departments) on April 23, 2018.

General Comments about the New MHPAEA Guidance

NAHU truly appreciates the release of the self-compliance check tool and additional FAQs on parity compliance for employer-sponsored plans, especially regarding non-quantitative treatment limitation (NQTL) requirements. NAHU specifically requested the development of this information in previous comment letters, and we are grateful for the Departments' focus on helping employers understand and build compliance proficiency. This tool and the additional guidance and examples will be beneficial to our members as they work to educate their group health plan clients on the intricacies of MHPAEA compliance.

NAHU would also like to encourage the Departments to prioritize working 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. Since



most Americans receive their health insurance coverage through fully insured health insurance plans, NAHU believes that greater coordination with state regulators on MHPAEA would be a very sound policy. Specifically, NAHU thinks that making state regulators fully aware of the new compliance checklist would be very helpful, as would Department assistance to state regulators to help them adopt the compliance checklist to the state regulatory plan design review process. Additionally, we urge you to consider providing sample materials and best practices for communications to issuers and state regulators. Finally, NAHU feels that the Departments should devote more significant resources to working with 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 such plans. Providing clear and consistent educational materials to employers and their plan administrators through webinars, publications and sample communications about how to operate a fully compliant health plan concerning 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. This strategy would help fully insured group benefit plans and self-funded plans alike. 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 to distribute would also be a way of reaching large numbers of health plan enrollees and plan administrators.

Comments about Proposed FAQs 39 Regarding the MHPAEA Nonquantitative Treatment Limitations and Disclosure Requirements

While the development of the proposed FAQs concerning the NQTLs and MHPAEA disclosure requirements will generally be helpful to employer group plan sponsors and the NAHU members that assist them with MHPAEA compliance and plan administration, several of the FAQs contain provisions that will be very burdensome. Some of the requirements will be particularly challenging for midsize and smaller companies and those that purchase fully insured group health plan coverage for their employees and their dependents. In particular, the members of NAHU and the millions of group health plan sponsors that our members serve and represent have significant concerns about the significant policy change to the ERISA plan disclosure requirements proposed in FAQ 12.

FAQs 11 and 12 address the requirement that if an employer plan subject to ERISA offers coverage that utilizes a provider network, the group plan is required to give plan beneficiaries a general description of the provider network in the relevant summary plan description (SPD). Regarding mental health providers, these FAQs state that a provider network list "may be provided as a separate document that



accompanies the plan's SPD if it is furnished automatically and without charge and the SPD contains a statement to that effect." Group health plan sponsors currently routinely meet the provider network disclosure requirements for both mental health and other medical providers by including a live electronic link to the provider directory maintained by the health insurance carrier or relevant provider network administrator. Employers that offer fully insured group coverage rely on their health insurance carriers to develop adequate provider networks, and to keep provider network information up to date for beneficiaries through electronic updates to network directories, and such employers have no control over network design and adequacy, nor are they routinely made aware of provider network directory changes, which are made at the health insurance carrier level.

However, question 12 goes on to say "While ERISA-covered plans must provide an SPD that describes provisions governing the use of network providers, the composition of the provider network and whether, and under what circumstances, coverage is provided for out-of-network services under ERISA section 102 and the Department of Labor's implementing regulations, such information could be provided electronically, for instance in a hyperlink or URL address, ***provided the Department of Labor's electronic disclosure safe harbor requirements at 29 CFR 2520.104b-1(c) are met.***"

The Department's addition of the ERISA electronic disclosure rule requirement to the longstanding practice of providing a live link to satisfy the general SPD network description requirements is a substantial policy change that would impact millions of group health plans. The ERISA electronic disclosure safe harbor rules are out of date, often misunderstood and inappropriate for many businesses with diverse workforces. Additionally, these rules present a challenge for plans with any COBRA beneficiaries, plans with beneficiaries who have coverage as part of a QMCSO, and plans with retirees, so very few group health plan sponsors can honestly meet the requirements. Therefore, this change to the disclosure policy guidance will require vast numbers of group health sponsors to routinely provide their enrollees with paper copies of provider directories, which are notoriously difficult to keep up to date. It is unclear how employers would even know when an insurer provider directory was updated, thereby necessitating the distribution of revised directories. NAHU is also worried that the proposed guidance change could later be interpreted to have far-reaching implications for SPD information requirements well beyond network descriptions.

NAHU members, of behalf their employer group health plan sponsor clients, urge the Departments to reconsider the inclusion in FAQ 12 of the condition that ERISA electronic disclosure safe harbor requirements must be met in order to use a hyperlink or URL address as a means of providing network summary information about mental health providers through an SPD. Instead, we believe the Departments should continue to allow for the common practice of including summary network information in the SPD through the use of an active link or current website address without imposing other burdensome conditions.



Additionally, we ask that the Departments strongly consider adding the modernization of the electronic distribution rules related to ERISA disclosure requirements to its regulatory agenda. The ERISA electronic distribution requirements were drafted and finalized over a decade ago. Since then, technology has changed significantly, both for consumers and for employee benefit plans.

Beyond our concerns about the dramatic and burdensome policy change proposed in FAQ 12, NAHU members note that some of the other requirements in the proposed guidance will impose great difficulties on the typical employer group health plan sponsor. For example, FAQ 4 addresses pharmaceutical benefit management and the use of P/T committees. Ensuring that such committees and pharmaceutical vendors meet the standards outlined in the proposed guidance will be an extreme challenge for employers that outsource this process, and outsourcing is the industry norm.

The requirements outlined in FAQ 10 also will be next to impossible for employer plan sponsors to monitor and correctly handle. This FAQ deals with the way plans treat and cover conditions in an emergent situation when there can be overlap between mental health and physical conditions. An example is a laceration: Is it medical because the plans treat all cuts as medical or is it mental health because the wound stemmed from self-harm? There are different requirements to ensure parity based on the way each plan treats the coverage, and these types of differences are going to be next to impossible for employers, especially those with fully insured coverage, to keep up with and ensure fair treatment for all. NAHU strongly urges the Departments to consider the burden these requirements will place on business owners, and instead impose reasonable standards or a safe harbor for employers that cannot possibly be expected to monitor how fully insured plans, with pre-established coverage designs, will handle treatment and claims for all kinds of potentially overlapping and nuanced medical and mental health conditions.

Comments about the Revised Draft MHPAEA Disclosure Template

The newly revised disclosure form requires a 30-day turnaround from the employer plan once the request is received from the employee, and the information needed for the disclosure is very complicated. While it is essential to get beneficiaries information quickly, the data for this form will be challenging to compile swiftly and accurately since employers will need to go to many sources to obtain it. Pulling together all of the required information will be particularly complicated for employers that offer fully insured group coverage, which is a more common source of coverage for smaller companies that have the fewest internal compliance resources.

Employer group plans that contract with issuers of fully insured coverage often rely on their issuer to be fully compliant with the MHPAEA requirements, including the correct formulation of NQTLs and related disclosure requirements, even though they have their liabilities. Furthermore, employer group plans that operate or participate in self-funded health coverage arrangements frequently rely on third-party vendors to help them with plan-design elements and to process and administer claims. They too are



dependent on third parties concerning the required analyses necessary to document the reason for any denial of reimbursement or payment for services concerning 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 MHPAEA disclosure processes more straightforward and uniform for all stakeholders. Furthermore, given the high penalty involved for employers that cannot meet the deadline (\$114 per day per beneficiary) and the complexity of the information required, NAHU recommends that the Departments extend the compliance deadline for an employer response to 90 days.

Thank you for the opportunity to provide input on the implementation of consumer protections related to the MHPAEA. 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.

Sincerely,

A handwritten signature in black ink, which appears to read "Janet Stokes Trautwein". The signature is written in a cursive style with a large, looping initial "J".

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