



May 3, 2010

Employee Benefits Security Administration  
United States Department of Labor  
200 Constitution Avenue NW, Room N-5653  
Washington, D.C. 20210

Re: 29 CFR Part 2590  
RIN 1210-AB30

The National Business Group on Health appreciates the opportunity to submit comments on the interim final rules implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Mental health and substance use disorder benefits serve an important role in employer-sponsored plans.

In order to maintain access to effective, affordable employer-sponsored mental health and substance abuse disorder (MH/SUD) benefits, we urge the Department to:

- Reconsider the regulations regarding non-quantitative treatment limitations. The statutory language of MHPAEA preserves the rights of plans to use medical management tools which are essential to quality, affordable coverage and we believe that the regulations on non-quantitative treatment limits go beyond the scope of the law.
- Clarify that Employee Assistance Programs, which provide critical support to employees in many areas including mental health but also work/life balance, financial, legal, and other instances, can continue to provide mental health and/or substance use disorder benefits as long as they are not used as “gatekeepers”, but provide benefits beyond other mental health and/or substance use disorder benefits group health plans provide at parity with medical/surgical benefits.
- Issue a proposed rule under the Administrative Procedures Act. Given the complexity of implementing both the MHPAEA and the Patient Protection and Affordable Care Act of 2010 (PPACA), prompt guidance is important, but arguably the opportunity for all parties to comment is more important. If that step is not an option, then we urge you to push back the effective date until July 1, 2011.
- Reconsider the “substantially all” and “predominant” tests to determine parity across classifications of benefits. These tests may lead to increased costs and less access if plans increase medical/surgical cost sharing to match mental health and substance abuse because of their inflexibility.

The National Business Group on Health represents about 300 large employers providing health coverage to more than 55 million U.S. employees, retirees, and their families. It is the nation’s only non-profit organization devoted exclusively to finding innovative and forward-thinking solutions to large employers’ most important health care and related

benefits issues. Business Group members are primarily Fortune 500 and large public sector employers, with 63 members among the Fortune 100.

### **FR 5416 Non-Quantitative Treatment Limitations**

We recommend the agencies reconsider promulgating regulations for non-quantitative treatment limitations. Medical case management is vital to achieving higher quality medical outcomes and preserving affordable coverage. The language of the MHPAEA recognized its importance by maintaining plans' flexibility to use medical management tools for MH/SUD services. Moreover, medical management techniques do not translate well from medical/surgical practices to mental health and substance use disorder treatment.

If the agencies persist in regulating non-quantitative treatment limitations, we recommend that future regulations provide additional examples to illustrate the application of non-quantitative treatment limitations to various medical case management tools. We also recommend that the regulations recognize clinically appropriate differences between the medical case management of mental health and/or substance use disorder benefits and that of medical/surgical benefits.

We recommend that the Agency fully address in the additional regulations how clinically appropriate standards of care can permit differences in both quantitative and non-quantitative treatment limitations between medical/surgical benefits and mental health and/or substance use disorder benefits while still complying with the statutory requirements of the MHPAEA.

We would further recommend that the Agency expand on the requirement that non-quantitative treatment limitations must be generally applied to mental health and/or substance use disorder benefits in a comparable manner as such limitations are applied to medical/surgical benefits.

We encourage the Agency to formulate the regulations with a comprehensive recognition that "the relevant medical community" for mental health and/or substance abuse disorders varies significantly in both best-practices treatment and the appropriate application of medical case management from that of health care providers addressing medical/surgical conditions.

We recommend that the Agency fully account for the fact that the processes, strategies, evidentiary standards, and other factors used in applying non-quantitative treatment limitations to ensure parity can be vastly different for mental health and/or substance use disorder benefits than for benefits provided for medical/surgical conditions.

The Departments must give careful consideration to the differences between medical case management of mental health and/or substance use disorders, and that of medical/surgical conditions, to recognize when such differences are medically appropriate but do not actually limit the scope or duration of benefits. We very much look forward to the opportunity to comment on the additional regulations as you address these “scope of services” issues in the future regulations.

### **Employee Assistance Programs**

Consistent with discussions at the Technical Assistance Briefing on February 19, 2010, we recommend further clarification that Employee Assistance Programs can continue to provide assessment, referral, and brief counseling for mental health and/or substance use disorder benefits when such programs do not serve as “gatekeepers” but simply provide optional benefits in addition to those mental health and/or substance use disorder benefits that plans provide.

Employee Assistance Programs provide many resources for plan participants facing family, work and financial issues, and mental health and/or substance use disorder benefits represent just one aspect of their many valuable services. Additional clarification will ensure they can continue to serve, optionally at employees’ choosing, as the first contact for plan participants with mental health and/or substance use disorder conditions.

### **Postpone Compliance Dates**

We recommend the agencies consider postponing the requirements for a longer period for plan years beginning on or after July 1, 2011. Implementing changes in group health plans to meet regulatory compliance requirements is procedurally complex and requires a great deal of time. Employers face unprecedented demands to comply with MHPAEA and PPACA, two major laws simultaneously affecting plan benefits and plan design, and we urge you to allow them additional time.

### **Financial Requirements and Quantitative Treatment Limitations**

We recommend reconsideration of the “substantially all” and “predominant” tests to determine parity between medical surgical and MH/SUD benefits. In some circumstances, demonstrating “parity” simply by making financial requirements and quantitative treatment limitations the same, can be counter productive to encouraging desired behavioral changes (e.g.; participation in wellness activities, etc.). Cost sharing not only encourages better utilization but also encourages desired behaviors. If the goal is to have the same cost-sharing, the practical effect may be to increase cost-sharing on the medical / surgical side to a level that achieves parity with MH/SUD.

Employee Benefits Security Administration

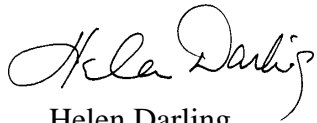
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Thank you, again, for the opportunity to provide comments in response to the interim final rules.

Please do not hesitate to contact me or Steve Wojcik, Vice President of Public Policy, at 202.585.1812 if you have questions or would like to discuss this feedback in further detail.

Sincerely,

A handwritten signature in cursive script that reads "Helen Darling". The signature is written in black ink and is positioned to the left of the printed name.

Helen Darling  
President