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Human Resources Policy

May 28, 2009

Submitted Via E-mail: E-OHPSCA.EBSA@dol.gov

Re: Request for Information (RFI) Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Pub. Law 110-343, "MHPAEA") published in the Federal Register on April 28, 2009 (74 Fed. Reg. 19155)

Dear Sir or Madame:

The National Association of Manufacturers (NAM), the nation's largest industrial trade association representing small and large manufacturers in every industrial sector, submits the following comments in response to the above-referenced Request for Information (RFI).

Ninety-seven percent of NAM members voluntarily provide employer-sponsored health coverage to their employees, with many members also offering mental health and substance use disorder coverage. The NAM supports making the parity requirement work. However, it is critical that the regulations do not stray from the intent of the law, and the very precise and meaningful language adopted by Congress.

There are several important areas where we seek clarification and guidance on the implementation of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Pub. Law 110-343, "MHPAEA"), which we detail below.

1. The NAM firmly believes that group health plans (or health insurance coverage offered in connection with such a plan) are permitted under the law to offer separate but equal deductibles and out-of-pocket maximums. This approach is clearly intended by the language of the MHPAEA and may be more appropriate for some patients.

The law states the financial requirements (or treatment limitations) "applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan (or coverage), and there are no separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits". This language prohibits a financial requirement or a treatment limitation that is applied only to mental health or substance use disorders and not to medical and surgical benefits. However, it allows a requirement or limit on mental health or substance use disorders that is no more restrictive than that applied to medical and surgical benefits.

2. The NAM also believes the comparison in the parity requirement should be made to similar levels of care. Determinations of financial requirements or treatment limitations should be made on an inpatient to inpatient comparison and on an outpatient to outpatient comparison. This methodology should exist for both in-network and out-of-network coverage. For example, out-of-network outpatient mental health or substance use disorder financial requirements or treatment limits would be compared to out-of-network

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outpatient medical and surgical financial requirements or treatment limits, and in-network inpatient mental health or substance use disorder financial requirements or treatment limits would be compared to in-network inpatient medical surgical financial requirements or treatment limits.

3. The MHPAEA clearly indicates that group health plans and group health insurers may determine what conditions, treatments, services, or settings of care are covered under the terms and conditions of the plan or insurance policy. Group health plans and group health insurers have the ability to determine whether or not they provide coverage for mental health or substance use disorders. Any proposed guidance should clarify that the MHPAEA requirements do not impose any obligation on a group health plan or group health insurer to cover any specific mental health conditions or substance use disorders, services or treatments, or settings of care.

4. The law states “as defined under the terms of the plan”, assuring that the law did not place any restrictions on the management of the benefit. Management of benefits is critical to an employer’s ability to ensure high-quality, cost-effective care. It has always been our understanding that the parity requirements apply only to financial requirements, treatment limitations and out-of-network services, and specifically does not change existing practices as it relates to the management of the benefit.

5. With an effective date for most group health plans and group health insurers beginning with plan years on or after October 3, 2009, many NAM members have or are in the process of negotiating their health benefits for the January 2010 plan year. The on-going negotiations between employers and health insurance plans and the time needed to obtain state regulatory approvals for insurance policy changes creates a number of challenges for employers to reopen negotiations after an interim final rule is issued. There may be cases where employers and health insurance plans have already established contracts for health benefits for plan years beginning after October 3, 2008. If the group health plan or group health insurer has acted in good faith to comply with the MHPAEA, we request that financial penalties not be immediately imposed on the plan and that the plan is not required to reopen negotiations in regard to the benefit package midyear if the plan is deemed to not be in full compliance once the interim final regulation is issued. The NAM hopes that the Agencies work with the plan throughout the year to bring the plan in to full compliance in the next plan year.

We appreciate the opportunity to comment on the RFI, and we look forward to working with you on the implementation of MHPAEA. Please do not hesitate to contact me, Jeri Kubicki, at (202) 637-3127 or at jkubicki@nam.org if you would like to discuss our comments.

Kind regards,



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