

From: [Laura Goodman](#)
To: [E-OHPSCA-FAQ.ebsa](#)
Subject: Comments on MHPAEA Transparency and Disclosure Requirements
Date: Wednesday, January 08, 2014 12:33:44 PM
Attachments: [Comments of Health Law Advocates et al. on MHPAEA Transparency and Disclosure Requirements.pdf](#)
[Appendix 1 - Org. Listing.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)

To Whom It May Concern:

Attached, please find written comments to the Departments of Health and Human Services, Labor, and the Treasury regarding transparency and disclosure requirements pursuant to the Mental Health Parity and Addiction Equity Act (MHPAEA). These comments are submitted on behalf of Health Law Advocates and twelve supporting organizations, which are listed and described in Appendix 1.

We appreciate the opportunity to provide these comments. If you have any questions, please contact me at (617) 275-2917, or by e-mail at lgoodman@hla-inc.org.

Sincerely,

Laura Goodman
Staff Attorney / Project Director, Mental Health and Addiction Parity Initiative
[health law advocates](#)
30 Winter Street, Suite 1004
Boston, MA 02108
Tel: 617-275-2917
Fax: 617-338-5242
www.healthlawadvocates.org



NOTICE: This e-mail and any attachments (the “communication”) are confidential and may be legally protected. This communication is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 510-2521. If you are using a hand held device, please delete this communication as soon as practicable. If you are not a named addressee or if you received this communication in error, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited and you are requested to immediately delete all copies from your system and contact me at 617-338-5241. Thank you.

January 8, 2014

VIA ELECTRONIC MAIL, E-OHPSCA-FAQ.ebsa@dol.gov

Kathleen Sebelius, Secretary
U.S. Department of Health & Human Services
200 Independence Ave SW
Washington, D.C. 20201

Thomas E. Perez, Secretary
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave NW
Washington, D.C. 20210

Jacob J. Lew, Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, D.C. 20220

RE: Comments on Health Plan Transparency and Disclosure Requirements under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act

Dear Secretary Sebelius, Secretary Perez, and Secretary Lew:

Along with advocates for mental health and addiction parity across the country, we were thrilled to receive the Departments' final regulations implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA). We write now to respond to the Departments' request for comments on what additional steps, consistent with the statute, should be taken to ensure compliance with MHPAEA through health plan transparency, including what other disclosure requirements would provide more transparency to participants, beneficiaries, enrollees, and providers.

Thank you for this added opportunity to weigh in on the critical issue of health plan transparency and disclosure. Please consider this a joint submission by the following organizations, each of which is dedicated to the promotion of mental health and addiction parity: Health Law Advocates, Health Care For All, Association for Behavioral Healthcare, Boston Children's Hospital, Children's Mental Health Campaign, Community Catalyst, Gosnold on Cape Cod, Massachusetts Association of Behavioral Health Systems, Massachusetts Association for Mental Health, Massachusetts Organization for Addiction Recovery, Massachusetts Psychiatric Society, Massachusetts Society for the Prevention of Cruelty to Children, and National Alliance on Mental Illness, Massachusetts. Please refer to Appendix 1 for a brief description of each signing organization.

The Final Rule reminds health plans that they must meet the disclosure requirements of MHPAEA, together with disclosure requirements under other state and federal laws. When factoring in the disclosure requirements of laws such as the Employee Retirement Income Security Act (ERISA) and the Affordable Care Act (ACA), this means that health plans must make available health plan information including the information on medical necessity criteria, and the processes, strategies, evidentiary standards, and other factors used to apply non-quantitative treatment limitations (NQTLs) for both mental health/substance use disorders *and* medical/surgical benefits. HLA applauds the Departments for elaborating on this critical consumer protection. Increased access to health plan information is essential to effective implementation and enforcement of MHPAEA.

Disclosure Timeframes and Penalties for Non-compliance

We encourage the Departments to incorporate some of the protections available under ERISA for non-ERISA health plans that are subject to MHPAEA. For example, large group health plan administrators are required to provide health plan members with copies of health plan information, at no charge, within 30 days of the request.¹ And, if health plans fail to provide the requested information within thirty days, plan administrators are subject to a penalty of up to \$100 per day until the requested information is furnished.² We encourage the Departments to establish a similar disclosure requirement for health plans subject to MHPAEA. For example, if a health plan member makes an oral or written request for health plan information relating to the coverage of mental health and/or substance use disorders, the health plan must provide copies of all of the requested information within 30 days or else be subject to a monetary penalty of not less than \$100 per day that the information is not provided. The health plan may also be subject to a monetary penalty if it withholds information based on erroneous claims that such information is “proprietary” or otherwise not subject to disclosure. Because state insurance commissioners have primary parity enforcement authority when it comes to the individual and small group market, we encourage the Departments to recommend specific disclosure requirements and enforcement penalties which the state agencies may implement in their states.

In some circumstances, it will be necessary for health plan members to obtain health plan information more quickly than a 30-day timeframe. For example, if a health plan member is denied coverage for urgent mental health or substance use disorder treatment, that member may need more immediate access to plan information so that s/he may adequately prepare for and file an expedited appeal. In such circumstances, where there exists an urgent medical need certified by a treating provider, health plans should be required to provide the requested plan information within seven days. Requiring a shorter disclosure timeframe in cases of demonstrated medical need will not only ensure full appeal rights for all health plan members, but also serves the broader goal of prompt and efficient access to needed health care services.

¹ 29 U.S.C. § 1132(c)

² 29 U.S.C. § 1132(c)

Improvements to Consumer Accessibility

Despite the availability of health plan information required under laws including ERISA, the ACA, and MHPAEA, the average health plan member continues to face considerable difficulty obtaining complete information describing their health plan benefits. In our experience as advocates, we have observed health plans notifying members that they have the right to request information, but then failing to provide a direct phone number or other contact information for members to request such information. Or, the health plan fails to elaborate on what health plan information is available for review, which results in members not fully appreciating their right to receive health plan information.

We encourage the Departments to establish disclosure procedures that will make information more accessible to health plan members and contracted providers. For example, health plans may be required to post medical necessity criteria and utilization review criteria on the member portal of their website, and provide information in plan documents and appeal notices directing members to where they can locate the information online.

Health plans should also be required to not only notify health plan members that they have the right to request health plan information, but also the specific process by which they can request the information; for example, the health plans may be required to provide specific phone numbers or addresses where information requests may be directed.

Proprietary Information

Finally, in our experience, health plans often refuse to disclose certain health plan information that they deem “proprietary.” We anticipate that health plans will assert “proprietary” claims to health plan information including internal processes, strategies, evidentiary standards, and other factors used to apply NQTLs, despite the clarification in the final rule that such information is subject to disclosure under federal laws. We encourage the Departments to release additional guidance confirming that health plans may not refuse to disclose medical necessity criteria, utilization review criteria, or the processes, strategies, evidentiary standards, and other factors used to apply NQTLs on the basis that it is “licensed,” “proprietary,” or otherwise protected from disclosure. Similarly, medical necessity criteria or utilization review criteria developed by utilization review organizations or other third parties should also be subject to these disclosure requirements.³

³ This is consistent with ERISA guidance concerning the availability of health plan information. *See* 29 CFR 2560.503-1(g)(v) (A) and (j)(5)(i); 65 FR at 70251 (The Department of Labor takes the position that internal rules, guidelines, protocols, or similar criteria would constitute “instruments under which a plan is established or operated” within the meaning of section 104(b)(4) of ERISA and, as such, must be disclosed to participants and beneficiaries.) *See also* 29 CFR 2560.503-1(h)(2)(iii) and 2560.503-1(m)(8)(i); Advisory Opinion 96-14A (July 31, 1996).

Thank you for your continued work to implement MHPAEA. If we can provide additional information, please contact Laura Goodman at Health Law Advocates, at lgoodman@hla-inc.org or 617-275-2917.

Sincerely,

Health Law Advocates

Health Care For All

Association for Behavioral Healthcare

Boston Children's Hospital

Children's Mental Health Campaign

Community Catalyst

Gosnold on Cape Cod

Massachusetts Association of Behavioral Health Systems

Massachusetts Association for Mental Health

Massachusetts Organization for Addiction Recovery

Massachusetts Psychiatric Society

Massachusetts Society for the Prevention of Cruelty to Children

National Alliance on Mental Illness, Massachusetts

Health Law Advocates (HLA) is a non-profit public interest law firm that serves some of the Commonwealth's most vulnerable populations. HLA provides pro bono legal representation to low-income Massachusetts residents who have been unjustly denied health care access and those who are burdened with unaffordable medical debt.



Health Care for All (HCFA) is a statewide consumer health advocacy organization in Massachusetts. HCFA seeks to create a patient-centered health care system that provides comprehensive, affordable, accessible, culturally competent, high quality care and consumer education for all Massachusetts residents, especially the most vulnerable among us.



Association for Behavioral Healthcare (ABH) is a statewide association representing over 80 community-based mental health and addiction treatment provider organizations. Our members are the primary providers of publicly-funded behavioral healthcare services in the Commonwealth, serving approximately 81,000 Massachusetts residents daily and over three-quarters of a million residents annually, and employing 37,500 people.



Boston Children's Hospital operates a 395-bed inpatient facility, as well as outpatient services through over 40 clinical programs and 250 specialized services. The hospital is the primary pediatric teaching hospital of Harvard Medical School, training close to 1,000 residents and fellows each year, and is home to the world's largest research enterprise based at a pediatric hospital. Committed to improving the health and well-being of all children and families, Boston Children's works with partners and programs to address the most pressing community health needs, including mental health..



The Children's Mental Health Campaign (CMHC) is an innovative children's mental health system reform effort uniting more than 140 organizations in mental health, healthcare law, child welfare, family advocacy, and health policy into a dynamic coalition working together for systemic change.



Community Catalyst is a national nonprofit advocacy organization that works to build the consumer and community leadership that is required to transform the American health system. We work to ensure quality affordable health care for all, including access to prevention, coverage, treatment and recovery services for substance use disorders.



Gosnold is the leading provider of addiction and mental health services on Cape Cod. Founded in 1972, our rich history of innovative programming and commitment to excellence has made Gosnold a program of choice for addiction treatment. Throughout our history we have been committed to developing innovative programs that meet the needs of patients and families.



The Massachusetts Association of Behavioral Health Systems (MABHS) is the only trade association in Massachusetts whose central mission is to focus on inpatient psychiatric and substance abuse issues. The MABHS consists of 50 inpatient facilities statewide; its member facilities have over 2,200 beds, and admit over 60,000 patients on an annual basis. Its members include freestanding psychiatric hospitals; substance abuse facilities; and psychiatric units in acute general hospitals.



The Massachusetts Association for Mental Health (MAMH) is a private, non-profit tax-exempt Massachusetts corporation based in Boston, MA and a leading voice for the creation of services for people with mental illnesses. MAMH works with individuals with mental illness and their family members or friends to help them access services such as housing, treatment, education, employment, or health insurance.



Massachusetts Psychiatric Society (MPS) represents the majority of psychiatrists in Massachusetts. MPS members are physicians who are committed to providing outstanding medical/psychiatric care through accurate diagnosis and comprehensive treatment of mental health and emotional illnesses. We seek to achieve this goal by promoting public and professional education, legislation that addresses the needs and rights of the mentally and emotionally ill, and by advocating for the allocation of public and private resources for treatment, research, and education.



The Massachusetts Organization for Addiction Recovery (MOAR) mission includes organizing recovering individuals, families and friends into a collective voice to educate the public about the value of recovery from alcohol and other addictions. MOAR has received state and national recognition for its efforts.



The Massachusetts Society for the Prevention of Cruelty to Children (MSPCC) is a non-profit organization dedicated to ensuring the health and safety of children through direct services to children and families and public advocacy on their behalf.



The mission of NAMI Mass is to improve the quality of life for people with mental illness and their families. NAMI Mass carries out its mission by building awareness and working to change the perceptions of mental illness thereby reducing stigma. We work at the grass roots, state and national levels to motivate policy change and increase funding and services for people with mental health needs.