National Business Group on Health®

20 F Street, NW, Suite 200
Washington, D.C. 20001
202.558.3000 • Fax 202.628.9244
www.businessgrouphealth.org

Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

June 22, 2018

Submitted electronically via: OIRA_submission@omb.eop.gov

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer for DOL-EBSA
Office of Management and Budget
Room 10235
725 17th Street, NW
Washington, DC 20503

Re: Control No. 1210-0138 - Mental Health Parity and Addiction Equity Act and the 21st Century Cures Act

Dear Sir or Madam:

The National Business Group on Health is pleased to respond to the Department of Health and Human Services', Department of Labor's, and the Treasury's request for comments regarding the disclosure request process under the Mental Health Parity and Addiction Equity Act and the 21st Century Cures Act.

The National Business Group on Health represents 420 primarily large employers, including 75 of the Fortune 100, who voluntarily provide group health plan coverage to over 55 million American employees, retirees, and their families. Our members employ and provide health coverage under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. They often have multiple lines of business in multiple locations and tailor employee work and benefit arrangements to the specific needs of each line of business.

As our members continue to develop group health plan designs and comply with applicable legal requirements, including those under the 21st Century Cures Act and the MHPAEA, primary concerns will be:

(1) Minimizing the administrative and cost burdens associated with those requirements and

(2) Having flexibility to provide comprehensive health coverage in the most efficient, cost-effective way possible while ensuring access to providers and facilities that provide high-quality, evidence-based care.

Having flexibility to adapt compliance to current and future work and benefit arrangements will reduce compliance burdens and allow plan sponsors to devote more

resources to maintaining and developing high-quality, cost-effective health coverage for employees and their dependents.

I. Revised Draft Model Form

While we generally support the use of model forms for purposes of requesting information regarding nonquantitative treatment limitations, our members are concerned that some parts of the revised draft model form will present significant challenges for plan sponsor responses.

Specifically, our members are concerned that plan sponsors have not received adequate agency guidance to respond to this section. For example, plan sponsors would benefit from guidance regarding:

- Authorization requirements that may not meet MHPAEA standards;
- Prescription drug formulary designs that may not meet MHPAEA standards;
- MHPAEA standards for mental health and substance use disorder providers being "reasonably accessible," when compared to medical and surgical providers;
- Factors that plan sponsors can or should consider in developing NQTLs;
- Evidentiary standards plan sponsors can or should use to evaluate those factors;
- Methods and analysis that plan sponsors should use—or that would be permissible—in the development of NQTLs; and
- Evidence that plan sponsors must be able to provide to establish that an NQTL applies no more stringently to mental health and substance use disorder benefits than to medical and surgical benefits.

We note that the revised draft model form includes examples of factors used to develop NQTLs and evidentiary standards used to evaluate those factors. However, it is not clear from this form or the proposed FAQs how a group health plan is to evaluate whether application of any of those factors or evidentiary standards is permissible for any given treatment under the MHPAEA. These factors and evidentiary standards may not apply uniformly to all medical/surgical benefits or all mental health/substance use disorder benefits in a given plan. As the highly detailed proposed FAQs suggest, how these factors and evidentiary standards apply can vary by condition, treatment, and location. If a group health plan is to evaluate specific factors and evidentiary standards with respect to NQTLs, we recommend that the Departments develop guidance accordingly and provide interested parties with an opportunity to comment.

We strongly encourage the Departments to provide this guidance so that plan sponsors (1) have adequate guidance with which to comply with the MHPAEA and (2) can respond fully to participants' information requests.

II. MHPAEA Compliance

We also encourage the Departments, in developing future guidance, to take into account the ongoing challenges that plan sponsors face in MHPAEA compliance, including the following:

- While our members are committed to maintaining comprehensive coverage—including mental health and substance use disorder coverage—for employees and their dependents, availability of providers for certain mental health and substance use disorders is an ongoing problem for both group health plans and participants. In many cases, the number of covered mental health/substance use disorder providers in a given area will not be equal to the number of covered medical/surgical providers. In fact, our members have noted that some mental health/substance use disorder providers will not accept group health plan coverage for payment, whether insured or self-insured. We therefore encourage the Departments to develop MHPAEA guidance clarifying that compliance does not require coverage of a specific number of providers or coverage within a specific geographic range.

- Many mental health and substance use disorder benefits are not comparable to medical or surgical benefits. For example, residential treatment for mental health conditions or substance use disorders often differs substantially (in scope, providers, and treatment) from treatment at a skilled nursing facility or medical rehabilitation facility. Therefore, it is often difficult to determine if a mental health or substance use disorder benefit meets the MHPAEA's "parity" standard.

- The evidence base for certain mental health and substance use disorder benefits is not as robust as that for many medical and surgical benefits. For example, it is difficult to obtain data from many substance use disorder treatment programs regarding short or long-term outcomes for patients, which makes evaluation of the programs' effectiveness difficult. Meanwhile, plans sponsors and governmental entities such as CMS have placed increasing emphasis on quality outcomes for hospitals and other providers of medical and surgical services.[1] The lack of comparable data for mental health and substance use disorder treatment providers is a particular challenge if plan sponsors are to develop plan designs that promote high-quality, efficient care.

- The current MHPAEA regulations and agency guidance require extensive and detailed examination of all mental health and substance use disorder benefits for compliance with parity standards. However, this regulatory structure—by requiring a service-by-service analysis—does not take into account plan participants' broader need for comprehensive, high-quality, affordable coverage and plan designs that promote high-quality care.

[1] For example, CMS and the Hospital Quality Alliance are reporting 30-day mortality measures for acute myocardial infarction and heart failure (https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/hospitalqualityinits/outcomemeasures.html).

Our members are concerned that without resolving the above issues, MHPAEA enforcement will be inconsistent across plans and states. We therefore recommend that the Departments (1) develop clear implementation guidance and (2) adopt rules that take into account plan sponsors' good faith compliance before focusing on enforcement efforts.

We believe that the above recommendations, if implemented, will reduce administrative and cost burdens and allow group health plan sponsors much-needed flexibility in complying with the MHPAEA and other applicable laws.

Thank you for considering our comments and recommendations. Please contact me or Debbie Harrison, the National Business Group on Health's Assistant Director of Public Policy, at (202) 558-3004 if you would like to discuss our comments in more detail.

Sincerely,

Brian J. Marcotte
President and CEO