



236 MASSACHUSETTS AVENUE, NE, SUITE 505, WASHINGTON, D.C. 20002

May 3, 2010

Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: RIN 1210-AB30, MHPAEA Comments

Dear Sir or Madam:

We appreciate the opportunity to submit comments to the Departments of Labor, Health and Human Services, and the Treasury on the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) Interim Final Rule (IFR).

**State Associations of Addiction Services (SAAS)** is the leading national organization that advocates on behalf of state associations of addiction prevention, treatment, and recovery providers, representing thousands of providers in 42 states around the country. The mission of SAAS is to ensure the availability and accessibility of quality drug and alcohol treatment, prevention, education, and research. **Legal Action Center** is a non-profit law and policy organization that works to expand treatment and prevention services for people with alcohol and/or drug addictions, people living with HIV/AIDS, and people with criminal records.

Below is our response to the MHPAEA Interim Final Rule. Based on our analysis, we conclude that:

1. The Interim Final Rule is fully consistent with the MHPAEA and will ensure that the new law is correctly implemented.
2. Additional guidance to state policy-makers is needed to ensure that the MHPAEA is most effectively implemented.
3. The Interim Final Rule correctly identifies quantitative and non-quantitative treatment limitations and other practices that restrict access to care as subject to the requirements of the MHPAEA.
4. Guidance should swiftly be issued to affirm that the Interim Final Rule applies to Medicaid managed care plans.
5. In providing guidance on a scope of services for substance use disorders, the Departments should utilize the substance use disorder treatment field's existing body of evidence-based practices and standards of care.

**1. The Interim Final Rule is fully consistent with the Wellstone/Domenici Act and will ensure that the new law is correctly implemented.**

We were extremely pleased with the passage of the Wellstone/Domenici Act, and with it the promise of the elimination of barriers that have kept thousands of individuals with substance use disorders and

mental illnesses from receiving critically important treatment services. Thank you for your work to develop the Interim Final Rule on the MHPAEA. The Interim Final Rule is entirely consistent with the MHPAEA statute and Congress's goals of eliminating discrimination in group health plan coverage of mental health and substance use disorder and mental health treatment benefits and improving access to care. The Interim Final Rule will help to ensure that the MHPAEA is implemented correctly and as Congress intended, and will ensure that the promise of the MHPAEA, to close the unacceptably large treatment services gap, will be realized.

## **2. Additional guidance to state policy-makers is needed to ensure that the MHPAEA is most effectively implemented.**

Our work with providers of addiction treatment services, people in recovery and their allies around the country has made it clear that additional guidance is needed as the MHPAEA is implemented. Specifically, guidance by the Departments is needed to ensure that state policy-makers best inform consumers and the broader public about the requirements of the MHPAEA.

State insurance commissioners need continued guidance from the Departments to ensure greatest compliance with the MHPAEA. In particular, although the IFR preamble affirms that the MHPAEA does not preempt any State laws except those that would prevent the application of the MHPAEA, additional education and outreach is needed to ensure that managed care organizations continue to comply with State laws that provide greater protections or are more favorable from the standpoint of the insured or enrollee than the MHPAEA.

In addition, guidance is needed on the MHPAEA provision allowing non-federal employer group health plans sponsored by State and local governments to opt out of the MHPAEA. Regulatory guidance should be given on the process non-federal government employers should follow in determining whether they choose to comply with the MHPAEA. Specifically, we urge the Departments to require that there be:

- A certain period of time during which these plans must deliberate whether to opt out of the requirements of the MHPAEA
- A transparent process where plan beneficiaries are notified of the possibility of the plan opting out of the MHPAEA
- A process, for those government-sponsors plans that have opted out, to require that plans reexamine whether to comply with the MHPAEA after a certain amount of time; guidance should also be given to inform plans that have opted out that they can later decide to comply with the MHPAEA

## **3. The Interim Final Rule correctly identifies quantitative and non-quantitative treatment limitations and other practices that restrict access to care as subject to the requirements of the MHPAEA.**

### Inclusion of Quantitative and Non-Quantitative Treatment Limitations:

The Interim Final Rule's inclusion of both quantitative and non-quantitative treatment limitations in the MHPAEA parity analysis is fully within the scope of the MHPAEA and is consistent with the statute and its legislative history.

Medical management tools, identified in the Interim Final Rule as non-quantitative treatment limitations (NQTLs), are a fundamental means through which plans limit treatment. NQTLs were determined by both Congress and the Departments as a form of treatment limitation as defined under the law and hence subject to the purview of the statute and regulations.

Limiting the scope of the MHPAEA analysis solely to day or visit limits or frequency of treatment limits would not achieve the legislation's intended result of ensuring that substance use disorders and mental health benefits are not provided in a more restrictive way than benefits for other medical and surgical procedures. Excluding a major category of plan practices that significantly limit treatment from the MHPAEA analysis would be contrary to the letter and spirit of the MHPAEA.

Identification of Additional Practices that Limit Consumer Access to Care:

The Interim Final Rule correctly recognizes that excluding certain types of providers from plan networks can significantly limit treatment and that plan practices to restrict network access, including setting low reimbursement rates, constitute non-quantitative treatment limitations that must be subject to the MHPAEA analysis.

In addition, the Interim Final Rule recognizes that high out-of-pocket spending requirements deter individuals from accessing substance use disorder and mental health services. As a result, the Interim Final Rule correctly recognized that individuals need a combined mental health/substance use disorder and medical deductible to keep out-of-pocket spending requirements at a reasonable level.

**4. Guidance should swiftly be issued to affirm that the Interim Final Rule applies to Medicaid managed care plans.**

The Centers for Medicare and Medicaid Services (CMS) should quickly issue guidance clarifying that the Interim Final Rule applies to Medicaid managed care plans because there is no rationale for a separate, different parity standard for Medicaid managed care plans.

The MHPAEA statute and its legislative history do not include any distinction between how the law applies to group health plans and Medicaid managed care plans. The Interim Final Rule implements the MHPAEA, and Medicaid managed plans must adhere to the MHPAEA. Therefore they must comply with the Interim Final Rule.

Until CMS affirms that the Interim Final Rule applies to Medicaid managed care plans, there will likely be significant confusion as the MHPAEA is implemented for Medicaid managed care plans. The MHPAEA is in effect, and guidance is quickly needed to ensure the Medicaid managed care plans comply with the requirements of the current law.

**5. In providing guidance on a scope of services for substance use disorders, the Departments should utilize the substance use disorder treatment field's existing body of evidence-based practices and standards of care.**

The Interim Final Rule includes a number of references to "generally recognized independent standards of current medical practice" and the need for managed care organizations to use these standards in making decisions about coverage for mental health and substance use disorders.

The substance use disorder treatment field has a body of widely accepted standards of care and evidence-based practices for the treatment of substance use disorders. In providing additional guidance

to plans on standards of care and the scope of services covered in substance use disorder treatment benefits, the Departments should adopt these recognized best practices and standards so that plan decisions best reflect recognized clinically appropriate standards of care for substance use disorder treatment. In providing this guidance, the Departments should reflect the MHPAEA by ensuring that more favorable State laws are preserved.

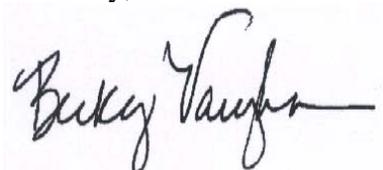
Specifically, the Departments should:

- Adopt standards developed by experts in the substance use disorder treatment field including the National Quality Forum’s “National Standards for the Treatment Of Substance Use Conditions”
- Explicitly identify these standards and criteria as “generally recognized independent standards of current medical practice,” in addition to the Diagnostic and Statistical Manual of Mental Disorders, the International Classification of Diseases, and State guidelines, which group health plans must use to define the services covered in SUD benefit packages.

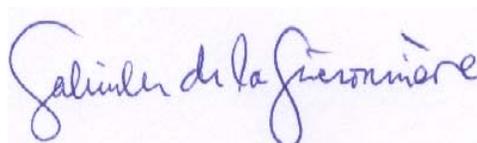
Should the Departments define a scope of services constituting substance use disorder treatment, they should include but not be limited to, the levels of care identified by the American Society of Addiction Medicine (Early Intervention; Outpatient Treatment; Intensive Outpatient/Partial Hospitalization; Residential/Inpatient Treatment; and Medically-Managed Intensive Inpatient Treatment). Including this full continuum will better ensure that people with substance use disorders receive the appropriate clinically determined type and level of care.

Thank you for the opportunity to submit comments on the MHPAEA Interim Final Rule. Please feel free to contact us if you have any questions or need additional information. Thank you for your careful consideration.

Sincerely,



Becky D. Vaughn  
CEO  
State Associations of Addiction Services (SAAS)



Gabrielle de la Guéronnière, JD  
Director for National Policy  
Legal Action Center