



January 3, 2017

Submitted electronically via: e-ohpsca-mhpaea-disclosure@dol.gov

Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington DC 20210

Re: Disclosures with Respect to Mental Health and Substance Use Disorder Benefits

Dear Sir or Madam:

The National Business Group on Health is pleased to respond to the Department of Labor's, the Department of the Treasury's, and the Department of Health and Human Services' (the Departments') request for comments regarding disclosures with respect to mental health and substance use disorder benefits under the Mental Health Parity and Addiction Equity Act and other statutes.

The National Business Group on Health represents 418 primarily large employers, including 69 of the Fortune 100, who voluntarily provide group health plan coverage and other employee benefit plans to over 55 million American employees, retirees, and their families. Our members employ and provide health benefits for employees under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. In addition, our members often operate multiple lines of business 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 MHPAEA—primary concerns are:

- (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 regulatory 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. Therefore, we welcome the Departments' efforts to incorporate input from stakeholders such as group health plans.

I. Features of Large, Self-Insured Group Health Plans

We encourage the Departments, in developing future guidance, to take into account large, self-insured group health plan designs and goals. As noted above, National Business Group on Health members employ and provide health benefits for employees in a wide variety of industries, locations, and work arrangements. To ensure the efficient, cost-effective plan administration, it is critical that plan sponsors be able to adapt their compliance procedures to current plan structures. Therefore, we recommend that the Departments take into account that ERISA's preemption provision explicitly provided for national, uniform administration of self-insured employee benefit plans. This provision is crucial to the efficient administration of multi-state group health plans such as those maintained by Business Group members. Uniform administration allows our members to offer benefits packages for all employees, streamline administration and communications processes, and reduce costs by negotiating with providers on a multi-state or national basis. Uniform administration also provides much-needed flexibility to tailor plan designs to the features and needs of employers and their employee populations.

The individually-tailored plans designs of large, self-insured group health plans mean that (1) self-insured plan sponsors have latitude to design MH/SUD benefit coverage in a way that is most suitable for their specific employee populations and (2) *requiring specific forms for disclosures would likely increase administrative and cost burdens with little or no benefit to plan participants.*

Model forms for disclosures related to nonquantitative treatment limitations may be appropriate for the individual and small group markets, which are required by the ACA to cover specific essential health benefits packages. However, requiring large, self-insured group health plans to use such model forms would involve applying the forms' terms to plans that may not use the same terms or have the same coverage as plans in the individual and small group markets—a process that would create confusion for both plans sponsors and participants. In addition, plan sponsors would need to commit resources to explaining to participants how plan terms differ from those of the form(s)—a process that would be costly and time-consuming but would not necessarily assist plan participants in understanding NQTLs under the plan. Therefore, *we recommend that the Departments (1) not adopt model forms at this time or, in the alternative, (2) make such forms optional for self-insured group health plans.*

II. Need for Flexibility in MHPAEA Compliance

In addition to the above concerns of large, self-insured plans, we emphasize the ongoing challenges that plan sponsors face in MHPAEA compliance, including the following:

- 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 (1) if a mental health or substance use disorder benefit meets the MHPAEA’s “parity” standard and (2) how group health plans should document or demonstrate compliance with this standard, particularly with respect to NQTLs.

- 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 provider is a particular challenge if plan sponsors are to develop plans design 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.

III. Recommendations

Therefore, National Business Group on Health encourages the Departments, in developing MHPAEA guidance, to:

- (1) Focus on the need for clear guidance as to how group health plans can demonstrate compliance with the MHPAEA’s parity standard, particularly with respect to NQTLs;
- (2) Take into account the need for plan design flexibility for group health plan sponsors, provided they make good faith efforts to comply with the MHPAEA and offer an overall benefits package that provides comprehensive health coverage; and
- (3) Focus on the need for group health plan designs based on clinical effectiveness, efficiency, and value-based benefits.

¹ For example, CMS and the Hospital Quality Alliance is 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>).

We believe that these 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 regarding disclosures with respect to MH/SUD benefits. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink that reads "Brian J. Marcotte". The signature is written in a cursive style with a long, sweeping tail on the letter "t".

Brian J. Marcotte
President and CEO