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Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>

Office of Health Plan Standards and Compliance  
Assistance Employee Benefits Security  
Administration  
Room N-5653  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210  
*Attention:* RIN 1210-AB30

Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human  
Services Attention: CMS-4140-IFC  
P.O. Box 8016  
Baltimore, MD 21244-8016

CC:PA:LPD:PR (REG —  
120692-09) Room 5205  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Comments of the Coalition for Parity on the Interim Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”)

Ladies and Gentlemen:

On behalf of the Coalition for Parity, Inc. (the “Coalition”), we hereby submit these comments regarding the Interim Final Regulations (“IFRs”) issued under MHPAEA by the Agencies on February 2, 2010, 75 Fed. Reg 5410. The Coalition is comprised of managed care behavioral health organizations (“MBHOs”) that support the principle of parity and strongly advocated for the passage of MHPAEA. The Coalition is offering its comments because its members are directly and adversely affected by the current terms of the IFRs.

As you are aware, the Coalition is the plaintiff in the lawsuit Coalition for Parity, Inc. v. Sebelius (No. 1:10-cv-00527 (CKK)) filed in the United States District Court for the District of Columbia to challenge the procedure used by the Agencies in issuing the regulations in IFR form. The lawsuit is purely a procedural challenge under the Administrative Procedure Act, and the Coalition continues to believe that the procedural issues raised by the lawsuit must be addressed before the Agencies promulgate any final rules.

Specifically, the Coalition urges the Agencies to rethink the decision they have made in issuing complex and far-reaching new requirements in the form of IFRs. The interim final nature of these regulations means that these requirements are being imposed without any prior public input, and in particular without any prior input from the industry being tasked with their implementation. In the Coalition's view, this process has led not only to a deeply flawed regulation, but also to a violation of legal standards applicable to such rule-making processes.

In all but the most extraordinary situations, persons and entities affected by governmental regulatory action are afforded the right of notice of proposed regulations and comment under the Administrative Procedure Act (APA). 5 U.S.C. 553. The APA process is intended not only to produce well-reasoned regulations, but also to guarantee input by those affected by governmental action. The exceptions to the notice and comment process are few, and apply only in limited, emergency situations. In the present case, the Agencies assert the need for public guidance as the reason for issuing these regulations on an interim final basis. This justification, however, does not rise to the level of emergency need that supports invoking the "good cause" exception under 5 U.S.C. 553(b). Further, the factual deficiencies of this position are apparent from both the fact that the Agencies have recognized the on-going compliance efforts of the entities affected by the IFRs, and the many areas in the regulation in which the Agencies have expressed uncertainty and asked for additional guidance from the public. As a result, the Coalition believes that the Agencies have no legal basis for straying from the required procedure for issuing regulations.

The preamble to the IFRs contains long passages in which the Agencies praise MBHOs for increasing access to affordable mental health and substance abuse disorder benefits. If the Agencies mean what they say, they must follow a process that insures input from MBHOs and that will result in a regulation that allows MBHOs to continue this work. The best way to accomplish this is to withdraw the regulations and reissue them in proposed form, thereby assuring a rulemaking process that complies with the APA and a reasoned discussion of the requirements to be applied to this complex area.

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We appreciate the opportunity to submit this comment on behalf of the Coalition and urge the Agencies to act on the concerns expressed herein in a way that will assure the success of mental health and substance abuse disorder parity going forward.

Respectfully submitted,

William J. Flanagan

on behalf of and as counsel for the Coalition for Parity