



December 27, 2016

The Departments:

U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

U.S. Department of Labor
200 Constitution Ave. N.W.
Washington, D.C. 20210

U.S. Department of the Treasury
799 9th St. N.W.
Washington, D.C. 20001

Submitted electronically on 1/3/17 to: e-ohpsca-mhpaea-disclosure@dol.gov

RE: Request for Comment contained in ACA FAQs Part 34 on MHPAEA Disclosure Requirements

Thank you for providing New Directions Behavioral Health, L.L.C. (New Directions) the opportunity to express our thoughts regarding the disclosure requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA) and its various accompanying regulations and guidance.

New Directions is a twenty two year old Kansas City, Missouri based full-service Managed Behavioral Health Organization (MBHO) that is accredited by both URAC and the National Committee for Quality Assurance (NCQA).

New Directions administers the behavioral health benefits for Blue Cross Blue Shield Association health plans in both the public and private sectors, covering nearly thirteen million Blue Cross Blue Shield members located in all fifty states.

In addition to New Directions' role as a behavioral health benefit administrator, since its inception New Directions has been a pioneer, innovator and leader in the areas of Employee Assistance Programs (EAPs), case management and care management, and has been an advocate and innovator of fully integrated care models such as Patient Centered Medical Homes (PCMHs).

Our organization is a member of the Association for Behavioral Health and Wellness (ABHW), an association of the nation's leading behavioral health and wellness companies that provide behavioral health and wellness programs to nearly 170 million people. New Directions' CEO John Quick is the current Board Chairman for the ABHW. For the last two decades the ABHW has supported mental health and addiction parity, and was closely involved in the writing of the Senate legislation that became





MHPAEA, and was later heavily involved in the regulatory process transitioning from the Interim Final Rule (IFR) to the Final Rule.

New Directions strongly believes in the spirit of mental health parity and has always worked very closely with its health plan customers to promote the inclusion of expanded mental health and substance use benefit coverage in plan benefit design, and has encouraged equity in the manner in which behavioral health benefits are constructed and applied.

In response to the Departments' request for feedback regarding disclosure requirements required by federal mental health parity and the potential use of forms in the disclosure process, New Directions respectfully submits the following comments for the Departments' consideration. Each comment presented is in response to the questions specifically posed by the Departments in ACA FAQ 34, which are in **bold** below.

- 1) Would the issuance of model forms that could be used by participants and their representatives to request information with respect to various NQTLs be helpful and, if so, what content should the model forms include?**

New Directions believes that model forms could potentially lead to the simplification of the participant information request process and could better empower consumers to understand the universe of parity related and plan specific materials that are available to them and their representatives.

New Directions encourages regulators to collaborate with both payer and consumer subject matter experts in the creation of any such forms, including what content should be included in those forms. The collaborative process will help better ensure that upon implementation participants have access to necessary and useful information, while still taking into account the business and administrative implications that exist for the payers and benefit administrators who will be responsible for producing the information.

Should the Departments elect to create participant forms, New Directions encourages the Departments to allow for public notice and an open comment period so that all interested parties may opine on content, structure, and application.

New Directions does not believe any form created by the Departments should be legally mandated for use, but rather should serve as the model for use only. This approach recognizes the numerous business models and entity types involved in the administration of medical/surgical and behavioral health benefits, and allows respective payers and benefit administrators to ensure their participants are presented forms that are appropriate in light of applicable business relationships, the jurisdiction[s] in which the businesses operate, and any other factors which may necessitate a deviation from the presented model.

- 2) Do Different Types of NQTLs require Different Model Forms? Should there be a separate model form for plan participants and other individual to request the plan's analysis of its MHPAEA compliance?**





New Directions believes that this determination should be made by a collaborative effort between payer and participant subject matter experts and the Departments.

To better determine what NQTLs might potentially require different model forms, it may be helpful if the Departments publically address and provide feedback regarding their regulatory enforcement efforts and the NQTLs that most often require additional regulatory scrutiny, and explain what information, forms, policies, procedures, etc. are relied upon by the Departments to evaluate the legality of a particular NQTL or a component of that NQTL. For example, if the Departments recognize they encounter a disproportionately high number of parity compliance issues with a certain type of medical necessity determination (such as prior authorization for a certain service), the Departments could provide guidance on what documents, and what parts of those documents, their compliance enforcement reviewers access when auditing for compliance. With that feedback it might be better possible to determine if a particular NQTL warrants a different model form as well as what information related to that NQTL should be disclosed.

3) Would issuance of model forms that could be used by States as part of their review be helpful, and if so, what content should the form include? Should the form focus on specific classifications or categories of services? Should the form request information on particular NQTLs?

New Directions strongly endorses efforts to bring about uniformity in the manner in which different jurisdictions review and enforce parity compliance.

Because New Directions has health plan customers in numerous states, and because we have covered members in all fifty states, New Directions conducts business in an environment where we are potentially subject to over fifty unique regulatory interpretations of MHPAEA and its accompanying guidance. This potential for disparate state level interpretation requires continuous monitoring of the regulatory and enforcement activity of all of these states' regulatory bodies, including how each state interprets the federal regulations (including the interpretation of what constitutes parity for certain NQTLs), as well as the expectations of the auditing and enforcement arms of the respective state regulatory bodies.

State level MHPAEA interpretation and enforcement has led to vastly different ideologies about what actually constitutes "parity," what activities and cost control mechanisms are allowed to be applied to benefits, and what the appropriate sanctions and enforcement activities should be in the circumstance of noncompliance.

From a compliance and customer service perspective these vastly differing mindsets regarding the existing guidance creates an environment where thought leaders in the behavioral health industry are unable to create and implement new programs, apply quality measures and deliver value for fear they will run afoul of one of the various interpretations and thus put themselves at risk. This uncertainty in turn handcuffs insurers and stymies ingenuity in the field of behavioral health.

Instead of simply creating model forms, New Directions urges the Departments to create a model toolkit for state level mental health parity compliance and auditing, and then provide extensive training on the





contents of the toolkit to both state regulators as well as insurers and MBHOs. At minimum the tool kit and education would provide a unified resource for insurers and MBHOs on which to base their compliance programs, and would help to alleviate the fear of inconsistent cross jurisdictional enforcement and interpretation.

New Directions envisions the potential model forms as a component piece of the compliance toolkit. New Directions believes issuance of forms requesting certain information will act as a guide for insurers on what information is necessary for each NQTL analysis thereby leading to a more uniform compliance effort across insurers and administrators.

New Directions once again encourages the Departments to allow for public notice and an open comment period on all proposed forms so that all interested parties may opine on content, structure, and application.

4) What other steps can the Departments take to improve the scope and quality of disclosures or simplify or otherwise improve processes for requesting disclosures under existing law in connection with MH/SUD benefits?

New Directions is currently concerned about the breadth and depth of NQTL related information that can currently be requested due to the lack of additional guidance on what specifically *should* be requested by participants and when.

The amorphous nature of the ERISA mandated disclosure standard (plans are required to provide participants with information about the processes, strategies, evidentiary standards and other factors used to apply a NQTL) allows a participant to obtain a great deal of information pertaining to all facets of parity compliance regardless of its applicability to a participant's requested services.

For example, in a circumstance when a participant's requested behavioral health services are denied for lack of medical necessity, the member seeking approval of services may request all information pertaining to the setting of usual and customary rates, network tiering, provider reimbursement, the formulary design for determining what prescription drugs are discounted, and other similar NQTL information even though the requested NQTL information has little or no bearing on the service that participant requested. This ancillary unrelated request has the potential to place a large burden on the insurer and/or MBHO which in turn results in additional administrative production and compliance costs. This additional cost injected into the care continuum without any impact on the quality of services is directly contrary to the Department's triple aim of improving health care quality, improving population health, and reducing unnecessary healthcare costs.

Should the Departments elect to move forward with the creation of model forms New Directions urges additional guidance on what information should be able to be requested in relation to certain NQTLs.

5) Are there specific steps that could be taken to improve state market conduct examinations and/or federal oversight of compliance by plans issuers?





New Directions encourages the Departments to explore the possibility of creating a regulatory “safe harbor” via review and certification by national accreditation bodies.

National accreditation bodies such as URAC and NCQA provide an objective comprehensive review of policies, processes, and procedures to ensure compliance with regulatory standards. The “safe harbor” could be created by exempting accredited health plans or MBHOs from MHPAEA related litigation or other regulatory sanctions.

If an insurer’s parity analysis procedures, policies, and policy adherence are deemed adequate by a national accreditation body, and the plan achieves full accreditation, we believe the insurer should be exempted from negative regulatory outcomes.

The process of accreditation safe harboring would create ongoing checks against a universally accepted objective standard, and it would allow some flexibility of the accreditation auditors to recognize and properly address differences amongst health plans and MBHOs.

We appreciate your consideration of these comments and observations.

Thank You,

Noreen Vergara

Chief HR Executive and General Counsel

New Directions Behavioral Health, L.L.C.

