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

September 13, 2017

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

Re: Requirements in the 21st Century Cures Act Related to MHPAEA Disclosures

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 415 primarily large employers, including 73 of the Fortune 100, who voluntarily provide group health plan coverage and other health programs 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. Model Forms

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 draft model form will present significant challenges for plan sponsor responses. Specifically:

A. The General Information Request

The General Information Request includes a request for plan limitations related to coverage for specific conditions or disorders. However, a wide range of treatments or services can apply to any given condition or disorder. The individuals responding to these requests generally will not be health care professionals with the necessary expertise to identify all plan benefits that may apply to an identified condition or disorder. We therefore recommend that the General Information Request section include only requests related to coverage for specific treatments or services.

B. Claim/Denial Information Request

In addition, 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:

- 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 strongly encourage the Departments to provide this guidance so that plan sponsors 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.

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.

[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).

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