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September 13, 2017

US Departments of Labor, Health and Human Services, and Treasury  
Washington, DC, 20220

## **RE: FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21<sup>st</sup> Century Cures Act Part 38**

### **INTRODUCTION**

The National Council for Behavioral Health (National Council) is submitting these comments, suggested model form revisions and draft Frequently Asked Questions and Answers (FAQs) in response to the Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments) June 16, 2017 joint request for comments in the “FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21<sup>st</sup> Century Cures Act Part 38.”

The National Council is the unifying voice of America’s community of mental health and addictions treatment organizations. Together with 2,900 member organizations, the National Council serves more than eight million adults and children living with mental illnesses and addiction disorders. We are committed to ensuring all Americans have access to comprehensive, high-quality care that affords every opportunity for recovery and full participation in community life.

The National Council shares the Administration’s goal of full implementation and enforcement of MHPAEA. MHPAEA is a critical tool in combatting the nation’s twin epidemics of opioid misuse and overdose and suicides. To inform and accomplish this objective, the National Council has filed or signed on to several responses to requests issued by the Departments for comments since 2009. Many of our comments specifically addressed disclosure of documents necessary to perform a lawful non-quantitative treatment limit (NQTL) analysis and these recommendations continue that process.

### **OVERVIEW OF COMMENTS**

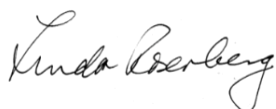
Per the Departments’ request in the June 16, 2017 FAQ addressing Part 38 of the *21<sup>st</sup> Century Cures Act*, the National Council’s recommendations clarify how to improve the disclosure of plan information required under MHPAEA and other relevant laws. The Departments have already issued a substantial amount of [sub-regulatory guidance](#) on disclosure and NQTLs and we urge their enforcement. As of this date, we are unaware of any health plan that has fully complied with an NQTL disclosure request despite this guidance. Moreover, our members have not had a plan provide the evidentiary standards or comparative analysis for mental health/substance use versus medical/surgical for the development or implementation of NQTLs. While the National Council believes the most recent sub-regulatory guidance on NQTL/disclosure was reasonably explicit, we

understand other stakeholders disagree. As such, for the development of further guidance, we have included:

- Attachment A
  - Suggested “tracked changes” to the Department’s draft form “Request Documentation from an Employer-Sponsored Health Plan or an Insurer Concerning Treatment Limitations” as solicited in the June 17, 2016 FAQs;
- Attachment B
  - Sample FAQs that expand upon how to comply with the documentation required in the Department’s model form;
  - Because specific examples of how various NQTLs are applied is often the clearest way to demonstrate compliant and non-compliant NQTLs analyses, the National Council’s comments also include a non-exhaustive group of draft FAQs on a variety of the most common types of NQTLs our members see; and
- Attachment C
  - A suggested plan reporting format on application of NQTLs, both written and in operation, with a clear six step process and an accompanying spreadsheet. The six-step process for reporting on application of NQTLs to mental health/substance use and medical/surgical benefits, as well as examples of their application to specific NQTLs are intended to be useful tools to the Departments and state regulators as to how a plan could structure its NQTL analysis and report on it to regulators. The sixth step in the process is intended for use by plans and not consumers or providers.

The National Council would be pleased to discuss these recommendations in greater detail as federal and state regulators seek to fully implement the parity law in their jurisdictions. For questions or comments, please reach out to Chuck Ingoglia, Senior Vice President for Public Policy and Practice Improvement at [ChuckI@thenationalcouncil.org](mailto:ChuckI@thenationalcouncil.org) or via phone at 202-684-7457.

Sincerely,



Linda Rosenberg,  
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National Council for Behavioral Health