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June 22, 2018

VIA ELECTRONIC MAIL

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Patrick Pizzelle
Deputy Assistant Secretary
U.S. Department of Labor
Employee Benefits Security Administration
200 Constitution Ave. NW, Ste N-5677
Washington DC 20210

RE: Comments on Draft Model Form for Improved Enforcement of the Disclosure Provisions of the Mental Health Parity and Addiction Equity Act

To Whom It May Concern:

Thank you for the opportunity to submit comments regarding the collaborative efforts of the Department of Labor, the Department of Health and Human Services, and the Department of the Treasury to implement the Mental Health Parity and Addiction Equity Act (MHPAEA). These comments are submitted in response to the proposed Model Form for use by consumers who seek information and documents to show health plan compliance with MHPAEA.

Health Law Advocates (www.healthlawadvocates.org) is a non-profit public interest law firm that provides free legal assistance to low-income Massachusetts residents who face barriers to obtaining essential health care. Health Law Advocates submits these comments on behalf of the Massachusetts Mental Health Parity Coalition, a diverse group of consumer, provider and legal advocacy organizations dedicated to improving consumer access to needed behavioral health services through education and improved enforcement of state and federal mental health parity laws.

We are pleased to provide feedback about this important topic of transparency and disclosure of MHPAEA documents and information to plan members and beneficiaries. The disclosure provisions of MHPAEA are critical to the success of the law, as without consumer access to the necessary information in the possession of health plans and health insurance issuers, parity may be an empty promise.

Comments on the Draft Model Form to Request Documentation from an Employer-Sponsored Health Plan or Insurer Concerning Treatment Limitationsⁱ

The draft Model Form is a positive step toward simplifying consumer requests for parity-related disclosures, and we commend the Departmentsⁱⁱ for drafting this resource. We voice our support for the sections of the Form that enable consumers to make a “General Information Request” and a “Claim/Denial Information Request.” The incorporation of the “General Information of Request” section will help consumers understand that parity disclosure requests are not limited to instances of denials of coverage. We also support the additional disclosure requirements that require the plan to identify the factors used in the development of the limitation and evidentiary standards used promote transparency, and provide consumers an opportunity to identify a parity violation.

We submit the following comments to help further improve the Model Form.

Recommendations to help reduce the burden upon individuals, families or providers.

We wish to commend the Departments for seeking comments “on any aspect of the draft model form, including ways to reduce the burden on individuals, families, health care providers” and others. As advocates for consumers who struggle to access needed mental health and substance use disorder treatment, we see how consumers faced with a denial of service by a health plan are very vulnerable. In this context, they must deal with a lack of service, while also simultaneously trying to access this parity information. During such times, even small administrative obstacles can be so burdensome that individuals or their representatives can easily become discouraged from attempting to understand and assert their rights under MHPAEA.

Considering these concerns, we propose the following change to reduce the burden upon consumers and their representatives:

(1) Create a HIPAA-compliant authorization section on the Model Form to prevent administrative barriers to consumers’ access to parity.

One aspect of the Model Form that could be improved is the authorized representative form. Although the authorized representative section is essential, it does not completely remove the administrative barriers consumers face when requesting parity documents. In many instances, a consumer may enlist a lawyer or advocate to speak on their behalf. And in doing so, the consumer must complete a HIPAA-compliant medical release form, which must be submitted to the insurer. However, many consumers are unaware that they must complete a HIPAA-compliant medical release form for their authorized representative. In many instances, it is not until the advocate tries to gather information from the insurer, but is denied information, that the consumer learns of the HIPAA requirement. Consequently, such unawareness causes significant delays for the authorized representative who is advocating on the consumers behalf. Also, it should be noted that some consumers face technological barriers that hinder their ability to expeditiously provide the insurer with the HIPAA release form. To alleviate such barriers, including a HIPAA-compliant authorization section on the Model Form is necessary.

Recommendations to help ensure that health plans fully and appropriately comply with requests for parity information.

(2) Clarify through accompanying guidance that the form should not be interpreted by plans to limit the scope of requested parity information.

We recommend that the Departments issue clarifying guidance accompanying the final Model Form to instruct health plans that nothing in the form should be interpreted so as to limit the scope of requested parity information. If a plan is informed adequately of the specific denial that is questioned by a consumer on the basis of parity, then the plan should provide all relevant documents and parity information that is related to the basis for their denial.

(3) Include a warning that any health plan that fails to produce parity documents within 30 days of receiving this Model Form can be subject to civil penalties amounting to as much as \$110 per day for each day that they are late.

We commend the Department for their inclusion of the list of four sets of information that a health plan must provide in response to the Model Form. We also commend the Departments for listing a 30-day deadline in this final section of the Model Form. However, we recommend issuing a warning of the imposition of civil penalties on insurers who do not meet the 30-day deadline.

In conclusion, we again thank the Departments for the opportunity to provide feedback on the disclosure provisions of the federal parity law. We are committed to ensuring that the federal parity law achieves its purpose to eradicate discrimination in insurance coverage of mental health and substance use disorders. Please feel free to contact Health Law Advocates Staff Attorney Wells Wilkinson at (617) 275-2983 or wwilkinson@hla-inc.org if you have any questions about any of our comments or recommendations.

Sincerely,

Niya Mack
Staff Attorney

ENDNOTES

ⁱ See Form to Request Documentation from an Employer-Sponsored Health Plan or Insurer Concerning Treatment Limitations, CMS, OMB Control Number 1210-0138, available at <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Model-Form-to-Request-MH-SUD-Treatment-Limitation-information.pdf>.

ⁱⁱ As used herein, the Departments refers collectively to the Department of Labor, the Department of Health and Human Services and the Internal Revenue Service.