



June 22, 2018

On behalf of the National Alliance on Mental Illness (NAMI), I am pleased to submit the following comments in response to the Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury (collectively, the Departments) April 23, 2018 joint request for comments on “[Proposed] FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part XX.”

NAMI is the nation’s largest organization representing individuals living with mental illness and their families. NAMI has fought for nearly two decades for fair and equivalent coverage of mental illness in health insurance. NAMI remains committed to working with the Administration on the prompt, effective implementation and enforcement of the Mental Health Parity and Addiction Equity Act (MHPAEA). We are hopeful that all sub-regulatory guidance and the “Model Form to Request Documentation from an Employer-Sponsored Health Plan or an Insurer Concerning Treatment Limitations” will be finalized and an enforcement strategy developed in an expeditious manner.

NAMI is grateful to the Departments for convening the public meeting on MHPAEA enforcement and compliance required by Section 13001 of the 21st Century Cures Act (PL 114-146) (“CURES”), as well as the Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act and Model Disclosure Form with the proposed FAQs. Together, these documents are consistent with, and reinforce, previous guidance released by the Departments that clarify that plans are required to conduct their own compliance analysis for each non-quantitative treatment limitation (NQTL)—both in writing and in operation—and must include the methods for conducting such analyses, and the evidence and documentation relating to such compliance analyses that must be disclosed to beneficiaries and their authorized representatives.

Ensuring that plans are required to disclose all NQTL analyses and relevant documentation to enrollees (or an authorized representative) is critical. NAMI members are entitled to plan documents and information regarding the development and application of NQTLs that are used to limit treatment and how these NQTLs are comparable to and no more stringently applied to mental health and substance use disorder benefits than to medical/surgical treatment. However, too often, we hear that this information is not adequately communicated to beneficiaries—or not conveyed at all. Absent this information, plan enrollees and their providers are unable to determine whether the plan is in compliance with MHPAEA and its regulations.

NAMI applauds the Departments for addressing many of the more complex, yet common, MHPAEA questions in FAQ Part 39 and providing clear and detailed responses regarding specific NQTLs. We also support the Self-Compliance Tool and its detailed framework for assessing compliance. It is important to note that the Self-Compliance Tool does NOT establish any new standards that could be subject to challenge. Instead, it provides a clear assessment of MHPAEA regulatory standards in a form that will promote more effective compliance reviews by plans and regulatory bodies.

NAMI continues to believe that the most effective MHPAEA enforcement strategy is to ask carriers and plan sponsors to demonstrate parity compliance prior to offering plans in the market and to ensure that regulators have complete parity analyses to facilitate plan review. The Self-Compliance Tool offers regulators a framework for obtaining plan compliance submissions for form review and verifying compliance pre-market. We encourage the Departments to identify the submission of plan compliance materials based on the tool as a “best practice” and to work with the National Association of Insurance Commissioners (NAIC) to establish this framework as a model standard for state insurance departments.

NAMI’s RECOMMENDATIONS

1) NAMI supports the Departments’ finalization of this proposed sub-regulatory guidance. The Departments should move expeditiously to finalize this guidance and engage in immediate enforcement in those areas for which guidance has been in place for several years.

NAMI would highlight the detailed analysis compiled by the Parity Implementation Coalition (PIC) of key compliance program guidance and FAQs based on the Self-Compliance Tool and combined Self-Compliance Tool and Model Disclosure Form with proposed FAQs. The PIC is a coalition of organizations, including NAMI, that worked to advance parity legislation and now works to ensure full implementation and enforcement. The PIC has conducted a review of the Departments’ prior guidance in order to demonstrate how the current CURES guidance is entirely consistent with prior guidance. As noted in separate comments submitted by the PIC there are at least four key areas illustrated in the recent CURES guidance that are consistent with and reinforce prior guidance: :

- Denial rates and other measures of outcomes are essential in analyzing NQTL rule compliance
- Multiple steps are necessary in order to conduct a compliant NQTL analysis;
- Compliant disclosure requires that all steps of a plan’s NQTLs analyses must be provided to consumers and authorized providers; and
- Quantitative analyses of evidentiary standards and other aspects of NQTL development and application are essential in determining compliance.

The proposed FAQs released on April 23, make clear that denial rates and other outcomes data are required to be disclosed in any NQTL analysis of “in operation” as set forth in the new CURES guidance. This is consistent with regulatory and sub-regulatory guidance issued from 2011 to 2017. This is further aligned with the “five steps” process set forth in the new CURES guidance.

NAMI believes that the Departments’ regulatory and sub-regulatory guidance to date has been very clear on NQTLs in these areas. NAMI also believes that the current array of model forms, self-compliance tools and sub-regulatory guidance has added additional clarity and provide a path for plans to move into full compliance. One of the most important actions we believe is necessary to accomplish this is to increase enforcement of the guidance already given. It is apparent that market forces alone have not helped to achieve equity in access to mental health and substance use disorder treatment services in proportion to the demand caused by the twin epidemics of opioids misuse and overdoses and suicides. Therefore, we support finalization of the proposed FAQs as drafted.

2) NAMI recommends that the Departments take actions to help enrollees and their families, providers, plans, and states with enforcement.

As we approach the 10th anniversary of Congress passing MHPAEA, there is significant evidence demonstrating that plan enrollees still have only limited knowledge of their rights and benefits under the parity law. NAMI has found that even when enrollees are aware of MHPAEA and believe their plan is in violation, they struggle with how and where to file a complaint given the myriad of federal and state entities with enforcement authority over MHPAEA.

The Departments have made efforts to address this by providing a new consumer portal that provides information on plan type and which state or federal agency oversees these plans. However, consumers must be able to receive help in uploading complaints and getting them in front of the proper state or federal agency. Therefore, we encourage the Departments to consider implementing the following actions:

- Further develop the interactive portal for consumer and providers to allow for the uploading of complaints and have it routed to the correct agency for assistance and should provide clear timelines for responses,
- Provide on-site state and regional workshops on MHPAEA implementation and enforcement based on the April 23, 2018 guidance implementing Section 13001 of the 21st Century Cures Act
- Develop a model “authorized representative” form so there is a consistent format for plan enrollees, consumers, providers and payers to use for this purpose, and
- Clarify that denial rates and other outcomes are proper and essential parts of an NQTL analysis.

3) NAMI recommends that the Departments issue additional FAQs on the outstanding issues of network adequacy, reimbursement rates and disclosure.

There is strong evidence that enrollees experience disparities with respect to access to in-network providers and that behavioral health providers are reimbursed at rates lower than other medical professionals, even for services billed to the same or nearly identical codes. NAMI published survey results in a report, *The Doctor is Out*, that found that significant barriers to parity still exist in the form of limited access to in-network providers, which results in higher out-of-pocket costs.

A November 2017 Milliman research report, *Addiction and mental health vs. physical health: Analyzing disparities in network use and provider reimbursement rates*, found that psychiatrists were paid less than primary care physicians and medical specialists for the same types of services—even those services billed to the same or nearly identical codes.

Given the continued disparities, as well as challenges with adequate disclosure from plans, we recommend that the Departments issue additional FAQs on the following issues:

- a. Network adequacy;
- b. Reimbursement rates; and
- c. Disclosure.

4) NAMI recommends that the DOL clarify in FAQ 5 that the exclusion of all benefits for bipolar disorder must take into consideration whether medications used to treat bipolar disorder – including not just medications with a FDA on-label indication, but also medications listed in peer-

reviewed, evidence-based treatment guidelines, are also covered on a plan's formulary for the treatment of other medical conditions.

5) NAMI recommends that DOL work with Congress to provide DOL with the authority it requests to levy monetary penalties on insurers and funders.

President Trump's Commission on Combatting Drug Addiction and the Opioid Crisis' Final Report included a recommendation to give DOL enhanced enforcement authority over MHPAEA. This authority is important to ensuring that consumers can access the treatment benefits promised to them under the parity law. Specifically, the Commission recommended, "Because the Department of Labor (DoL) regulates health care coverage provided by many large employers, the Commission recommends that Congress provide DOL increased authority to levy monetary penalties on insurers and funders, and permit DOL to launch investigations of health insurers independently for parity violations."

Further, the Commission's report noted, "while parity is a legal requirement, the existing means of monitoring and enforcing the parity act are insufficient. The sole means of enforcement under the parity act is equitable relief against the buyer of the insurance plan; and for the employer-based plans that are self-funding, DOL is presently permitted to enforce MHPAEA against only the employer, rather than the insurance company administering the benefits."

In NAMI's view, it was never the intent of Congress restrict DoL's enforcement authority to only the self-funded employer when an insurance company is administering the employer's benefits. NAMI believes should have the authority to levy monetary penalties on insurers and funders and launch investigations into health plans for MHPAEA violations. This will ensure that all parties are held accountable for providing equitable coverage of mental health and substance use disorder treatment benefits consistent with MHPAEA.

Thank you for the opportunity to provide comments on this important issue. NAMI stands committed to working with the Administration on implementation and enforcement of the parity law to help ensure that individuals with mental health conditions can access the care they desperately need.

Sincerely,



Angela Kimball
National Director, Advocacy & Public Policy