From: Elizabeth Leight [mailto:elizabeth@spbatpa.com]
Sent: Wednesday, May 27, 2009 2:25 PM
To: EBSA, E-OHPSCA - EBSA
Subject: Comment on MHPAEA Request for Information

May 27, 2009

Office of Health Plan Standards and Compliance Assistance
Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W., N-5653
Washington, D.C. 20210

ATTN: MHPAEA Comments

Filed Electronically
E-OHPSCA.EBSA@dol.gov

RE: Comment on MHPAEA Request for Information

Dear Sir or Madam:

The Society of Professional Benefit Administrators appreciates the opportunity to comment on the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) Request for Information (RFI) under 29 CFR Part 2590 issued Aril 28, 2009.

On behalf of third party contract administration firms, the Society of Professional Benefit Administrators wishes to express to you several concerns raised in the recently published Request For Information and we hereby submit the following comments.

The Society of Professional Benefit Administrators (SPBA) is the largest national association representing independent third party administration firms who are responsible for the administration of the employee benefits of nearly forty percent of all United States workers. SPBA represents over 90 percent of the firms which make third party contract administration of employee benefit plans their primary line of business.

Third party administrators (TPAs) provide continuing professional outside claims and benefit plan administration for employers and benefit plans. TPAs very often become the "employee benefits office" for the covered workers of many small employers under 100 employees. The average TPA client employs some degree of self-funding and clients range from large Taft-Hartley union/management jointly-administered plans, customized plans for single employers of all sizes, and cost-effective plans designed for related groups of employers in trade associations and other multiple employer configurations.

We commend the Department on its foresight in seeking information from private industry on the impact this change in the law will have on employers before issuing comprehensive regulations. Benefit administrators need immediate guidance from you on how to administer requests for legal and equitable coverage. As the preeminent representative of third party contract administration firms, SPBA wishes to discuss some of the unresolved questions, particularly as they relate to the responsibilities of employers,

and this letter is meant to highlight those issues as well as the issues raised in your request for comments.

TPAs who advise their clients have concerns in how the regulations can be interpreted. For example, the proposed regulations permit an employer to structure their plans to choose which disorders to cover, and are not required to cover the entire spectrum of illnesses identified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). Employers and TPAs would like to see the DOL provide a list of acceptable coverage for mental illnesses or substance abuse disorders, to do otherwise will raise liability issues for employers and TPAs under the Americans with Disabilities Act for failing to cover an individual with a "perceived" mental disability.

Hard to Define Statements
We commend the Department in seeking additional clarification in the regulations to facilitate compliance. MHPAEA does not spell out the details of some very important terms, for example, when the law defines parity as behavioral coverage that is "no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits," further clarification in interpretation is necessary to avoid uncertainty by plan sponsors.

Separate but Equal-Out-of-Pocket Limits
The Department should further clarify MHPAEA's application of the separate but equal calendar-year deductibles and out-of-pocket (OOP) limits for physical and behavioral healthcare. The Department should provide a clear guideline so employers can determine whether separate but equal deductibles and OOP limits exist. Additionally, the Department should provide examples where a single deductible and OOP limit across medical and behavioral benefits should be coordinated in the benefit administration. Clear examples in the regulations will provide a procedure for plans and employer sponsors to administer this provision accurately.

Equivalents
We applaud the Department for recognizing that there is a difference between physical healthcare conditions and behavioral healthcare services. One overriding challenge brought about by MHPAEA is that there appears to be few physical healthcare equivalents between providing behavioral healthcare services and physical healthcare in terms of practical hospital benefits. Adding to the confusion, for those plans that must comply with state laws, it is not clear how the plans will be affected by state law and how plans will be expected to comply.

Out-Of-Network
The new regulations require inclusion of out-of-network (OON) benefits that are provided for physical healthcare benefits. Previously, plans with OON behavioral benefits would have been managed through specific benefit limits and payment caps, but with MHPAEA's enactment, plans may no longer see unlimited OON behavioral benefits at payment levels upwards of 80% of usual and customary fees. Furthermore, the increase of OON benefits coverage could lead some providers to opt out of current networks (which have contracts at reduced fee levels) in favor of potential increases in their fees that would occur under OON benefits. In addition, certain providers, facilities or programs that have been exclusively private pay, may no longer serve as OON providers. This will further open the door to direct-to-consumer advertising by some providers similar to what has occurred in the drug industry. We

request that the Department clarify and establish a simplified method for employer sponsored benefit plans to show how OON benefits are in compliance with the new regulations.

Utilization Review
Some plans have elected to let the limited benefit designs for behavioral benefits serve as a type of utilization management surrogate. With the new parity regulations, this approach will require employers to re-examine their benefit plans, as such this will necessitate additional time for compliance.

Third Party Administrators are concerned about our abilities to advise employers on how they can determine medical necessity of care for mental, nervous and substance use disorder treatments. We request that the department establish a standard of review for treatment. Currently, plans employ utilization review for surgeries, in-patient stays, etc. However, mental, nervous and substance abuse treatment is difficult to quantify, unlike general surgical treatments.

Utilization management practices have established working guidelines that show behavioral disorders can be covered without limitless cost and treatment horizons. With the requirement of full parity under MHPAEA however, the expanded coverage could raise incentives for over-utilization of services, especially for out-of-network services. We ask that the Department will provide benefit plans with additional time to benchmark their historical data of benefit utilization with behavioral care guidelines, including how different behavioral specialists can be used in networks and how various lower-cost step-down benefits can be utilized within their healthcare system without running into the parity wall.

Provider and Provider networks
We request that the Department clearly define "mental health provider". Will plans be expected to cover pastors, non-degreed counselors, social workers (who are not LCSW's), under the definition of "mental health provider"? Employer-sponsored plans are allowed to define the types of covered providers for other services, and would like to do the same for mental and nervous providers.

Plans will need additional time to evaluate their provider networks for capacity implications and to determine whether their current provider network is deep enough to undertake overall parity. Employers will need to consider the size of their benefit plan, and the composition of benefits to meet the needs of plan participants--the relative numbers of psychiatrists, psychologists and social workers to meet the needs of the group. Employer-sponsored plans will need to determine the location of the population covered under the plan and relative to that, the availability of the providers in the network to meet their needs. Similarly, an inquiry will need to be made to determine the adequacy of their provider network and how plan participants use it as a means to determine equitable access to specialists. Because plan sponsors will need to expand their specialist networks and educate their covered population about their options for services, we seek additional time for implementation of this provision or at a minimum recognition of "good faith" compliance with the regulations.

Pricing
Wider use of consumer-driven health plans and high-deductible plans could result in reduced utilization of mental health services if consumers are unaware of their behavioral disorder or elect to defer treatment. Because

plan sponsors must create incentives for plan participants to seek early treatment, additional time is necessary to implement this provision before small problems develop into something far worse with lack of treatment.

Contacting with behavioral specialty providers will impact pricing. Managed behavioral healthcare, wellness and disease management companies have experience with behavioral healthcare specialists. An important consideration for pricing increased mental heath benefits involves the ability of the healthcare delivery and management system to effectively achieve healthy outcomes with reduced medical costs and increased productivity. Employee benefit plans will need to manage potential cost increases, but employers should be able to explore opportunities for reducing total healthcare costs by incorporating an integrated medical-behavioral healthcare approach into the health plan without fear of violating MHPAEA.

Employee Assistant Programs (EAPs)
TPAs work daily with employer plan sponsors on ways to provide benefits to their employees and to provide parity through their plans. Under the current regulations, it is unclear whether EAPs are included in the entities that are required to comply with parity. Our client plan sponsors tell us that EAPs address many personal issues for employees and result in improved productivity and reduced sick days. TPAs strive to educate employer plan sponsors that costs can be best kept in check by integrating the treatment of the body and the mind so that ailments missed in one don't transfer to the other without runaway costs. Some issues are related to mental health issues but many are related to legal, financial or work/life issues. However, if EAPs are required to comply with the parity mandate, it could limit the success EAPs play in the workplace today. Full parity will take time and additional time to implement some of these new measures will ensure that employer plan sponsors will do the right thing from the beginning rather than operating in a hit or miss process to meet the compliance deadline.

Summary
SPBA members indicate that current practices by their client employers adequately apprise employees of their responsibilities under MHPAEA. Third Party Administrators work vigorously to maintain employer regulatory compliance, however, as service contractors, they are given only as much data and duties as the Plan Administrator/Plan Sponsor wishes to extend.

SPBA respectfully requests a generous good faith provision be provided to encourage employer plan sponsors to amend their plans and set forth provisions that will meet their employees needs at the outset. Further, it should be made clear that employers who act in good faith with this legislative and regulatory change will not be penalized if the law is later clarified in such a way that would require employer plan sponsors to modify their plans to be in compliance. A preference would be to indicate in the regulations that health plans may wait until their next annual plan renewal before the amendments based on clarifications are required.

If the Department deems necessary a change in the current regulations, we further request that sufficient advance time be provided so that Third Party Administrators may provide guidance to employers to promote their understanding of their new responsibilities under the regulations. SPBA appreciates the opportunity to express our comments on this issue. It is respectfully requested that the recommendations cited above be considered in

the final regulations. SPBA would like to reserve the opportunity to provide future comments when the final regulations are released. Additionally, if a hearing is scheduled, SPBA requests the opportunity to testify. As the preeminent representative of third party contract administration firms, SPBA would be happy to provide you with additional information or to respond to any additional questions arising as a result of this submission. Please contact me at 301-718-7722 if we can be of further assistance.

Sincerely,

Elizabeth Ysla Leight
Director of Government Relations and Legal Affairs
Society of Professional Benefit Administrators