AMERICAN PSYCHOLOGICAL ASSOCIATION PRACTICE ORGANIZATION

September 13, 2017

**Comments of the American Psychological Association Practice Organization Regarding MHPAEA Disclosures**

The American Psychological Association Practice Organization is a companion advocacy organization to the American Psychological Association.[i] We submit these comments in response to the June 16, 2017 FAQs regarding MHPAEA implementation.

We have signed on to the comments by the Coalition for Whole Health (CWH), but offer the following additional comments.

We agree that a standard form for requesting parity disclosure information would be helpful, and like CWH, we offer the attached revisions to the form that we think will make the form more understandable to the average consumer. Our edits are based on our long experience in translating esoteric parity and HIPAA concepts to our psychologist members and their patients. We understand and sympathize with the agencies' challenge in creating this form: simplifying the very technical details of the MHPAEA regulations to so they are accessible to an average consumer – without losing key points about the law and its protections.

In particular, we suggest that there be separate forms for a person inquiring about their own care, and for an authorized representative asking about another person's treatment.[ii]

Relatedly, we suggest that the instructions explain what "authorized representative" means; we expect that many consumers would be confused by this term. It might also be helpful to the plan receiving the form to have the authorized representative state their capacity in the form, e.g., guardian or parent. Also, it was not clear to us how the form would be filled out if the person filling it out were the subscriber or member under the plan, but the care was denied to a beneficiary. This should be explained in the instructions.

To the extent that it is not already required, we suggest that Plan documents provided to Plan members and beneficiaries upon enrollment should clearly and simply state whether **or not** the plan is subject to MHPAEA and ERISA. We have found that the challenging threshold question for consumers, patients and their treating professionals is whether the plan is even subject to parity protections. We note that stating the negative (that a plan is *not* subject to these laws) is also important for two reasons. First, without such a statement a consumer or beneficiary might waste a lot of time trying to figure out if the plan is subject to MHPAEA and ERISA, and whether their rights under those laws have been violated. Second, to the extent a consumer has a choice between plans that are, and are not, subject to MHPAEA and ERISA protections, it would help consumers to know what plans do *not* include those protections.

Finally, we would like to support and expand upon CWH's recommendation in Section I.A of its comments that there should be a separate form for MH SU providers to inquire about parity issues that have an enormous impact on patient access to care, e.g., network adequacy and reimbursement rates.

From two decades of assessing these important issues, it is very clear to us that providers have a perspective and information on these issues that is not available to consumers and patients. For example, a patient may be having trouble finding care under his/her plan but does not realize that this is because the plan has disparately low reimbursement rates, and the patient does not know that access other plans is much better. The patient's provider is far more likely to have that information, from seeing how network adequacy and reimbursement differs between plans. That provider would have a better sense of when to inquire about suspect plans, and would be in a better position to evaluate the plan's response about network adequacy or reimbursement rates.

Please feel free to contact me with any questions regarding the above. Thank you for your efforts to further improve MHPAEA implementation.

Respectfully Submitted,

Alan Nessman
Senior Special Counsel
Legal and Regulatory Affairs
American Psychological Association Practice Organization
750 1st St. NE
Washington DC 20002
ANessman@apa.org
(202) 336-5886

---

[i] The American Psychological Association (APA), in Washington, D.C., is the largest scientific and professional organization representing psychology in the United States. APA's membership includes more than 115,000 researchers, educators, clinicians, consultants and students. APA works to advance the creation, communication and application of psychological knowledge to benefit society and improve people's lives. The APA Practice Organization advocates on behalf of practicing psychologists and their patients.

[ii] In trying to simplify the form, we saw that a key challenge was the number of different scenarios the form covered (e.g., denial vs. limitation, claim vs. coverage request). We found that the greatest awkwardness in the writing resulted from trying to cover both situations where the form talks about the person's own care, and the care of someone else when an "authorized representative" was making the request. The list of grounds for denial frequently refers to "my treatment." We have only provided a draft form for a person inquiring about their own treatment, but we would be happy to provide an "authorized representative" version if the agencies are interested in this approach.

**9-13-2017 draft by APA Practice Organization**

*(Use this form if you're requesting information about your own care. Italics in the form indicate instructions for filling it out)*

# Mental Health and Substance Use Disorder Parity
# Information Request -- About Your Own Care

**You and Your Plan:**

To (*health plan or insurance company*):_____ (My Plan)

From (*your name*):_____

Plan number (*if you have one*): _____

Member Number (*number assigned to me by the Plan*): _____

Date of request: _____

==========

My Plan must comply with the federal Mental Health Parity and Addiction Equity Act (MHPAEA). That basically means that any coverage limitations it applies to mental health and substance use disorder benefits must be comparable to limitations it applies to medical and surgical benefits. It also means that the Plan must provide me certain information required by law if I ask for it. Therefore, I request that the Plan provide the information specified below within 30 days of the date of this request.

**CHOOSE OPTION A or B:**

☐ Option A: I'm requesting general information about My Plan. (*If you pick this option, fill out Sections A and C below*.)

☐ Option B: I'm requesting information about a claim of mine, or about My Plan's denial of benefits, or limitation on benefits. (*If you pick this option, fill out Sections B and C below*)

## Section A: General Information Request
**(*Fill out this Section if you picked option A above)***

I'm requesting information on My Plan's limitations related to:

☐ Mental health and substance use disorder benefits, generally ***or***

☐ The following specific condition or disorder: _____

## Section B: Request Focused on a Specific Claim or Coverage Denial (*Fill this section out if you picked option B above.)*

**1. <u>What was denied or limited and why?</u>**

My Plan (or its representative) told me that it would deny/limit my claim/request for coverage of treatment for _____ [*list mental health condition or substance use disorder*] or a form of treatment or a medication _____ [*list treatment or medication*].

My Plan (or its representative) gave the following reason(s) for the denial or limitation:

*(Check all that apply.)*

☐ My treatment and/or medication was not medically necessary.

☐ My treatment was experimental or investigational.

☐ My Plan required me to get authorization (advance approval) before it will cover the treatment.

☐ My Plan requires me to try a treatment that is lower in cost before approving the treatment that my health care provider recommends.

☐ My Plan will not authorize any more treatments because it claims that I failed to complete a prior course of treatment.

☐ My Plan will not cover the medication my health care provider is prescribing.

☐ My Plan does not have any reasonably accessible in-network health care providers to give me treatment for my mental health and/or substance use disorder.

☐ My Plan's reimbursement for out-of-network services means that I get less reimbursement for these mental health or substance use disorder services than I would for medical/surgical services.

[Add 2 additional bullets suggested in CWH draft]

☐ Other:_____

_____

_____

☐ I don't understand why my claim or coverage request was denied/limited.

**2. <u>Date and form of denial or limitation</u>** *(This section is not required, but if you have the information handy, it will make it easier for the Plan to check its records on why it denied or limited your claim or coverage request.)*

I learned about the denial/limitation and the reasons for it through a (*check all that apply*):

☐ letter ☐ Explanation of Benefits form ☐ phone call ☐ email ☐ other _____

From: ☐ My Plan ☐ a representative of My Plan _____(*name the company*)

Date of letter, form, call or email: _____.

**3. <u>Information I'm Requesting About this Denial/Limitation</u>**

I'm requesting the following information to help me understand whether the limitations on my care comply with MHPAEA:

☐ The specific Plan language describing the limitations applied to my mental health or substance use disorder claim or coverage described above.

☐ A list of all of the medical/surgical benefits to which those limitations also apply, in the same benefit classifications.[1]

☐ A simple, plain English explanation of how the limitations applied to my care are comparable to the limitations My Plan applies to medical/surgical care.

☐ The following information supporting that explanation:

- The factors, evidentiary standards, methods and analysis My Plan used to develop and evaluate the limitations;

[1] [Provide simple explanation of benefits classifications and examples]

● Any evidence showing that the limitations are applied no more stringently to mental health and substance use disorder benefits than to medical/surgical benefits.

● (If reimbursement for out-of-network services is an issue) The methods and analysis My Plan used to calculate payment for out-of-network services, such as calculating "usual, customary and reasonable" charges.

## Section C: Signature and Contact Information *(everyone should complete this section)*

_____

Signature

_____

Address

Please send the information to me at:

☐ The address listed above

□ Another address:

_____

_____

□ The following email _____@_____