



September 13, 2017

The Honorable Tom Price
Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Alexander Acosta
Secretary of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Steven Mnuchen
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Submitted electronically via e-ohpsca-mhpaea-disclosure@dol.gov

RE: Mental Health Parity and Addiction Equity Act of 2008 and the 21st Century Cures Act

Dear Secretaries Price, Acosta and Mnuchen:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. The members of NAHU work on a daily basis to help individuals and employer groups purchase, administer and utilize health insurance coverage. Our association appreciates the willingness of the Departments of Labor, Health and Human Services and Treasury ("the Departments") to seek comments from stakeholders about the implementation of the Patient Protection and Affordable Care Act (ACA) and the implementation guidance you have issued to date. Specifically, we are writing about "FAQs on Affordable Care Act Implementation, Part 38" issued on June 16, 2017, and your request for information and comments in this document about coverage requirements and plan disclosures with respect to mental health and substance abuse disorder benefits, including a draft disclosure form for employees and employers to use relative to parity benefit inquiries.

NAHU members help businesses of all sizes offer and manage both fully insured and self-insured group coverage options. Providing employees and their dependents with access to mental health and substance abuse services is a critical part of group health benefit design. Also, NAHU members routinely advise their



employer clients about their compliance obligations in operating a group health insurance arrangement with both state and federal laws and related regulatory requirements. Our members report that ensuring compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPEA) and its associated rules is one of the most difficult areas for employer group plans to navigate. In particular, understanding and ensuring appropriate treatment of non-quantitative treatment service limitations (NQTLS) as they relate to MHPEA rules is very difficult for most employers and their plan administrators. Smaller plans with fewer compliance resources particularly struggle with the complexity of the MHPEA rules, but the complexity concerns in this area extend to plans of all sizes.

Employer group plans subject to ERISA must always be ready to provide plan participants and beneficiaries with information about the processes, strategies, evidentiary standards and other factors used to apply an NQTL with respect to medical/surgical benefits and mental health and substance abuse disorder benefits under the plan upon request. This is a very high compliance bar for virtually all employer group plans to navigate easily. One issue is that NQTLS are hard to understand and quantify. NAHU believes that companies and entities that businesses engage for health plan administration assistance would greatly benefit from more official guidance from the Departments about what constitutes an NQTL and what are acceptable processes, strategies, evidentiary standards and other factors to apply NQTLS. We strongly urge you to include as many detailed examples as possible when developing any such guidance. Recorded training webinars and videos covering real-life scenarios and how they should be handled that could be made available to employers and the general public via the Departments' websites would be very much appreciated.

Employer group plans that contract with issuers of fully insured coverage often rely on their issuer to be fully compliant with the MHPEA requirements, including the correct formulation of NQTLS and related disclosure requirements, even though they have their own liabilities. Furthermore, employer group plans that operate or participate in self-funded health coverage arrangements normally rely on third-party vendors to help them with plan-design elements and to process and administer claims. They too are dependent on third parties concerning the required analyses necessary to document the reason for any denial of reimbursement or payment for services with respect to mental health and substance abuse disabilities. Accordingly, NAHU feels that it would be extraordinarily helpful if the Departments were to take action to make the MHPEA disclosure processes simpler and more uniform for all stakeholders.

We truly appreciate the development of the consumer request template form released with FAQ 38. To make it even more useful, we suggest that its final release come with detailed information for employers and insurers as to how this form will be distributed to consumers. Additionally, we believe that the Departments should accompany the final release with an education push to employers and plan administrators so that they will know what to expect, including required timeframes and parameters for completion. The instructions indicate to consumers that an employer generally must respond within 30 days but, based on the plan type, that may not always be the case. Also, in NAHU's experience, most



individuals with group coverage do not understand what kind of plan their employer provides. If the consumer is enrolled in a small-group plan, their employer may not be subject to MHPEA, but that plan would likely provide parity of mental health and substance abuse treatment services through its coverage of essential health benefits. To help reduce consumer and employer confusion, we suggest that the introduction to this form explicitly cover the various types of health coverage, how consumers might determine what kind of coverage they have and the appropriate place to obtain information. The instructions briefly touch on this subject, but NAHU believes more clarity and detail is needed.

In addition to this model form for consumers to use to request NQTL information from a plan administrator, NAHU suggests that the Departments develop model response forms that plan administrators can use and adapt to their plans based on circumstances. Furthermore, guidance with specific examples of possible acceptable MHPEA methodologies for plans to review would be constructive.

Since most Americans receive their health insurance coverage through fully insured health insurance plans, NAHU believes that greater coordination by the Departments with state regulators who ensure the compliance of all fully insured policies with federal and state mental health parity requirements through market-conduct examinations and their policy filing and review processes would be very sound policy. Specifically, NAHU believes that making a compliance guide and checklist for plan administrators and regulators would be very helpful. Additionally, we urge you to consider providing sample materials and best practices for communications to both issuers and state regulators. Finally, NAHU feels that the Departments should devote greater resources to working with state regulators and their professional association, the National Association of Insurance Commissioners (NAIC), to ensure consistency in market-conduct examinations and policy-review processes relative to parity. Direct communication and working through the NAIC's collaborative and deliberate processes for model form and guidance development would engage every state and a wide range of other stakeholders, likely being beneficial for all involved.

In addition to working with issuers and state regulators, since approximately one-third of working Americans receive their health coverage through self-funded plans, NAHU believes that the Departments need to engage in a concerted education campaign designed to directly assist those operating self-funded plans. Providing clear and consistent educational materials to employers and their plan administrators through webinars, publications, checklists and sample communications about how to operate a fully compliant health plan with regard to both mental health and substance use disorder benefits and all other requirements is the best and most efficient way to ensure group benefit plan compliance. This strategy would help fully insured group benefit plans and self-funded plans alike. Reaching out not just to employers and health plans, but also to organizations such as NAHU that represent agents, brokers, general agents and consultants, and providing user-friendly materials that could be distributed and



communicated to members would also be a helpful and efficient way of reaching large numbers of health plan enrollees and plan administrators.

Thank you for the opportunity to provide input on the implementation of consumer protections related to the MHPEA. If you have any questions about our comments or need more information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, reading "Janet Stokes Trautwein". The signature is written in a cursive style with a large, stylized initial "J".

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters