



ONE FEDERAL STREET, BOSTON, MA 02110

MAIN: 617.338.6035

FAX: 617.451.5838

[www.communitycatalyst.org](http://www.communitycatalyst.org)

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*BY ELECTRONIC SUBMISSION*

Preston Rutledge, Assistant Secretary of Labor  
Employee Benefits Security Administration  
Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

RE: 21st Century Cures Act: Section 13002  
FAQs about Mental Health and Substance Use Disorder Parity Implementation,  
Disclosure Form, and Self-Compliance Tool

Dear Assistant Secretary Rutledge,

Thank you for the opportunity to submit comments in response to guidance issued by the DOL, HHS, and IRS on the Mental Health Parity and Addiction Equity Act of 2008.

Community Catalyst is a national non-profit advocacy organization that partners with national, state and local consumer organizations, policymakers, and foundations, providing leadership and support to change the health care system so it serves everyone – especially vulnerable members of society. Our substance use disorders project works to foster health and strengthen communities by ensuring all people have access to the integrated services – from prevention and treatment to community supports and housing – they need to address problematic use of drugs and alcohol and lead healthier lives.

We applaud the Departments for addressing many of the complex Parity Act questions in FAQ 39, including the detailed responses regarding specific non-quantitative treatment limitations. We are also very encouraged that the Self-Compliance Tool sets out a detailed framework for assessing compliance. We have outlined below the elements we support and recommendations for further strengthening parity enforcement.

### **Proposed FAQ 39**

#### *Consumer Education*

Nearly ten years after the enactment of the Parity Act, the level of awareness about the consumer's right to equitable coverage is woefully inadequate. While regulators in some states are doing more to educate consumers about the law, we urge the Departments to foster comprehensive state-based parity education initiatives in collaboration with state regulators and stakeholders.

For example, individual issuers should be required to inform patients of their parity rights and provide clear instructions on what to do when they suspect a parity violation. In addition, state-

based public education campaigns are needed for consumers and providers that should include easily accessible information on their rights and specific examples of potential violations.

### *Non-Quantitative Treatment Limitations*

We appreciate that the Departments have addressed several key NQTL issues in the FAQs, including standards for setting reimbursement rates, network adequacy metrics, and the exclusion of a facility type, such as residential settings for mental health conditions.

We are particularly supportive of FAQ 8, which reinforces that separate network adequacy standards violate MHPAEA. This is particularly important because carriers have taken the position that network adequacy is not an NQTL. FAQ 8 affirms the existing standards and provides useful guidance as states increasingly review their network adequacy standards and consider the adoption of quantitative metrics.

We also commend the Departments for providing examples in FAQs 2, 3, and 6 that highlight the requirement that NQTLs must comply with regulatory standards “in operation” as well as “as written”. We believe that many plans comply with the regulations in plan documents but commit parity violations in practice, particularly in applying NQTL. The Self-Compliance Tool will help reveal data on denial and appeal overturn rates, but plans would benefit from additional support in conducting the “in operation” analyses.

**We urge the Departments to issue additional FAQs that identify quantitative metrics that support the “in operation” comparative analyses of NQTL.** Additional data analysis may include: prior authorization and continuing care practices, reimbursement rates, network adequacy (e.g. level of out-of-network use), and the application of medical necessity criteria that result in determinations that authorize a lower level of care than the recommended level of care. We recommend highlighting the Texas Insurance Department’s [data collection requirements](#) as a model in future FAQs.

### **Self-Compliance Tool**

We believe an effective enforcement strategy is to require 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 review and, as appropriate, for 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.**

We enthusiastically support the Self-Compliance Tool guidance that sets out the plan and issuer obligation to “be prepared to provide” NQTL compliance information. To ensure that the DOL’s guidance leads to changes in issuer practices, we support the imposition of civil penalties to incentivize plans and issuers to comply with disclosure requirements and to generate funds that can be devoted to additional DOL and HHS oversight investigations and consumer education efforts. **We urge the DOL to renew its request for authority to levy civil penalties for**

**purposes of addressing egregious patterns of non-compliance with disclosure requirements and other MHPAEA standards.**

### **Model Disclosure Form**

We appreciate the proposed revisions to the model disclosure form, which will identify treatment authorization requirements, among other plan limitations, and provide examples of the types of evidentiary standards that a plan must disclose regarding the development and application of NQTLs. We also support the proposed revisions to the form's background description, which create a more consumer-friendly form and connect the consumer's insurance experiences with MHPAEA protections.

We support the revised form developed and submitted by the Coalition for Whole Health, of which Community Catalyst is a member. The revised form, which will reinforce the NQTL and disclosure requirements set out in the Self-Compliance Tool, includes the following changes:

- Revises the background description to further improve consumer understanding of their rights under MHPAEA.
- References "service and medication exclusions" as an NQTL example. This is consistent with the Self-Compliance Tool (page 5), which illustrates a MHPAEA violation for failure to cover methadone for opioid addiction.
- Identifies the plan's summary of its comparative analysis and data analysis, including denial and appeal overturn rates, as documents that must be disclosed.
- References disclosure of third-party vendor materials that are relevant to benefit coverage and limitations.

**We urge the Departments to develop a separate form that mental health and substance use treatment providers could use to request documentation of parity compliance with regard to network adequacy, network admission standards, network credentialing and contracting, and reimbursement rates.** Members receive no information about these plan design features, and, in many instances, will not know that these design features are limiting access to care. To increase the likelihood that violations related to these NQTLs are identified, providers should be encouraged to make a request for documents on behalf of their patients and independently, under state and federal standards that regulate plan networks.

Thank you for your continued work to enforce the MHPAEA. If we can provide additional information, please contact Alice Dembner at Community Catalyst, at [adembner@communitycatalyst.org](mailto:adembner@communitycatalyst.org) or 617-275-2880.

Sincerely,



Alice Dembner

Program Director, Substance Use Disorders and Justice-Involved Populations