From:	Elliot Kennedy
To:	E-OHPSCA-FAQ.ebsa
Subject:	Follow up comments to MHPAEA Final Rules
Date:	Friday, December 20, 2013 10:30:49 AM
Attachments:	The Trevor Project - Comments - MHPAEA - 1-14 - FINAL.pdf

Hello,

Please the attached follow-up comments to the MHPAEA final rules from The Trevor Project.

Thank you,
Elliot

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The Trevor Project is the leading national organization providing crisis intervention and suicide prevention services to LGBTQ youth.

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January 8, 2014

Daniel Maguire
Director, OHPSCA
Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

Dear Director Maguire:

The Trevor Project is pleased to have the opportunity to comment on the Final Rules implementing the Mental Health Parity and Addiction Equity Act (MHPAEA). We applaud the release of this important rule, and look forward to working with the Departments of Labor, Health and Human Services, and the Treasury ("the Departments"), to ensure that the promise of parity within these rules can be realized across the country.

Our follow up comments to this final rule focus on requests for further clarification about the way in which certain requirements pertain to lesbian, gay, bisexual, transgender, and questioning (LGBTQ) consumers. We greatly appreciate the Departments' ongoing commitments to ensuring equal access to services for LGBTQ consumers, and encourage you to take all possible measures to ensure culturally competent and non-discriminatory mental health services are available to this population.

The Trevor Project is the leading nonprofit, national organization providing crisis intervention and suicide prevention services to LGBTQ young people through age 24. The Trevor Project saves young lives through its accredited free and confidential lifeline, secure instant messaging services which provide live help and intervention, a social networking community for LGBTQ youth, in-school workshops, educational materials, online resources, and advocacy. The Trevor Project is a leader and innovator in suicide prevention.

Within the sphere of health care, The Trevor Project focuses on ensuring culturally competent and nondiscriminatory access to health care and mental health care for LGBTQ youth. Sources such as the Institute of Medicine,[i] Healthy People 2020,[ii] the Substance Abuse and Mental Health Services Administration,[iii] and the National Healthcare Disparities Report[iv] indicate that LGBTQ individuals and their families are disproportionately likely to live in poverty, to be uninsured, and to face substantial barriers to quality health care, including refusals of care, substandard care, inequitable policies and practices, and exclusion from health outreach or education efforts.[v]

With regard to mental health, suicidality is an especially critical issue for LGBTQ youth populations. Research has shown that LGB youth are 4 times more likely to attempt suicide as their straight peers, and questioning youth are 3 times more likely.[vi] Nearly half

of young transgender people have seriously thought about taking their lives and one quarter report having made a suicide attempt.[vii] Young people who experience family rejection based on their sexual orientations face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection.[viii]

As a result, the LGBTQ population experiences significant disparities in health indicators such as smoking, obesity, experiences of abuse and violence, mental and behavioral health concerns, and HIV infection. Although data on the prevalence of substance use disorders within the LGBTQ community is not yet robust, SAMHSA has reported that between 20 and 30 percent of LGBTQ people may abuse substances,[ix] as compared to 8.9 percent of the general population.[x] Surveys of LGB youth suggest that they are more likely to smoke cigarettes, drink alcohol, smoke marijuana, use cocaine, use inhalants, use ecstasy, use heroin, and use methamphetamines than their heterosexual peers.[xi] These inequities may be even more pronounced for LGBTQ people who are also members of other groups that are disadvantaged on the basis of factors such as race, ethnicity, geography, or disability.

Strong, clear, and enforceable non-discrimination protections are required to effectively reduce these disparities. We encourage the Departments to clarify the relationship between MHPAEA and Section 1557 of the Affordable Care Act (ACA). Specifically, that Section 1557 protections against sex discrimination will require plan providers to address discriminatory exclusions, outdated medical necessity determinations, and lack of provider cultural competency in the mental health context as well as the medical/surgical context. **This clarification is necessary for plan providers to understand the extent of their obligations under the intersection of these new laws and regulations. It is also important for consumers to have accurate information about the breadth of their rights against discrimination.**

Section 1557 of the Affordable Care Act prohibits discrimination based on race, color, national origin, sex, age, or disability in all health programs or activities that receive any Federal financial assistance. The prohibition of discrimination on the basis of sex includes protection against discrimination on the basis of gender identity and for failure to conform to sex-based stereotypes.[xii] In conjunction with general provisions in the ACA, Section 1557 extends a wide net of protections across a range of services (including those offered in private insurance plans), including among others: benefits and benefit design, a prohibition on pre-existing condition exclusions, access to services and providers, and medical necessity determinations.

As the Departments noted in the final regulation, MHPAEA does not require plan providers to offer coverage for specific conditions. However, plan providers must comply with any relevant non-discrimination provisions as well as with Essential Health Benefits (EHBs) requirements and applicable state law in order to be compliant with MHPAEA. In effect, plan providers have new obligations under the confluence of these laws—particularly with regard to protections against sex-based discrimination—that may be overlooked without further guidance. Additionally, consumers may be unaware that they have protection against discrimination in a range of circumstances, as well as a right to mental health care coverage; however, the landscape of enforcing those rights, being divided between several different federal laws and regulations, is significantly challenging for a layperson to navigate.

The burden of performing this complicated legal analysis is unfair for both providers seeking to avoid liability, and for consumers seeking to understand the protections that are now offered to them under these new laws and regulations.

For LGBTQ consumers in the context of mental health care and MHPAEA, Section 1557 and the ACA as a whole have established a legal bar to many pervasive discriminatory practices currently in place. However, plan providers are unlikely to fulfill their legal obligation to end these practices without federal support. We encourage the Departments to provider further guidance putting plan providers on notice of these new nondiscrimination requirements, particularly with regard to the unique mental health needs facing many LGBTQ people.

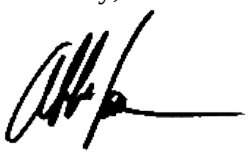
We anticipate an ongoing need in the wake of these regulations for technical assistance in interpreting plan provider obligations. In the course of meeting this need, the Departments should develop user-friendly resources explaining the rights afforded not just through MHPAEA, but also through the ACA, Section 1557, and other non-discrimination laws. Consumers, particularly those whose rights and interests may not be protected at the state level (such as LGBTQ consumers in many states), should be able to access comprehensive information outlining each of the avenues through which they can protect their right to receive culturally competent and non-discriminatory health and mental health care.

We also encourage a revised understanding of access to care that results in *meaningful* access to care for marginalized populations. As with consumers whose experiences receiving care are limited due to language barriers, LGBTQ consumers of health and mental health care do not receive adequate care if their providers are not culturally competent and cannot address LGBTQ-specific needs. To an LGBTQ consumer who cannot be appropriately treated because no provider in their network has the capability to treat their health and mental health needs according to internationally recognized standards, "network adequacy" is a concept without substance.

CONCLUSION

The Trevor Project appreciates this opportunity to offer follow up comments to the MHPAEA final rule. If you should have any questions regarding these comments, please contact myself or Elliot Kennedy, Government Affairs Counsel, at 202-380-1181 or by email at Elliot.Kennedy@thetrevorproject.org.

Sincerely,



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[i] Institute of Medicine. 2011. *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*. Available from http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx

[ii] Department of Health and Human Services. 2010. "Lesbian, Gay, Bisexual, and Transgender Health." Available from http://www.healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicid=25

[iii] Substance Abuse and Mental Health Services Administration. 2012. "Top Health Issues for LGBTQ Populations." Available from http://store.samhsa.gov/product/Top-Health-Issues-for-LGBTQ-Populations/SMA12-4684

[iv] Agency for Healthcare Research and Quality. 2012. *National Healthcare Disparities Report.* Available from http://www.ahrq.gov/qual/nhdr11/nhdr11.pdf

[v] The Joint Commission. 2011. "Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for the LGBT Community: A Field Guide." Available from http://www.jointcommission.org/assets/1/18/LGBTFieldGuide.pdf

[vi] Kann, L, et al. 2011. "Sexual identity, sex of sexual contacts, and health-risk behaviors among students in grades 9-12 – Youth Risk Behavior Surveillance, selected sites, United States, 2001-2009." MMWR 60(SS07): 1-133. Available from http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6007a1.htm

[vii] Arnold H. Grossman & Anthony R. D'Augelli, *Transgender Youth and Life-Threatening Behaviors*, 37(5) SUICIDE LIFE THREAT BEHAV. 527 (2007).

[viii] Caitlyn Ryan et al, "Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults," 123 PEDIATRICS 346 (2009). Available from http://pediatrics.aappublications.org/content/123/1/346.full.pdf+html

[ix] Office of Applied Studies (2010). OAS Data Spotlight, National Survey of Substance Abuse Treatment Services: *Substance Abuse Treatment Programs for Gays and Lesbians*. Available from http://www.samhsa.gov/data/spotlight/Spotlight004GayLesbians.pdf.

[x] Substance Abuse and Mental Health Services Administration, Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-41, HHS Publication No. (SMA) 11-4658. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2011.

[xi] Kann, *supra* n. vi.

[xii] Dep't of Health & Human Servs., Request for Information Regarding Nondiscrimination in Certain Health Programs or Activities, 78 Fed. Reg. 46,558, 46,559 (proposed Aug. 1, 2013) ("Sex discrimination (including discrimination on the basis of gender identity, sex stereotyping, or pregnancy)").