From:	Patten, Jarod
To:	E-OHPSCA-FAQ.ebsa
Cc:	Vergara, Noreen; Emerick, John; Crain, Roger
Subject:	Comment on MHPAEA
Date:	Wednesday, January 08, 2014 6:18:56 PM
Attachments:	MHPAEA Disclosure Comment Final.docx MHPAEA Disclosure Comment Final.pdf image001.png image002.png image003.png

Hello,

New Directions Behavioral Health, LLC is submitting the Comment attached to this email to the Departments for consideration. The Comment is in response to Q9 in ACA Implementation FAQs-Set 17 regarding the MHPAEA Final Rule's transparency and disclosure requirements. The Comment is attached in both MS Word and PDF format.

If you have any questions or concerns please contact Jarod Patten via telephone at 816-994-1449, or via email at jpatten@NDBH.com.

We sincerely appreciate the time and consideration you will afford our submission.

Thank You,

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To: Department of Labor; Department of the Treasury; Health and Human Services ("Departments")

From: **New Directions Behavioral Health, LLC**

Re: Comment on the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") Final Rule

Request for Comment:

"The Departments request comments on what additional steps, consistent with the statute, should be taken to ensure compliance with MHPAEA through health plan transparency, including what other disclosure requirements would provide more transparency to participants, beneficiaries, enrollees, and providers, especially with respect to individual market insurance, non-Federal governmental plans, and church plans."

Comment:

New Directions has eagerly awaited the MHPAEA Final Rule. We agree with the Final Rule's stance that plan participants and members have a fundamental right to be involved in, and understand determinations made about their health care. We also believe that those same members have a right to the efficient administration of their health care. We are not convinced that a member's rights to transparency and efficient healthcare administration can be mutually achieved without further guidance from the Departments. We respectfully submit the following considerations regarding the transparency and disclosure requirements of the MHPAEA:

- **We ask that the Departments supply guidance on what specific documentation constitutes an ERISA section 104, "Instrument under which the plan is established or operated."**

The Final Rule states that information on medical necessity criteria for both Medical/Surgical benefits and Mental Health/Substance Use Disorder (MH/SUD) benefits, as well as processes, strategies, evidentiary standards, and other factors used to apply a NQTL are considered an "instrument."

The ambiguity in the terms "processes," "factors," and "strategies" will result in Federal Courts creating definitions and standards from the bench. Pursuant to PHS Act section 2723(a), States have primary enforcement authority over health insurance issuers regarding the provisions of part A of title XXVII of the PHS Act, including MHPAEA. MHPAEA's state level enforcement mechanism will lead states to enforce requirements promulgated by its respective Federal Court of Appeals. The result will be substantially different disclosure requirements in different Federal Circuits.

Differing disclosure requirements will create heightened administrative, compliance, and quality management/improvement burdens for all MBHOs and plans servicing multiple jurisdictions. These burdens translate directly to increased administrative costs, and additional administrative costs add to benefit costs. Heightened benefit costs are contrary to the goals of health reform, and makes it difficult for plans (especially small plans and benefit administrators) to meet their medical loss ratio (MLR) requirements.

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- **We believe in the creation of a federal standard that requires uniform application and enforcement across all states.**

Federally dictated uniformity will alleviate administrative and operational roadblocks resulting from plans forced to interpret and implement requirements promulgated in court rulings. Uniformity will create a national bright line standard, thereby eliminating the financial, time, and energy expenditure from multi-state litigation and state regulatory audits.

A national bright line standard would allow members, MBHOs, and/or plans to know what disclosure requirements pertain from the outset of treatment. Member transparency and awareness will increase by creating an expectation of the information to which a member is entitled, and would make a potential appellant aware of the reasons they could challenge an adverse determination based on MHPAEA. The member's added ability to understand the medical determination process and how a member is able to affect their own health care are both assumed goals of the Final Rule's transparency requirements.

- **We believe that an exception should be implemented that will allow MBHOs to request written Medical/Surgical NQTL processes.**

Currently the Final Rule allows potential participants, participants, and providers to request written Medical/Surgical NQTL processes, yet an MBHO is not allowed to do so.

Under MHPAEA, a MBHO must test its Mental Health/ Substance Use benefits for NQTL compliance. This requirement is difficult, if not impossible, to comply with due to the fact that MBHOs are often wholly unaware of the Medical/Surgical NQTLs to which it must test against. MBHOs have no avenue to easily obtain that information due to contractual arrangements and limits on access to health plan proprietary information. Allowing an MBHO to request this information would help ensure that plan participants are receiving the MH/SUD benefits to which they are entitled.

- **We suggest creating a disclosure "safe harbor" in national accreditation bodies such as URAC and NCQA.**

National accreditation bodies such as URAC and NCQA provide an objective comprehensive review of policies, processes, and procedures to ensure compliance with regulatory standards. Accreditation through these bodies ensures that an organization has policies and procedures in place that rise to a level accepted by the American medical professions as well as by regulatory agencies.

We believe the Departments would effectively accomplish the goal of MHPAEA, and would help to minimize the ambiguity of ERISA section 104 by allowing national accreditation entities to affirm MHPAEA disclosure protocols. This would create an ongoing regulatory check that Final Rule disclosure requirements are being met, and it would allow some flexibility of the accreditation auditors to recognize and properly address differences amongst plans and MBHOs.

The "safe harbor" could be created by exempting URAC and NCQA accredited plans or MBHOs from litigation or other regulatory sanctions regarding MHPAEA associated disclosure requirements. If a plan's disclosure procedures are deemed adequate by a national accreditation body, and the plan achieves full accreditation, we believe they should be exempted from negative regulatory outcomes.

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