ABHW
Association for Behavioral Health and Wellness
Advancing benefits and services in mental health, substance use and behavior change.

January 16, 2014

The Honorable Thomas Perez
Secretary of the U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Secretary:

The Association for Behavioral Health and Wellness (ABHW) is writing to comment on health plan transparency and disclosure requirements related to the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). These comments are in response to the MHPAEA final rule and FAQ 9 issued on November 8, 2013 requesting comments on ensuring compliance with MHPAEA through health plan transparency including disclosure requirements.

ABHW is an association of the nation's leading behavioral health and wellness companies. These companies provide an array of services related to mental health, substance use, employee assistance, disease management, and other health and wellness programs to approximately 125 million people in both the public and private sectors. ABHW and its member companies use their behavioral health expertise to improve health care outcomes for individuals and families across the health care spectrum. In particular, ABHW members are involved in management of behavioral health benefits under group health plans as managed behavioral health organizations (MBHOs).

As you may know, ABHW has supported mental health and addiction parity for over fifteen years. We were an original member of the Coalition for Fairness in Mental Illness Coverage ("Fairness Coalition"), a coalition developed to win equitable coverage of mental health and addiction treatment through the enactment of federal mental health parity legislation. At the height of the parity debate, ABHW was the Chair of the Fairness Coalition, was closely involved in the writing of the Senate legislation, and was present during the negotiations of the final bill that became public law. Our extensive involvement in the writing and negotiating of the legislation helps provide an understanding of the meaning and intent of the law.

We understand the MHPAEA requirements related to disclosure of medical necessity criteria and communication of the reason for any denial of coverage or reimbursement under the plan. We further understand the final rule contained additional language about disclosure that called to our attention two existing disclosure provisions.

ABHW believes that the application of these requirements in MHPAEA is an expansion of the law, and we respectfully request that the scope of these provisions be appropriately limited. Also, as you move forward with the application of these provisions to MHPAEA, we ask that you make clear which health plans are subject to these requirements.

ERISA section 104 and the claims and appeals regulations limit disclosure to plan participants, claimants, or their authorized representative. We assume that disclosure of the information required under these provisions will continue to be limited to only these individuals. Much of the information referred to in these provisions is complex, proprietary (especially in the area of nonquantitative treatment limits), and voluminous; and disclosure of this information can be an enormous administrative burden when our members have multiple plan partners. Therefore, the document request should be targeted to the relevant information related to the individual's claim.

As we have requested previously, we again encourage the Departments to consider partnering with accreditation entities such as the National Committee on Quality Assurance (NCQA) or URAC to develop standards that, if met, would deem parity compliance with the disclosure provisions in the MHPAEA final rule. If such standards existed and were recognized by the Departments, there would be a benefit to both consumers and health plans. Individuals could, for purposes of determining parity compliance with the disclosure requirements, simply check with the accrediting bodies to ascertain whether or not their health plan was in compliance instead of requesting a multitude of complex technical documents and attempting to make the compliance determination themselves. This would ease the burden for health plans as well because the reproduction and disclosure of information would only occur during the accreditation process. In addition, such a process would protect the proprietary nature of these documents.

Finally, while we understand the disclosure provisions referenced in the final rule were in existence prior to the issuance of the final rule, the application to the provisions of MHPAEA are new and we therefore acknowledge that the implementation of these provisions, as it relates to MHPAEA, will take effect as noted in the final rule, for plan years beginning on, or after, July 1, 2014.

Thank you for your consideration of the issues raised in our letter. If you have any questions or would like to discuss any of these issues with ABHW, please contact Pamela Greenberg, MPP, President and CEO, at (202) 449-7660 or greenberg@abhw.org.

Sincerely,

Pamela Greenberg

Pamela Greenberg, MPP
President and CEO

Cc:
Amy Turner