



July 24, 2020

Jeanne Klinefelter Wilson
Acting Assistant Secretary
Department of Labor
Employee Benefits Security Administration
200 Constitution Ave NW
Washington, DC 20210

RE: 2020 Draft Mental Health Parity and Addiction Equity Act Self-Compliance Tool

Delivered Electronically via e-ohpsca-MHPAEA-SCT-2020@dol.gov

Dear Ms. Wilson:

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. We are pleased to have the opportunity to provide comments on your 2020 draft of the Mental Health Parity and Addiction Equity Act self-compliance tool.

NAHU members help employers of all sizes offer and manage both fully insured and self-insured group health insurance arrangements. Providing employees and their dependents access to mental health and substance-abuse services is an important part of group health benefit design. In addition, NAHU members routinely advise their employer clients about their group health plan compliance obligations as per state and federal laws and regulatory requirements.

Ensuring compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and its related rules is one of the most difficult areas for employer group plans to navigate. Smaller plans with fewer compliance resources particularly struggle with the complexity of the MHPAEA rules, but the complexity concerns in this area extend to plans of all sizes. As such, NAHU truly appreciates the revisions made to the self-compliance check tool, especially all of the new examples and clarifications that appear throughout. We also are grateful for the additions of the internal compliance plan best practices section and the warning signs for plans that may signal MHPAEA violations. To help provide the Employee Benefits Security Administration (EBSA) with constructive advice about the new revisions, NAHU asked for suggestions from both the members of our Mental Health Task Force and our standing Group Health Benefits Compliance Committee.



General Comments About the Updated Compliance Tool

NAHU members strongly support the focus the updated compliance tool places on helping employers understand and build compliance sufficiency. It will be very helpful to our members as they work to educate their group health plan sponsor clients on the intricacies of MHPAEA compliance. However, as our members reviewed the revisions to the tool, there was a distinct common thread to their comments. The compliance tool, in its current form, is targeted at two very distinct audiences: health insurance issuers of fully insured group coverage and the sponsors of self-funded group health plan arrangements. While these two groups do have much in common, they also have key differences. In particular, the level of expertise and resources available to health insurance issuers is far more extensive than what is available to the average employer sponsor of a self-funded group health plan. To make the tool more accessible to these employers, the language and directions need simplification. In addition, while the majority of the content is relevant for both groups, occasionally the information is very specifically directed at one entity or another. For clarity, and also greater use, particularly by self-funded employer plans, NAHU suggests separating the tool into two documents: one explicitly for employers and one directed at health insurance issuers. We encourage a reduction in clinical and complex language, and encourage use of layman's language in the employer's version.

Another recurring general comment from our members concerned the organization of the tool. In each section, the central compliance question appears first followed by the explanatory details that assist the user in answering the question. Particularly for employer group plan sponsors, it would be helpful if the structure was reversed. If users were prompted to answer a series of introductory questions, or complete a series of relevant check-boxes that led them to their correct answer to the central question employer group plan sponsors would be more apt to use the tool. NAHU members also believe this type of structural alteration would yield more accurate responses.

Finally, as a general suggestion, NAHU would like to encourage the Departments to prioritize working 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. Since most Americans receive their health insurance coverage through fully insured health insurance plans, NAHU believes that greater coordination with state regulators on MHPAEA would be a very sound policy. Specifically, NAHU believes that greater public collaboration with the National Association of Insurance Commissioners is warranted. The NAIC is currently crafting its own MHPAEA compliance tool to ensure consistency in market-conduct examinations and policy-review processes. Direct EBSA participation in the ongoing NAIC's collaborative and deliberate process for its MHPAEA would engage every state and a wide range of other stakeholders, likely being beneficial for all involved.

Definitions

The new addition to the definitions section of the compliance tool is a note about mental health conditions. In the note, there is a reference to non-quantitative treatment limits (NQTLs), yet that term is



not defined in the overall definitions section. Instead it is folded into a general definition of treatment limits. Understanding what are quantitative and non-quantitative limits and their applicability to the MHPAEA requirements is one of the most significant aspects of plan compliance. However, NAHU members observe daily that understanding and ensuring appropriate treatment of NQTLs as they relate to MHPAEA rules is very difficult for most employers and their plan administrators. To increase understanding, we suggest separation of these terms into two specific definitions with detailed examples.

Examples

Throughout the revised document, the EBSA has revised and added relevant examples. The addition of this information is most welcome and will enhance compliance. However, over the past few months, as the world battles the COVID-19 pandemic, healthcare delivery has changed significantly. Telemedicine, particularly regarding mental health care, is increasingly mainstream. Employees are accessing these benefits both through their traditional medical coverage and through employee assistance programs (EAPs). Accordingly, NAHU members request additional examples that refer to telemedicine and EAPs, particularly when it comes to qualified-provider standards.

Section F - Non-Quantitative Treatment Limits

In Section F of the compliance tool, the new draft includes additional information on pages 22-23 about provider reimbursement rates used by a plan. Included is a compliance warning regarding reimbursement rates established via a comparison to Medicare. For assistance comparing a plan or coverage's reimbursement schedule to Medicare, the document contains a Medicare rate comparison chart in Appendix II. For ease of use, NAHU members suggest the relocation of this chart to the end of the NQTL section.

On page 26 of this section, the compliance tips box includes an addition. It instructs issuers and plans: "If the plan or issuer relies on any experts, the plan or issuer should describe the experts' qualifications and whether the expert evaluations in setting recommendations for both MH/SUD and medical/surgical conditions are comparable." NAHU members seek clarification as to how and where group plan sponsors should include such documentation. In the group's plan documents? In a different location?

On page 28, there is an addition that an example of methods/analyses substantiation might be "Summaries of research (e.g., clinical articles) considered in designing NQTLs for both MH/SUD and medical/surgical benefits, demonstrating that the research was similarly utilized for both MH/SUD and medical/surgical benefits." NAHU members suggest a higher standard for "summaries of research (e.g., clinical articles)" to ensure the use of legitimate and evidence-based research. Given the volume of illegitimate information on the Internet, we would suggest the specification of the use of multiple, peer-reviewed and evidence-based published medical journal articles instead.

Section H - Establishing an Internal MHPAEA Compliance Plan



Pages 34 and 35 of the new tool discuss the establishment of an internal MHPAEA compliance plan. Although not required by MHPAEA, it is suggested for group plans and issuers. The pages lay out a few "characteristics" of what the plan should entail but nowhere do they mention a "how to" or procedures for drawing up such a plan. NAHU members suggest the addition of a brief instructional paragraph or two as to "who should" or "how to" put together such a plan. In addition, since this exercise is voluntary, our association suggests the addition of language that outlines the advantages for issuers and employer plan sponsors to complete the assessment.

On page 35, the tool references the work by the NAIC to a Data Collection Tool, which includes a Non-Quantitative Treatment Limitations Chart, to assist issuers in listing and comparing MH/SUD NQTLs to medical/surgical NQTLs. The work to create this tool is still ongoing, and the link referenced in the document is inaccurate. NAHU suggests an update to reflect current information.

Beyond these substantive suggestions regarding the compliance plan language, NAHU members note that both fully insured group health plan issuers and the employer-level sponsors of the group health plan have MHPAEA compliance liability. However, employers that purchase fully insured group coverage and offer it to their employees have little to no input in their plan's benefit design. Instead, the plan-design elements that would ensure MHPAEA are fully within the domain of the health insurance issuer. It is the feedback of our members that it is difficult to obtain treatment criteria from the health insurance issuer or subcontractor. To give employer-sponsored plans a degree of comfort with regard to the MHPAEA compliance status of fully insured health plan products, we suggest the inclusion of a requirement that health insurance issuers that develop and complete compliance audits of each product provide notification of such and require disclosure of treatment criteria when requested by group purchasers. Perhaps carriers could offer employers assurance that their plan offerings meet MHPAEA standards similarly to the way that they confirm that a plan offering meets the Affordability Care Act's "minimum value" standard or that a plan offers "creditable coverage" when compared to Medicare's prescription drug benefits.

Appendix I – Additional Illustrations

NAHU members appreciate all of the new specific examples of potential situations where a plan may have a MHPAEA violation. We would like to ask for consideration of the inclusion of two additional scenarios.

We would appreciate it if your agency addressed the applicability of readmission rates. Inpatient medical and surgical inpatient and outpatient facilities are rated on readmission rates. We wonder if equal treatment should apply to mental-health and substance-abuse facilities.

Another common issue we would like to see included concerns holding plans to access-to-care standards that are prevalent in medical and surgical benefits. We believe that wait times that exist in mental health



and substance use disorder benefits do not also exist in medical and surgical coverage. Does this equate to a lack of parity and signal the inadvertent, or intentional, presence of NQTLs?

Thank you for the opportunity to provide comments about the 2020 Draft Mental Health Parity and Addiction Equity Act self-compliance tool. If you have any questions about our suggestions or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

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

Janet Stokes Trautwein
Chief Executive Officer
National Association of Health Underwriters