



AMERICAN BENEFITS COUNCIL

June 22, 2018

Filed electronically via OIRA_submission@omb.eop.gov

Office of Information and Regulatory Affairs,
Attn: OMB Desk Officer for DOL-EBSA
Office of Management and Budget
Room 10235
725 17th Street, N.W.
Washington, DC 20503
Attn: OMB Control Number 1210-0138; Notices under the Mental Health Parity and
Addiction Equity Act of 2008

**RE: Comments on Mental Health Parity and Addiction Equity Act Draft Model
Disclosure Request Form**

Dear Sir or Madam,

I write on behalf of the American Benefits Council (“Council”) to provide comment in connection with the Mental Health Parity and Addiction Equity Act (“MHPAEA”) Draft Model Disclosure Request Form, published on April 23, 2018 by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments).

The Council is a national nonprofit organization dedicated to protecting and fostering privately sponsored employee benefit plans. The Council’s approximately 425 members are primarily large multistate U.S. employers that provide employee benefits to active and retired workers and their families. The Council’s membership also includes organizations that provide employee benefit services to employers of all sizes. Collectively, the Council’s members either directly sponsor or provide services to retirement and health plans covering virtually all Americans who participate in employer-sponsored benefit programs.

Our members strongly believe in the value of mental health and substance use disorder (“MH/SUD”) benefits for employees. As key stakeholders directly impacted by mental health parity requirements, we are committed to working with the Departments in developing reasonable guidance for the provision of MH/SUD benefits provided by group health plans.

In 2017, the Departments solicited comments on the draft model form that participants, enrollees, or their authorized representatives could -- but would not be required to -- use to request information from their health plan or issuer regarding nonquantitative treatment limitations (“NQTLs”) that may affect their MH/SUD benefits, or to obtain documentation after an adverse benefit determination involving MH/SUD benefits to support an appeal. The Departments have submitted the revised model form to the Office of Management and Budget (“OMB”) and indicated that OMB is requesting comments on the revised form, including ways to reduce burden on individuals, families, health care providers, States, group health plans, health insurance issuers and other stakeholders.

The Council previously commented on the draft model form and appreciates the opportunity to provide OMB with comments with respect to the revised model form, including ways to reduce administrative burden on group health plans.

ISSUANCE AND CONTENT OF MODEL FORM

A model form that could be used by participants to request information with respect to various NQTLs could be helpful as long as it is voluntary for *both* the plan to accept and for the participant to use and narrowly targeted to specific NQTL disclosure requirements. Group health plans are currently subject to MHPAEA’s disclosure requirements related to a plan’s criteria for medical necessity determinations with respect to MH/SUD benefits and the reason for any denial of reimbursement or payment for services with respect to MH/SUD benefits. Plans should be permitted the flexibility to respond to such disclosure requests in ways they have identified to be most helpful to participants and beneficiaries, which may or may not include the use of a model disclosure form.

- **Voluntary:** While a model form could be helpful, it is important that it not be imposed on plans as a requirement for individuals to request information with respect to NQTLs. Employers must maintain the flexibility to accept requests for information with respect to NQTLs in certain formats, and individuals should have flexibility in submitting such requests, consistent with the requirements under the plan.

We request that the Departments clarify in the Background section of the draft model form that the form is voluntary for *both* the plan and the participant, for example, it would be permissible for the plan to require a different process for the request for information and it would be permissible for a participant to request the information by utilizing another format, consistent with the requirements under the plan. As the draft model form is currently drafted, it could be interpreted by participants that their plan must accept this form as a request for documents under MHPAEA. For example, on page i. of the draft model form, it states that “[t]his form *will* help you request information from your plan about treatment limits on mental health and substance use disorder

benefits”, which could be misleading if the plan is not required to accept this form.

- **Targeted to specific NQTL disclosures:** Any model form that could be used by participants to request information with respect to NQTLs should be targeted to specific NQTLs, rather than framed as a general request for plan information related to MH/SUD benefits, which is how the form is currently drafted. Group health plans are currently subject to many different disclosure requirements, and any disclosure requirement through the use of this form should not be duplicative of existing disclosure obligations. For example, it would be appropriate for a group health plan to respond to a request for general information about a plan’s MH/SUD benefits by providing an ERISA-required summary plan description (“SPD”) that provides detailed information about a plan’s benefits for both MH/SUD benefits and medical and surgical (“M/S”) benefits.

SPECIFIC COMMENTS ON DRAFT MODEL FORM

- **Background:** The “Background” section of the draft model form is drafted in an overly broad manner by stating that the form may be used to request general information about treatment limitations. Individuals in group health plans and other types of coverage already have access to general information about their plan, including coverage limitations, in other mandated plan disclosures, such as SPDs and Summary of Benefits and Coverage (“SBC”). The Council believes that making this model form available for requesting general information about the plan would be duplicative of information that is already required to be provided to individuals pursuant to other existing mandated disclosure requirements.

In the second paragraph of the “Background” section, we are concerned that the description of the parity requirement could be confusing to individuals. Determining whether benefits are in parity is not a simple “cross walk” of the same medical management standards or financial requirements. The parity analysis is highly complex. Because of this, parity can be confusing for consumers and any model form should be clear as to how parity is defined. This potential for misunderstanding parity is of particular concern with the NQTL requirement. We recommend that the model form include a statement, in plain language, providing that the parity analysis, including the NQTL analysis, is not a one-to-one comparison, but rather that the rule requires plans and issuers to adhere to standards for testing financial requirements, quantitative treatment limitations and NQTLs. The model form should specifically note that regulations do not require plans and issuers to use the same NQTLs for both MH/SUD and M/S benefits, and that disparate results alone do not mean that the NQTLs in use do not comply with the MHPAEA.

- **Instructions:** Similar to our comment in the “Background” section, permitting this model form to be used for requesting general information about coverage

limitations is duplicative, given that such information is already required to be provided to individuals through other required disclosures, such as an SPD and SBC. If the Departments finalize a model form, the Council requests that it be narrowly targeted to request information for NQTLs rather than a broad request for general information about the plan. If the Departments do not agree with this comment, the Council requests that the Departments clarify that it would be permissible for a plan to direct the individual to the specific page number(s) in the SPD that has already been provided to the participant.

- **Disclosure Request, Authorized Representative:** The revised draft model disclosure request permits the form to be used by a representative who is “authorized” to request information for the individual enrolled in the plan pursuant to “an authorization signed by the enrollee” and attached to the request.

The Department of Labor claims regulation allows plans the discretion to establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant. We request that plans be permitted to apply the reasonable procedures adopted under the plan for an authorized representative’s ability to act on behalf of an individual enrolled in the plan, including for purposes of disclosure requests.

We also request that the Departments clarify in this section of the model that the form is voluntary for *both* the plan and the participant, and that it would be permissible for the plan to require a different process for the request for information and for determining whether an individual has been authorized to act on behalf of an individual enrolled in the plan.

- **Disclosure Request, General Information Request:** The model form allows individuals to request “information concerning the plan’s treatment limitations related to coverage for: Mental health and substance use disorder benefits, generally” and/or the “following specific treatment for my condition or disorder.” The Council recommends that the information request use the MHPAEA NQTL terminology, using plain language, rather than a broad reference to limitations under the plan. This will allow the request for information to be focused on the actual plan limitation for which additional information is being requested rather than a broad-based request of information that is already provided in an SPD or other required disclosure.

In addition, we recommend deleting the ability to request information about “Mental health and substance use disorder benefits, generally” from the model form and only allow the use of this section for requests for information about a specific condition(s) or disorder(s). General information about MH/SUD benefits is included in an SPD and SBC in which all participants are required to receive under ERISA. This section of the model form would be more appropriately used for requesting information about a specific condition(s) or disorder(s) so that the

information provided to the individual addresses the condition or disorder of interest. The Council believes that a broad request for general information about the plan's limitations on MH/SUD benefits generally is duplicative of information that is provided in an SPD and SBC and will not necessarily be helpful for an individual that is trying to learn about coverage for a specific condition (i.e., a condition for which the individual has been diagnosed) to understand the NQTLs for such condition and how their benefits are in parity. We are also concerned that individuals may check all of the "boxes" in order to obtain information broadly, but that such information may not be meaningful to consumers and would create unnecessary burden for group health plans.

- **Disclosure Request, Claim/Denial Information Request:** In the last section of the request, it appears the information that is required to be provided under numbers 1 through 5 is intended to apply only to the claim/denial information request, not to the general information request-which would make sense since plans should have flexibility in responding to general information requests, but it would be helpful to have this clarified. This is an important clarification for plan sponsors for determining what disclosures are expected of them through the use of this form.

In addition, the introductory paragraph to this section includes a general statement of the parity requirement that may be confusing to consumers. Similar to the comment above in the "Background" section, we request a statement be included, in plain language, explaining that a parity analysis, including the NQTL analysis, is not a one-to-one comparison. Specifically pointing out that the regulations do not require plans and issuers to use the same NQTLs for both MH/SUD and M/S benefits, and that disparate results alone do not mean that the NQTLs in use do not comply with MHPAEA's requirements.

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Thank you for the opportunity to share our views and for the continued dialogue. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,

A handwritten signature in black ink that reads "Kathryn Wilber". The signature is written in a cursive, flowing style.

Kathryn Wilber
Senior Counsel, Health Policy