

GROOM LAW GROUP

August 30, 2022

By Electronic Mail

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Re: Mental Health Parity Guidance

Dear Acting Assistant Secretary Khawar, Ms. Rivers, Mr. Wu, Ms. Weiser, and Ms. Levy:

We write on behalf of the undersigned Coalition to provide additional follow-up from the meeting with Coalition members on June 15, 2022 to discuss the Coalition's guidance recommendations. As noted in our prior correspondence, the Coalition is a unique and broad alliance of stakeholders; through its membership, the Coalition provides mental health and substance use disorder ("MH/SUD") benefits to the vast majority of Americans covered by private health insurance plans, both self-insured and insured. Coalition members look forward to continuing to work collaboratively with the Departments of Health and Human Services, Labor, and the Treasury (collectively, the Tri-Agencies) to promote access to comprehensive MH/SUD treatment benefits and compliance with the Mental Health Parity and Addiction Equity Act ("MHPAEA").

The Coalition members also want to again stress their commitment to parity. As discussed in our meeting, stakeholders would greatly benefit from important clarifications on the Tri-Agencies' expectations related to parity compliance documentation for the nonquantitative treatment limitation ("NQL") comparative analyses requirements under MHPAEA. Additional guidance will support entities who are actively working to comply with the parity requirements and help regulators focus their resources on addressing true violations that impact patients' access to care.

Based on our discussion at the meeting on June 15, the Coalition is enclosing a draft NQL checklist with instructions for the four focus NQLs:¹

1. Prior authorization requirements for in-network and out-of-network, inpatient and outpatient services;
2. Concurrent review for in-network and out-of-network, inpatient and outpatient services;
3. Standards for provider admission to participate in a network, including reimbursement rates; and
4. Out-of-network reimbursement rates.

We are providing this draft NQL checklist to reflect specific common questions asked by the Departments of Labor and Health and Human Services (collectively the "Departments") in response to plan's and issuer's submitted NQL comparative analyses. The checklist is structured to include the common questions for each of the NQLs noted above for each of the steps of the NQL analysis, as described in the Tri-Agencies' FAQs Part 45.² While this voluntary checklist may help plans and issuers prepare or collect information for the comparative analyses for NQLs imposed on MH/SUD benefits as compared to medical/surgical ("M/S") benefits, and which are required to demonstrate parity in accordance with the MHPAEA provisions of the Consolidated Appropriations Act, 2021 ("CAA"), the Coalition requests that the Departments continue to consider efficiencies and ways to eliminate duplicative obligations, including how to tailor and refine inquiries in a manner that mitigates concerns regarding

¹ For any other focus NQLs added by the Tri-Agencies, a similar NQL checklist could be provided.

² FAQs About Mental Health And Substance Use Disorder Parity Implementation And The Consolidated Appropriations Act, 2021, Part 45, p. 2; Internal Revenue Code (Code) section 9812(a)(8)(A)(i)-(iv), ERISA Section 712(a)(8)(A)(i)-(iv) and Public Health Service (PHS) Act section 2726(a)(8)(A)(i)-(iv).

potential discrimination while also minimizing administrative burden. Following the submission of this document, we would like to set up a meeting to discuss the specific proposals that have been submitted to date and respond to any questions.

The Tri-Agencies may wish to consider this checklist when making updates to the Self Compliance Tool and make a similar checklist available for plans and issuers to use on a voluntary basis. We respectfully request that the Tri-Agencies make available in a proposed form any guidance drafted in connection with the update to the Self Compliance Tool and provide all stakeholders with an opportunity to review and comment on the materials prior to finalizing. We believe the public comment process would help to close the apparent gaps between the current Self Compliance Tool and the demonstration of compliance. In addition, we are in the process of finalizing NQTL safe harbors, or “green flags” that can be used to identify acceptable processes or standards. We will provide these to the Tri-Agencies when finalized.

We believe that the Coalition’s proposed guidance will enhance the Tri-Agencies’ current guidance, support entities who are actively working to comply with parity requirements, and help regulators focus their resources on addressing true parity violations impacting patients’ access to care. We also hope that the Coalition’s proposals will serve as a resource to the Tri-Agencies in connection with forthcoming rulemaking efforts. As always, we appreciate the Tri-Agencies’ focus on critical mental health and substance use disorder issues, including parity. We look forward to discussing the Coalition’s guidance recommendations with the Departments and to continuing to work collaboratively with the Tri-Agencies to improve MHPAEA compliance. Please do not hesitate to reach out to Lisa Campbell (lcampbell@groom.com) or Michael Kreps (mkreps@groom.com) with questions at any time.

Sincerely,

American Benefits Council
Anthem, Inc.
Association for Behavioral Health and Wellness
AHIP
Blue Cross Blue Shield Association
Business Group on Health
ConnectiCare
CVS Health/Aetna
EmblemHealth
Health Care Service Corporation
National Coordinating Committee for
Multiemployer Plans
The ERISA Industry Committee
UnitedHealthcare
U.S. Chamber of Commerce

Enclosure