

GROOM LAW GROUP

July 14, 2022

By Electronic Mail

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Employee Benefits Security Administration
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Re: Mental Health Parity Guidance and Enforcement Proposals

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

We write on behalf of the undersigned Coalition to thank you for 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 benefits to the vast

majority of Americans covered by private health insurance plans, both self-insured and insured. We appreciate the constructive discussion, and 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 mental health and substance use disorder treatment benefits and compliance with the Mental Health Parity and Addiction Equity Act (“MHPAEA”).

We also appreciate the thoughtful dialogue regarding the Tri-Agencies’ perception of overall compliance with MHPAEA and want to stress our commitment to parity. While we reinforce our support for ensuring access to high-quality mental health and substance use disorder services for our members, we recognize there is room for improvement for mental health parity compliance. As discussed in our meeting, we would greatly benefit from important clarifications on the Tri-Agencies’ expectations related to parity compliance documentation and the enforcement process for the nonquantitative treatment limitation (“NQTL”) 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 has revised the enforcement proposal for the Departments’ consideration, which we have enclosed for your review. In addition, we are in the process of finalizing a (1) checklist of questions to be addressed in an NQTL analysis; and (2) NQTL safe harbors, or “green flags” that can be used to identify acceptable processes or standards. We will provide these to the Departments within the next two weeks. Following the submission of these documents, it may be helpful to set up a meeting to discuss the specific proposals and respond to any questions.

We believe that the Coalition’s proposed guidance and enforcement recommendations 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 recommendations 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) and 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