



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

LANSING

ANITA G. FOX
DIRECTOR

October 17, 2023

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: 1210-AC11

Submitted via Regulations.gov

To Whom It May Concern:

As the Director of Michigan's Department of Insurance and Financial Services (DIFS), I offer the following comments regarding the regulations published in the Federal Register on August 3, 2023, concerning proposed requirements related to the Mental Health Parity and Addiction Equity Act (MHPAEA) (Proposed Rule).

DIFS appreciates the Biden-Harris Administration's efforts to clarify and increase enforcement efforts surrounding the 2013 MHPAEA final regulations, as well as its work to create new proposed provisions setting forth content requirements for the non-quantitative treatment limitations (NQTLs) comparative analyses required under amendments to MHPAEA made by the Consolidated Appropriations Act of 2021. DIFS submits the following comments on the Proposed Rule with the goal of continuing to work with the Administration to improve access to timely, high quality mental health and substance use disorder (MH/SUD) services.

DIFS generally supports the extension of MHPAEA to non-federal governmental plans. DIFS also supports the Administration's detailed data collection requirements for insurers to collect and analyze data on access to MH/SUD benefits and requiring further action when the data shows differences in outcomes compared to medical surgical (M/S) benefits. Nevertheless, further guidance in the definitions section, as well as in the form of a template or model form, is necessary to interpret this data—particularly to determine what constitutes a "material difference" in the data that could indicate a MHPAEA violation. To ensure sufficiency and consistency in states' review of insurers' data, the final rule should expressly specify at what point a difference in outcomes rises to the level of a material difference requiring additional action.

The Proposed Rule also solicits feedback with respect to where, within the MHPAEA or essential health benefit (EHB) framework, behavior health crisis services fit. DIFS urges the Administration to specifically

include mobile crisis response units and residential crisis stabilization units for MH/SUD services in the emergency classification for MHPAEA purposes. These emergency services should also be considered EHB.

The Proposed Rule creates two exceptions to the parity requirements to allow insurers to apply more restrictive treatment limitations in special circumstances, i.e., when the limitation either prevents fraud, waste, and abuse, or when the limitation arises from independent professional medical or clinical standards. The Proposed Rule does not, however, include adequate standards by which to apply the exceptions and to avoid inappropriate limitations on treatment. The final rule should include narrow definitions related to these exceptions and clarify that the relevant independent professional medical or clinical standards are those promulgated by non-profit professional associations for the relevant specialty or those recognized by government bodies.

DIFS further requests that the final rule expressly recognize state enforcement authority. Insurers should be required to comply with applicable state and federal parity requirements, and the final rule should expand, not restrict, state authority. Toward this end, insurers should be required to provide state regulators with the requisite comparative analyses pursuant to proposed 45 CFR 146.137(b), which is consistent with the language of the governing statute. See 42 USC 300gg-26(a)(8)(A).

Thank you for the opportunity to comment on the Proposed Rule. DIFS looks forward to continued collaboration with the Administration concerning health insurance issues.

Regards,



Anita G. Fox
Director