



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Revision of Information Collection Request Submitted for Public Comment; Draft Model Non-Quantitative Treatment Limitations Form

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Notice

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on a revision of the Notices under the Mental Health Parity and Addiction Equity Act of 2008 information collection request (ICR) to add a model form participants and authorized representatives can use to request certain information from their health plans that is discussed below.

A copy of the information collection request (ICR) may be obtained by contacting the office listed in the ADDRESSES section of this notice. The ICR is also available on the Department's website at: <https://www.dol.gov/agencies/ebsa>.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before September 1, 2017.

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to the Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5718, Washington, D.C. 20210. Telephone: (202) 693-8410; Fax: (202) 219-4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) was enacted on October 3, 2008 and amended by the Affordable Care Act and the 21st Century Cures Act (Cures Act). Generally, MHPAEA requires that the financial requirements and treatment limitations imposed on mental health and substance use disorder (MH/SUD) benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical and surgical benefits. As discussed below, MHPAEA includes several disclosure requirements for group health plans and health insurance issuers.

The Cures Act¹ was enacted on December 13, 2016. Among its requirements, the Cures Act contains provisions that are intended to improve compliance with MHPAEA by requiring the Departments to solicit feedback from the public on how to improve the process for group health plans and issuers to disclose the information required under MHPAEA and other laws.

The statutory MHPAEA provisions and implementing regulations expressly provide that a plan or issuer must disclose the criteria for medical necessity determinations with

¹ Pub. L. 114-255

respect to MH/SUD benefits to any current or potential participant, beneficiary, or contracting provider upon request and must disclose the reason for any denial of reimbursement or payment for services with respect to MH/SUD benefits to the participant or beneficiary.

On October 27, 2016, the Departments of Labor, Health and Human Services, and the Treasury (the Departments) issued Affordable Care Act Implementation FAQs Part 34, which, among other things, solicited feedback regarding disclosures with respect to MH/SUD benefits under MHPAEA and other laws. In the FAQs, the Departments indicated that they had received questions and suggestions regarding disclosures with respect to Nonquantitative Treatment Limitation (NQTLs) applicable to medical/surgical and MH/SUD benefits under the plan. The feedback also included requests from various stakeholders for model forms that group health plan participants, beneficiaries, covered individuals in the individual market, or persons acting on their behalf could use to request relevant disclosures. Stakeholders also requested guidance on other ways in which disclosures, or the process for requesting disclosures, could be more uniform, streamlined, or otherwise simplified

In addition, the Departments indicated that they had received requests to explore ways to encourage uniformity among State reviews of health insurance issuers' compliance with the NQTL standards. Various stakeholders stated that model forms to report NQTL information will help facilitate uniform implementation and enforcement of MHPAEA, and relieve some complexity that MHPAEA compliance poses for issuers operating in multiple States. Furthermore, other stakeholders highlighted that the use of

such model forms may also benefit consumers, as consumers will be entitled to request the analysis performed to complete the model forms.

The Cures Act requires the Departments, by June 13, 2017, to solicit feedback from the public on how the disclosure request process for documents containing information that health plans and health insurance issuers are required under Federal or State law to disclose to participants, beneficiaries, contracting providers or authorized representatives to ensure compliance with existing mental health parity and addiction equity requirements can be improved while continuing to ensure consumers' rights to access all information required by Federal or State law to be disclosed.² The Cures Act requires the Departments to make this feedback publicly available by December 13, 2017.³

The Departments recently issued Affordable Care Act Implementation FAQs Part 38, which again solicited comments on FAQs Part 34 as required by the Cures Act. The Departments also solicited comments on a draft model form that participants, enrollees, or their authorized representatives could use to request information from their health plan or issuer regarding 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 draft model form is an information collection subject to the PRA. The model form and instructions are available at <https://www.dol.gov/agencies/ebsa>.

² Cures Act section 13001(c)(1).

³ Cures Act section 13001(c)(2). The Departments must also share this feedback with the National Association of Insurance Commissioners (NAIC) to the extent the feedback includes recommendations for the development of simplified information disclosure tools to provide consistent information to consumers. Such feedback may be taken into consideration by the NAIC and other appropriate entities for the voluntary development and voluntary use of common templates and other sample standardized forms to improve consumer access to plan information. See Cures Act section 13001(c)(3).

II. Current Actions.

This notice requests public comment on the draft model form discussed above. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Type of Review: Revised Collection.

Agency: DOL–EBSA.

Title: Notices under the Mental Health Parity and Addiction Equity Act of 2008 – Draft Model Non-Qualitative Treatment Limitations Form.

OMB Numbers: 1210-0138.

Affected Public: Private Sector—Not for profit organizations; businesses or other for profits.

Total Respondents: 1,204,215 (combined with Treasury the total is 2,404,430).

Total Responses: 1,204,215 (combined with Treasury the total is 2,404,430).

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 26,295 (combined with Treasury the total is 52,590 hours).

Estimated Total Annual Burden Cost: \$3,424,759 (combined with Treasury the total is \$6,849,519).

III. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the revision of the information collection; they will also become a matter of public record.

Dated: June 9, 2017

Joseph S. Piacentini, Director
Office of Policy and Research
Employee Benefits Security Administration

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