



THE ERISA
INDUSTRY COMMITTEE
*Shaping benefit policies
before they shape you.*

DILLON CLAIR
Director, State Advocacy

November 14, 2024

Commissioner Michael Conway
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, CO 80202
dora_ins_rulesandrecords@state.co.us
Submitted Electronically

Re: DRAFT Proposed Amended Regulation 4-2-64 Concerning Mental Health Parity in Health Benefit Plans – Public Comments from The ERISA Industry Committee

Dear Commissioner Conway:

The ERISA Industry Committee (“ERIC”) appreciates the opportunity to comment on the regulations contained in “DRAFT Proposed Amended Regulation 4-2-64 Concerning Mental Health Parity in Health Benefit Plans” (“Proposed Rules”) issued by the Colorado Division of Insurance (“Division”). While ERIC appreciates ongoing efforts to improve parity for mental health and substance use disorder benefits, **we believe that the Proposed Rules would inflexibly codify dynamic federal regulations, lead to future compliance conflicts, and ultimately undermine the ability of employer plans to effectively control for ever-growing national health care costs.**

ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state and city.

A critical tenet of the Employee Retirement Income Security Act of 1974 (ERISA) is its preemptive effect on state regulation of self-funded ERISA plans. This preemption is critical to the ability of our member companies to continue to provide robust, uniform, and affordable health benefits across their multi-state workforce. To that end, ERIC works closely with federal lawmakers to achieve policies that improve mental health care access nationwide.

For instance, ERIC has played a role in shaping federal mental health and substance use disorder benefit parity policy for many years dating back to the enactment of the Mental Health Parity and Addiction Equity Act (“MHPAEA”) as well as additional legislation and implementing regulations that followed. Most recently, ERIC provided comments to the U.S. Departments of Health and Human Services, Labor, and the Treasury (“Departments”) in

response to their changes to the federal mental health and substance use disorder parity compliance landscape that ERISA plan sponsors will face, and parts of which will take effect in just a few weeks. ERIC's concerns about the workability of the federal rule changes, as well as the enormous regulatory complexity, confusion, and costs associated with the recent federal rule changes, cannot be understated. ERIC raised these concerns with the Departments repeatedly before the rule changes were finalized, but to no avail. Therefore, it remains uncertain how plan sponsors should best prepare for new regulatory burdens and whether the federal rule changes will ultimately lead to improved behavioral health care access, a goal that ERIC member companies share with the Departments and with you.

As we continue to work with the Departments on future changes to the federal rules to better meet this shared goal, we are especially concerned that the Proposed Rules feature state regulatory standards that essentially mirror existing MHPAEA regulations, meaning that any future changes or updates to these federal standards would create both an immediate conflict with the proposed Colorado regulations and a pressing need for state regulatory action to reconcile emerging differences. Many stakeholders are interested in making important changes to the federal regulations and the Departments have already discussed the need for improved clarity and guidance materials. Similarly, litigation challenging MHPAEA or current federal regulations could lead to a court decision invalidating some portion of the federal rules, which would also necessitate federal regulatory changes.

In either case, employers would be left in limbo, unsure of how to comply and continue providing employee benefits while federal and state lawmakers attempt to resolve conflicting standards. Based on persisting issues created by the federal rules, ERIC believes that future legal challenges or federal regulatory changes are likely to occur – as such, attempts by the Division to duplicate and codify current federal regulations are unnecessary, counterproductive, and would create serious challenges for employers and lawmakers alike.

ERIC appreciates the opportunity to provide comments on the Proposed Rules, and strongly urges the Division to reconsider this effort to unnecessarily duplicate and separately codify federal MHPAEA regulations. If advanced in their current form, the Proposed Rules would lead to conflict between state and federal compliance standards and negatively impact employer efforts to expand access to mental health care benefits nationwide.

If you have any questions concerning our regulatory comments or would like to discuss ways to improve mental health care access across Colorado, please contact us at (202) 789-1400 or dclair@eric.org.

Sincerely,



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