

October 17, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20002

The Honorable Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

**Re: 0938-AU93
1210-AC11
1545-BQ29
Requirements Related to the Mental Health Parity and Addiction Equity Act**

Dear Secretary Becerra, Assistant Secretary Gomez, and Deputy Commissioner O'Donnell;

The Kennedy Forum appreciates the opportunity to comment on the Department of Health and Human Services, Employee Benefits Security Administration, and the Internal Revenue Service's (the "Departments") proposed rule, Requirements Related to the Mental Health Parity and Addiction Equity Act (hereinafter "2023 Proposed Rule"). In addition to our [primary comments](#) that were endorsed by the Mental Health Liaison Group (MHLG) and 59 other organizations, The Kennedy Forum would like to endorse an important provision recommended by the Legal Action Center and other organizations in their submitted comments on the 2023 Proposed Rule.

As explained in the MHLG-endorsed comments, while The Kennedy Forum strongly supports the 2023 Proposed Rule's focus on ensuring equitable access to mental health and substance use disorder (MH/SUD) treatment, as well as data collection and reporting requirements, we oppose the two exceptions relating to "independent professional medical or clinical standards"¹ and "fraud, waste, and abuse." If they remain, these exceptions will significantly undermine the potential of the 2023 Proposed Rule to increase access to care.

¹ We view "independent professional medical or clinical standards," if properly defined, as equivalent to "generally accepted standards of care."

Instead, we believe independent professional medical or clinical standards and combatting fraud, waste, and abuse must be embedded in existing NQTL frameworks and subject to all existing and proposed NQTL requirements. Within this framework, the Departments can put in place additional safeguards to allow plans/issuers to appropriately use these standards and fight fraud, waste, and abuse, while preventing their misuse to limit access to medically necessary MH/SUD services in a discriminatory manner. Therefore, we support the Legal Action Center’s recommendation that the Departments strengthen the proposed regulations by amending (c)(4)(v) to reinforce the importance of adhering to evidence-based standards of care and a proper consideration of strategies and processes that address “fraud, waste and abuse.”

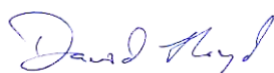
We endorse the following amended language:

(v) **Construction:** Independent professional medical or clinical standards and standards to detect or prevent and prove fraud, waste, and abuse—(A) To **satisfy the standards** ~~qualify for the exceptions~~ in paragraphs (c)(4)(i)(~~E~~), (c)(4)(ii)(B), and (c)(4)(iv)(~~D~~) of this section for independent professional medical or clinical standards, a nonquantitative treatment limitation must impartially apply generally recognized independent professional medical or clinical standards (consistent with generally accepted standards of care) to medical/surgical benefits and mental health **benefits** or substance use disorder benefits, **as defined in this part**, and may not deviate from those standards in any way, such as by imposing additional or different requirements. (B) To **satisfy the standards** ~~qualify for the exceptions~~ in paragraphs (c)(4)(i)(~~E~~) and (c)(4)(ii)(~~B~~) of this section to detect or prevent and prove fraud, waste, and abuse, a nonquantitative treatment limitation must be ~~reasonably~~ designed to detect or prevent and prove fraud, waste, and abuse, based on indicia of fraud, waste, and abuse that have been reliably established through objective and unbiased data, and also be narrowly designed to minimize the negative impact on access to appropriate mental health and substance use disorder benefits.

By adopting the language above (and also defining “independent professional medical or clinical standards” as recommended in our MHLG comments), the Departments would put in place guardrails on how plans/issuers may incorporate these standards into any NQTL they impose, thus ensuring that these standards are not turned into subterfuges that plans/issuers exploit to inappropriately limit access to MH/SUD care.

Thank you for the opportunity to submit comments on the 2023 Proposed Rule. If you have further questions, please contact David Lloyd, Chief Policy Officer of The Kennedy Forum, at david@thekennedyforum.org or Lauren Finke, Policy Director of The Kennedy Forum, at lauren@thekennedyforum.org.

Sincerely,



David Lloyd
Chief Policy Officer
The Kennedy Forum