The MHPAEA (B) Working Group of the Regulatory Framework (B) Task Force met via conference call March 19, 2020. The following Working Group members participated: Katie Dzurec, Chair (PA); Jane Beyer, Vice Chair (WA); William Lacy (AR); Erin Klug (AZ); Cara Cheevers (CO); Kurt Swan (CT); Colin Johnson (DC); Sarah Crittenden (GA); Andria Seip (IA); Ryan Gillespie and Erica Weyhenmeyer (IL); Julie Holmes (KS); Erica Bailey (MD); Candace Gergen (MN); Jeannie Keller (MT); Ted Hamby (NC); Sara Gerving (ND); Maureen Belanger (NH); Ralph Boeckman (NJ); Paige Duhamel and Viara Ianakieva (NM); Marie Ganim (RI); Shari Miles (SC); Jill Kruger (SD); Rachel Bowden (TX); Tanji Northrup (UT); Brant Lyons (VA); Barbara Belling (WI); Tim Sigman and Joylynn Fix (WV); and Denise Burke (WY). Also participating was: Laura Arp (NE).

1. **Adopted its March 9 Minutes**

   Ms. Beyer made a motion, seconded by Ms. Crittenden, to adopt the Working Group’s March 9 minutes (Attachment ? -A). The motion passed unanimously.

2. **Discussed Current and Potential MHPAEA Compliance State Tools**

   Ms. Dzurec said that currently there are two main Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) compliance tools available to the states: 1) the U.S. Department of Labor’s (DOL’s) compliance check list, which is updated every two years; and 2) the NAIC Market Regulation Handbook’s MHPAEA chapter. She asked the Working Group to consider the following questions: 1) how much detail is necessary for state insurance regulators to determine plan compliance with MHPAEA’s parity requirements; 2) whether instructions on how to use these tools and any additional tools the Working Group develops would be useful; and 3) what is working and what is not regarding state insurance regulators determining plan parity compliance.

   Ms. Dzurec asked the Working Group members to share their experiences with evaluating plan parity compliance. Ms. Cheevers said that in accordance with state requirements, Colorado receives a robust set of data from plans to evaluate compliance. She said the receipt of such data has presented some challenges; as a result, in some cases, Colorado has relied on self-attestation in determining plan compliance. She said the department of insurance (DOI) is looking at ways to prioritize and streamline the data it receives. Ms. Dzurec said Pennsylvania has similar issues with the amount of data it receives. She said this is an area the Working Group could address as part of its work related to nonquantitative treatment limits (NQTLs) guidelines to determine what information state insurance regulators need and what questions they should ask in determining plan parity compliance.

   Ms. Arp said that when working on the MHPAEA chapter of the Handbook, the Market Conduct Examination Standards (D) Working Group took a surgical approach in establishing the examination requirements because it realized that state DOIs have limited staff to perform these analyses. She suggested that one way to find out if plans are complying with MHPAEA parity requirements is to reach out to providers. She said Nebraska took such an approach—talking to providers about what the Nebraska DOI would be looking for with respect to MHPAEA violations. Ms. Dzurec agreed that the Working Group could look at utilizing a similar approach, but taking care not to overburden providers in reporting this information to state DOIs. Ms. Arp suggested that to avoid this, the Working Group could consider reaching out to provider associations. Ms. Duhamel said New Mexico has taken a similar approach in its provider outreach efforts. She said it might be useful for the Working Group to create provider outreach materials for the states to use. Ms. Arp said Nebraska has created such materials, including a provider outreach presentation. Ms. Dzurec asked Ms. Arp to share Nebraska’s provider outreach presentation with the Working Group. She suggested that any information the Working Group receives from such outreach could inform the Working Group’s work on identifying which NQTLs the Working Group should focus on. She noted that claim reviews are also helpful in identifying NQTLs and monitoring plan in-operation compliance.

Uma Dua (Dua Enterprises) said the Working Group should consider developing an NQTL data tool for pharmacy benefits. Ms. Beyer said the Bowman Family Foundation (BFF) has developed a model data request form, which the Working Group may want to look at to determine what information state DOIs would want from plans to determine parity compliance. The Working Group discussed additional suggestions on what additional tools the Working Group could create to assist the states.
in determining plan parity compliance and providing uniformity in responses among carriers, such as developing a standardized side-by-side comparison template of medical/surgical (M/S) benefits and mental health of substance use disorder (MH/SUD) benefits and/or an excel spreadsheet with tabs that pertain to a certain area of mental health.

Matthew Litton (DOL) said the DOL recently issued its 2020 Report (Report) to the U.S. Congress (Congress), as required by the MHPAEA, on compliance of group health plans and health insurance coverage offered in connection with such plans with the MHPAEA’s requirements. He said the DOL is required to submit this Report every two years. He said the Report discusses the DOL’s activities to further parity implementation since its 2018 Report to Congress. Most notably, the Report provides an overview of the DOL’s partnership efforts across the federal agencies, as well as with plans, issuers, consumers, providers, states and other stakeholders. The Report details the DOL’s intent to use the information gathered from these partnerships to develop a roadmap to compliance for the regulated community so that health plan participants and beneficiaries can realize the full benefits of the MHPAEA. Mr. Litton said the DOL also released its fiscal year (FY) 2019 Mental Health Parity and Addiction Equity Act Enforcement Fact Sheet. He said the enforcement fact sheet summarizes the DOL Employee Benefits Security Administration’s (EBSA’s) and the federal Centers for Medicare and Medicaid’s (CMS’s) closed investigations and public inquiries related to MHPAEA during FY 2019.

Ms. Dzurec said that given the states’ short-term focus on COVID-19 issues, she anticipated the Working Group’s work to be slowed somewhat as it moves forward over the next few months. She said her goal is to create a project plan for the Working Group for the remainder of the year consistent with its charges.

Having no further business, the MHPAEA (B) Working Group adjourned.