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January 13, 2020

The Honorable Preston Rutledge
Assistant Secretary of Labor
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Assistant Secretary Rutledge:

We write to inquire about the Department of Labor's (the Department) Employee Benefits Security Administration's (EBSA) efforts to address compliance with federal mental health parity law.

As you know, EBSA is the primary federal agency tasked with providing participant protection, education, and oversight regarding employer-sponsored health plans covered by the *Employee Retirement Income Security Act of 1974* (ERISA). The *Mental Health Parity and Addiction Equity Act* (MHPAEA)—codified into ERISA—sets minimum standards for group health plans and insurers with respect to parity requirements. The law prohibits individual and group insurance plans that cover mental health or substance use disorder services from applying more restrictive financial or treatment limitations on those benefits than on benefits for medical/surgical services. Access to these mental health or substance use disorder services is more important than ever as communities around the country are being devastated by substance use disorder, including the opioid epidemic.

Unfortunately, there are still grave failures in parity compliance that leave workers and their families without benefits to which they are legally entitled. Particularly, we are concerned about recent developments that have exposed large-scale failure to comply with parity law. On February 28, 2019, the United States District Court for the Northern District of California found that United Behavioral Health (UBH) breached its fiduciary duties to, and denied benefit claims

for, beneficiaries of plans governed by ERISA.¹ UBH, in effect, contravened the purposes of MHPAEA by denying mental health and substance use disorder benefits for plan beneficiaries.² The plaintiffs in the case consisted of a class of over 50,000 individuals, thousands of whom were children. Additionally, analysis conducted by Milliman has shown continued compliance challenges regarding non-quantitative treatment limitations (NQTLS).³

In order to better understand what EBSA is doing to safeguard the benefits of the over 150 million individuals it protects, we request the following information and documents:

1. EBSA currently enforces numerous laws with approximately 400 investigators and 100 benefits advisors.⁴ According to the Department, “EBSA looks for ways to leverage its resources without compromising its commitment to rigorously enforce the law.”⁵ EBSA also conducts investigations “targeted to achieve high impact” and uses “specialized, interdisciplinary teams to target and evaluate complex [MHPAE] compliance issues.”⁶
 - a. Please provide a detailed explanation of what this approach entails.
 - b. Given the *Wit* decision and Milliman analysis, please provide any additional steps EBSA is taking to improve education and plan compliance.
2. Provide the number of complaints to EBSA for violations of the MHPAEA in the past 5 years, listed by health plan (including the insurance company and region).
3. Provide the number of investigations brought by EBSA against insurance companies serving as administrative services-only providers (ASOs) or third-party administrators (TPAs) to self-funded ERISA-covered plans in the past five years, listed by health plan (including the insurance company and region) and excluding currently open investigations.
4. Provide the number of investigations opened in the past five years for potential violations of MHPAEA as a result of the following:
 - a. Complaints.
 - b. Form 5550 answers.
 - c. Service provider referrals.
5. According to materials on its website, EBSA works with health insurance issuers and other service providers to obtain “voluntary global corrections.”⁷ Please provide:

¹ *Wit v. United Behavioral Health*, No. 14-cv-02346-JCS, 2019 U.S. Dist. LEXIS 35205, at *212 (N.D. Cal. Feb. 28, 2019).

² *Id.*

³ Steve Melek et al., Milliman, *Addiction and Mental Health vs. Physical Health: Widening Disparities in Network Use and Provider Reimbursement* (2019), http://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf; Steve Melek et al., Milliman, *Addiction and Mental Health vs. Physical Health: Widening Disparities in Network Use and Provider Reimbursement* (2017), <http://www.milliman.com/uploadedFiles/insight/2017/NQTLDisparityAnalysis.pdf>.

⁴ Department of Labor, *An Introduction: DOL MHPAEA FY 2018 Enforcement Fact Sheet 1* (2019), <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-enforcement-2018-fact-sheet-introduction.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

- a. A detailed explanation of what EBSA is doing to help employers and group health plans understand their responsibilities and legal requirements under MHPAE.
- b. Guidance documents given to plan sponsors.
- c. The number of voluntary global corrections implemented within the past 10 years disaggregated by health plan (including the insurance company and region).

Please provide the requested information and documents as soon as possible, but no later than January 28, 2020. If you have any questions, please contact Janice Nsor at Janice.Nsor@mail.house.gov. Please direct all official correspondence to the Committee's Chief Clerk at Tylease.Fitzgerald@mail.house.gov. Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman



SUSAN A. DAVIS
Member of Congress



RAÚL M. GRIJALVA
Member of Congress



JOE COURTNEY
Member of Congress



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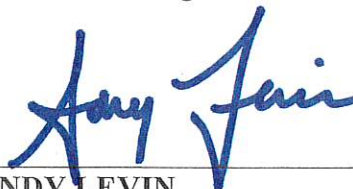
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