

# Fiduciary Check In

## CAA Employer Attestation Requirements

*Action required by January 1*

November 16, 2023



# Speakers



**Michael Thompson**  
President & CEO  
National Alliance of Healthcare  
Purchaser Coalitions



**Jamie Greenleaf**  
Co-Founder  
Fiduciary In A Box

# Role of Fiduciary

- Health plan sponsors have fiduciary obligation to disperse plan assets in a prudent manner for the exclusive benefit of plan participants and beneficiaries
- Fiduciaries are required to be experts in the subject matter entrusted to them, or to become educated by subject matter experts
- Prudence standard for fiduciaries
  - It is a prudent expert standard, not a prudent layperson standard
  - A good faith effort is not enough

# Relentless Healthcare Podcast to CEO/CFOs with Mark Cuban

The screenshot shows the Relentless Health Value podcast player interface. At the top, the logo "relentlesshealthvalue™" is on the left, and navigation links for "Episodes", "Noteworthy", "About", "Contact Us", and "Subscribe" are on the right. Below the navigation, the episode title "EP418: Mark Cuban With Some Advice for CEOs and CFOs of Self-insured Employers, With Mark Cuban and Ferrin Williams, PharmD, MBA, From Scripta" is displayed in large white text. To the left of the title is a thumbnail image of Mark Cuban and Ferrin Williams. Below the thumbnail is a "SUBSCRIBE" button. At the bottom of the player, there is a playback control bar with icons for previous, play, next, a progress bar, volume, 1x speed, download, and share.



# As a Fiduciary, how confident are you in the following:

- Reasonability of broker or consultant fees for the services provided
- Independence and lack of conflicts of my broker or consultants
- Reasonability of medical TPA direct and indirect compensation for services provided
- Integrity and lack of conflicts in medical TPA administration
- Reasonability of PBM direct and indirect compensation for services provided
- Integrity and lack of conflicts in PBM administration
- Reasonability of hospital charges for the services provided
- Integrity and lack of conflicts in hospital billing practices

13. As a fiduciary, how confident are you in the following:

	Confident	Somewhat Confident	Somewhat Concerned	Concerned	Need more Information
Reasonability of broker or consultant fees for the services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Independence and lack of conflicts of my brokers and consultants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonability of medical TPA direct and indirect compensation for services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Integrity and lack of conflicts in medical TPA administration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonability of PBM direct and indirect compensation for services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Integrity and lack of conflicts in PBM administration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonability of hospital charges for the services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Integrity and lack of conflicts in hospital billing practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Compliance of my plan administrators with mental health parity requirements as specified in new proposed regulations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my TPA(s) to provide the Comparison Price Tool as required by 1/1/2004	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my TPA(s) to meet current requirements related to elimination of gag clauses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my TPA(s) to meet current requirements for machine readable files of all contracted rates for medical services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my PBM to meet 6/1/2004 requirements for machine readable files of contract rates for pharmacy services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Excerpt from November 2023 National Alliance Pulse of the Purchaser Survey*

# As a Fiduciary, how confident are you in the following:

- Compliance of my plan administrators with mental health parity requirements as specified in new proposed regulations
- Support of my TPA(s) to provide the Comparison Price Tool as required by 1/1/2004
- Support of my TPA(s) to meet current requirements related to elimination of gag clauses
- Support of my TPA(s) to meet current requirements for machine readable files of all contracted rates for medical services
- Support of my PBM to meet 6/1/2004 requirements for machine readable files of contract rates for pharmacy services

13. As a fiduciary, how confident are you in the following:

	Confident	Somewhat Confident	Somewhat Concerned	Concerned	Need more Information
Reasonability of broker or consultant fees for the services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Independence and lack of conflicts of my brokers and consultants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonability of medical TPA direct and indirect compensation for services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Integrity and lack of conflicts in medical TPA administration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonability of PBM direct and indirect compensation for services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Integrity and lack of conflicts in PBM administration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reasonability of hospital charges for the services provided	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Integrity and lack of conflicts in hospital billing practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Compliance of my plan administrators with mental health parity requirements as specified in new proposed regulations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my TPA(s) to provide the Comparison Price Tool as required by 1/1/2004	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my TPA(s) to meet current requirements related to elimination of gag clauses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my TPA(s) to meet current requirements for machine readable files of all contracted rates for medical services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Support of my PBM to meet 6/1/2004 requirements for machine readable files of contract rates for pharmacy services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Excerpt from November 2023 National Alliance Pulse of the Purchaser Survey*

# We Know there are Issues

*A Playbook for Employers*

## Addressing Pharmacy Benefit Management Misalignment



**Complimentary Webinar**  
**Going Deep on Mental Health Parity**  
*Taking action now in light of proposed regulation*

**October 31, 2023 | 3 p.m.-4 p.m. (ET)**

Since the pandemic, mental health has never been more front and center for employer health, healthcare, and benefits strategies.

This webinar focuses on proposed rules and additional guidance on compliance with the Mental Health Parity and Addiction Act set forth by the U.S. Departments of Treasury, Labor, and Health and Human Services.

Click on the images below to view recent mental health parity regulations and resources.

**REGISTER**



**Health Policy in Transit: Mental Health Parity and Regulation Update**



**Proposed Mental Health Parity Rule Includes Costly Adequacy Requirements**



**Behavioral Health Vendor Engagement Template**

### Meet the Panelists



**Margaret Faso**  
 HR Policy Association, American Health Policy Institute



**Michael Thompson**  
 National Alliance of Healthcare Purchaser Coalitions

**View More National Alliance Mental Health Publications**

<https://www.nationalalliancehealth.org/resources/going-deep-on-mental-health-parity-webinar-share/>

## SETTING THE RECORD STRAIGHT The Urgency of Achieving Hospital Fair Price



### Mental Health Parity Regulations Update

On July 25, the U.S. Departments of Treasury, Labor and Health and Human Services (the "tri-agencies") released new proposed rules and additional guidance on compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). The [proposed regulations](#) amend the current MHPAEA final regulations (issued in 2013) and are focused on requirements related to nonquantitative treatment limitations (NQTs) (e.g., prior authorization) imposed on mental health and substance use disorder benefits, as compared to medical/surgical benefits.

The proposed regulations include several new requirements, including:

- Prohibit NQTs with respect to mental health and substance use disorder benefits unless (1) the NQTL is no more restrictive than 60% of M/S benefits; (2) the plan or issuer satisfies requirements related to the design and application of the NQTL; and (3) the plan or issuer collects, evaluates, and considers the impact of relevant data on access to MH/SUD benefits relative to access to M/S benefits; and subsequently takes reasonable action as necessary to address any material differences in access shown in the data to ensure compliance with MHPAEA.
- Review a modified, non-exhaustive list of NQTs, including standards related to network composition, such as methods for determining reimbursement rates, standards for provider and facility admission to participate in a network, credentialing standards, and network adequacy procedures.
- Complete a comparative analysis to include: (1) a description of the NQTL; (2) the identification and definition of the factors used to design or apply the NQTL; (3) a description of how factors are used in the design or application of the NQTL; (4) a demonstration of comparability and stringency, as written; (5) a demonstration of comparability and stringency in operation; and (6) findings and conclusions.
- Under the NPRM, no new opt-outs would be permitted on or after June 27, 2023.

Additional guidance comes in three main documents:

- A [technical release](#) that sets out principles and seeks public comment to inform future guidance on the proposed requirements related to the impact of NQTs on access and parity for mental health and substance use disorder benefits
- The [2023 MHPAEA Report to Congress](#), which describes recent enforcement efforts related to the NQTL comparative analyses required by CAA 2021.
- The [Fiscal Year 2022 MHPAEA Enforcement Fact Sheet](#), which gives a general overview of the tri-agencies' mental health parity enforcement efforts and findings for the 2022 fiscal year.

The net impact of these proposed MHPAEA regulations on employers:

- Clarifies that lack of parity in mental health and substance use disorder access directly impacts plan sponsor MHPAEA compliance requirements
  - Substantially increases and better defines employer compliance requirements
  - Significantly restricts NQTL practices (e.g., utilization management, reimbursement) that may directly or indirectly impact access
- Plan sponsors will be highly dependent on their TPAs to help them to meet these requirements. Compliance requirements may be even more challenging where different TPAs administer MH/SUD and M/S benefits and where MH/SUD access issues persist.

*In support of discussions with MH/SUD TPAs, plan sponsors should consider using the following tools:*

[Behavior Health Vendor Engagement Template](#), [Model Data Request Form](#)

[www.nationalalliancehealth.org](http://www.nationalalliancehealth.org)

August 29, 2023

Health Policy in Transit  
 A Purchaser Viewpoint

National Alliance of Healthcare Purchaser Coalitions is a non-profit, membership association of employer/purchaser-led coalitions across the country collectively serving more than 45 million Americans, spending \$300 billion annually on healthcare.



### Mental Health Vendor Engagement Template



<https://www.nationalalliancehealth.org/resources/latest-national-alliance-tools-and-resources/>

# Role of Fiduciary is Getting Real

A February 23, 2023 FAQ makes it clear that:

- Fiduciary Obligations are no longer just a good idea, they are THE LAW
- Plan sponsors need to EDUCATE, ACTIVATE and COMPLETE their fiduciary process by 12-31-23

**An activated Fiduciary pays LESS for healthcare!!**



# The Consolidated Appropriations Act of 2021

---



1                   **TITLE II—TRANSPARENCY**  
2   **SEC. 201. INCREASING TRANSPARENCY BY REMOVING GAG**  
3                   **CLAUSES ON PRICE AND QUALITY INFORMA-**  
4                   **TION.**

<https://www.congress.gov/bill/116th-congress/house-bill/133/text>

# What is expected of you?

Attest to by 12/31/2023

A Group Health Plan may not sign a contract that would (directly or indirectly) restrict the plan from:

- **Providing cost or quality of care** information to the plan sponsor, referring providers, enrollees, people eligible to become enrollees
- Accessing **de-identified claims data** for each enrollee, including:
  - **Financial information (including “allowed amount” or any other claim-related info)**
  - **Provider information**
  - **Service codes**
  - **Any other data element included in the claim or encounter transaction**
- Sharing the above information or data or directing it **to be shared with a business associate** (consistent with HIPAA)

# JUST SIGN IT?

## To Attest or Not to Attest – Three Options:

### 1. Attest Compliance

- ❖ **Pro:** Stay off the Government's radar.
- ❖ **Con:** Very difficult for purchasers to know they're fully compliant.
- ❖ **Potential risk:** Documentation that you've said you're in compliance when you may in fact not be. Could be cited in a lawsuit down the road.
- ❖ **Other risks?** (e.g., penalties associated with submitting false statement to federal government)

### 2. Do Not Attest Compliance

- ❖ **Pro:** Not submitting a false statement to the government.
- ❖ **Con:** May attract plan investigation from regulatory body
- ❖ **Potential risk:** Investigation may reveal other areas of plan deficiency, like mental health parity or 408(b)(2) disclosures.
- ❖ **Other risks?** (e.g. – what happens the next year? Obligated to make a major change if you can't attest, e.g., end relationship?)

### 3. Submit a Narrative in Lieu of Attestation or Call the DOL

- ❖ **Pro:** Not submitting a false statement to the government.
- ❖ **Con:** Relies on proposed legislative improvements not currently in effect; essentially a bid for no penalty voluntary corrective relief.
- ❖ **Potential risk:** No guarantee that this will be a legitimate path forward
- ❖ **Other risks?** (same as if you do not attest.)

# Throw it back to the vendors



# Previous Fiduciary Webinars

## A Case in Fiduciary Activation

<https://www.nationalalliancehealth.org/resources/fiduciary-check-in-a-case-study-in-fiduciary-activation/>

## Operationalizing Fiduciary Oversight

<https://connect.nationalalliancehealth.org/viewdocument/fiduciary-check-in-operationalizin>

## Reaching Fiduciary and Employee Satisfaction Goals

<https://www.nationalalliancehealth.org/resources/reaching-fiduciary-and-employee-satisfaction-goals/>

## How to Receive Optimal PBM Value and Services

<https://www.nationalalliancehealth.org/resources/fiduciary-check-in-how-to-receive-optimal-pbm-value-service/>



Speakers



Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions

Mark Pinsky  
Controller  
Lehigh County

Tony Sorrentino  
President  
HPfid Risk Advisors



Speakers




Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions

Karen van Caull, PhD  
President & CEO  
Florida Alliance for Healthcare Value

Tony Sorrentino  
President  
HPfid Risk Advisors



Speakers




Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions

Tony Sorrentino  
President  
HPfid Risk Advisors

Laura Corte  
Chief Legal Officer  
Advanced Medical Pricing Solutions

Jim Arnold  
Founder & CEO  
finHealth




Speakers



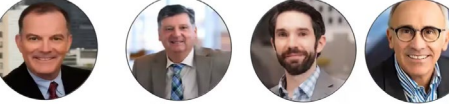
Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions

Jamie Greenleaf  
TILT  
Managing Director/Founder

Tony Sorrentino  
President  
Health Plan Fiduciary Compliance, LLC



Speakers




Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions


Andrew Gragg  
Vice President  
Employee Benefits Prudential

Brent Nicholson  
Co-founder & Chief Partner Officer  
Carrum Health

Tony Sorrentino  
President  
HPfid Risk Advisors




Speakers



Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions

Elena Lynett  
Segal  
Vice President & Senior Consultant  
Compliance Health

Tony Sorrentino  
President  
Health Plan Fiduciary Compliance, LLC



Speakers



Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions

Paul B. Holmes  
Partner  
Nixon Peabody, LLP



Speakers



Michael Thompson  
President & CEO  
National Alliance of Healthcare Purchaser Coalitions

Jamie Greenleaf  
TILT  
Managing Director/Founder

Tony Sorrentino  
President  
Health Plan Fiduciary Compliance, LLC



[https://www.nationalalliancehealth.org/resources/?\\_initiatives=fiduciary-check-in-series&\\_resource\\_types=webinar](https://www.nationalalliancehealth.org/resources/?_initiatives=fiduciary-check-in-series&_resource_types=webinar)

# Relentless Healthcare Podcast to CEO/CFOs with Mark Cuban

The screenshot shows the Relentless Health Value podcast player interface. At the top, the logo "relentlesshealthvalue™" is on the left, and navigation links "Episodes", "Noteworthy", "About", "Contact Us", and "Subscribe" are on the right. Below the navigation, the episode title "EP418: Mark Cuban With Some Advice for CEOs and CFOs of Self-insured Employers, With Mark Cuban and Ferrin Williams, PharmD, MBA, From Scripta" is displayed in large white text. To the left of the title is a thumbnail image of Mark Cuban and Ferrin Williams. Below the thumbnail is a "SUBSCRIBE" button. At the bottom, there is a playback control bar with a play button, a progress bar showing "00:00:00", a volume icon, a "1x" speed icon, and a share icon.



# Speakers



**Michael Thompson**  
President & CEO  
National Alliance of Healthcare  
Purchaser Coalitions



**Jamie Greenleaf**  
Co-Founder  
Fiduciary In A Box  
[Jamie@fiab.co](mailto:Jamie@fiab.co)