

Waterman, Robert - WHD

From: Jessica Waltman <jessica@forwardhealthconsulting.com>
Sent: Friday, October 04, 2019 1:26 PM
To: WHDPRAComments
Cc: Janet Trautwein; Marcy Buckner
Subject: FMLA Form Revisions Comment Letter
Attachments: NAHU FMLA Forms .docx

Attached please find a comment letter from the membership of the National Association of Health Underwriters.



October 4, 2019

Cheryl Stanton
Administrator, Wage and Hour Division
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted Electronically via WHDPRAComments@dol.gov

Dear Ms. Stanton:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefits specialists. We are pleased to have the opportunity to provide comments about your proposed revisions to forms related to the Family and Medical Leave Act of 1993, as amended, published on August 5, 2019, in the Federal Register.

The members of NAHU help millions of individuals and employers of all sizes purchase, administer, and utilize their health insurance coverage. Our expertise lies in employee benefits administration, and NAHU members work directly with their employer clients on FMLA compliance processes. As such, our organization has a keen interest in the proposed revisions to the FMLA forms. We appreciate your willingness to seek expert and stakeholder input on this critical matter.

In particular, the members of NAHU would like to voice their support of the intent behind the proposed form revisions. According to your press release accompanying the new draft forms, the goal of your division is to “increase compliance with the FMLA, improve customer service, and reduce the burden on the public by making the forms easier to understand and use.” Our members report that the FMLA forms in current use can be confusing to both employees, and the healthcare providers who need to complete them. Incomplete or unclear forms can hold up an employer’s and employee’s ability to designate absences from work as FMLA leave. Additionally, the subjective nature of the current forms, which include multiple narrative questions for providers to complete, can lead to confusion on the part of the employer as to the provider’s intent. Employers sometimes feel obligated to use the narrative answers to surmise if an employee or a family member has an FMLA leave qualifying serious medical condition. This creates unnecessary and unwelcome legal and compliance issues for all involved.

The new draft forms are more straightforward. We commend your division’s attempt to make them more efficient for employees, employers, and healthcare providers to use. However, our association does have some suggestions for further improvement.

The revised forms are very long. All of the templates that require documentation by an employee or medical provider are six pages each, and the employer determination form is four pages. NAHU believes that streamlined forms and



disclosures are always better, as they are easier to prepare and keep timely. Ideally, our members would like to see one-page templates or at least significantly shorter forms.

The instructions and definitions for healthcare providers appear at the end of the forms, rather than at the beginning. Our concern is that providers will complete the forms before reading the instructions or ignore them completely, leading to continued form errors and inaccuracies. NAHU suggests consolidating the guidelines and definitions and moving them to either the beginning of the forms or incorporating explanations into each specific form section.

The forms for healthcare providers to complete still require some narrative answers. We are concerned this structure will lead both employers and providers to make and draw legal conclusions when what is needed is a reliance on the facts of the matter. We suggest eliminating all narrative responses and relying solely on checkboxes.

The new provider forms include many questions that may not apply in all cases. There are no upfront directions for providers to skip irrelevant sections. This methodology seems confusing to our members. NAHU is concerned that it may lead providers to complete sections unnecessarily. We suggest the inclusion of a "not applicable" checkbox in all sections/categories to eliminate this concern.

Finally, we are not sure that the content of the draft WH-380-F form is fully reflective of the recent DOL opinion letter that confirmed that eligible parents of children with special needs who attend school individualized education program (IEP) meetings could use intermittent FLMA leave for that purpose. Given that 14 percent of American public school children ages three to 21 access special-education services requiring their parents to attend multiple IEP and other related school meetings each year, many employees will be affected. In the letter, the DOL acknowledged that caring for children with complex physical and/or mental health conditions can involve a wide range of activities. NAHU members anticipate an uptick in intermittent FMLA leave requests for parents to attend meetings and appointments related to the care of special-needs children. As such, the revised form WH-380-F needs to be fully reflective of the various severe medical conditions that impact special-needs children.

The members of NAHU sincerely appreciate the opportunity to express our views about the draft revisions to the FMLA forms used by employers, employees, and healthcare providers. If you have any questions about our comments, or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,
Janet Stokes Trautwein
Chief Executive Officer
National Association of Health Underwriters