



## **DOL Issues Proposed Mental Health Parity Compliance Guidance**

**Issue Date: July 2018**

### **Quick Facts:**

- The Mental Health Parity and Addiction Equity Act (MHPAEA) generally requires that mental health and substance use disorder (MH/SUD) benefit limitations may not be more restrictive than for medical and surgical benefits.
- Enforcing the MHPAEA has been among the Department of Labor's (DOL) top enforcement priorities for the past several years.
- The DOL recently issued comprehensive guidance regarding MH/SUD benefits to help health plan sponsors comply with the MHPAEA.
- To avoid possible penalties, plan sponsors should respond to participants' requests for MH/SUD benefits information within 30 days.

### **Background**

The Mental Health Parity and Addiction Equity Act (MHPAEA) is a federal law that generally prevents group health plans and health insurance insurers that provide mental health and substance use disorder (MH/SUD) benefits from imposing less favorable limitations on those benefits than on medical and surgical coverage. The MHPAEA's parity requirements generally apply to group health plans and health insurance insurers that provide coverage for MH/SUD benefits in addition to medical and surgical benefits.

### **Parity Requirements**

Under the MHPAEA, the financial requirements and treatment limitations applicable to MH/SUD benefits cannot be more restrictive than the predominant requirements or limitations applied to substantially all medical and surgical benefits in a benefit classification.

MHPAEA requires parity in the application of:

- annual and lifetime dollar limits;
- financial requirements (such as deductibles, copayments, coinsurance, and out-of-pocket maximums);
- quantitative treatment limitations (such as number of treatments, visits, or days of coverage); and
- non-quantitative treatment limitations (NQTLs), which include (but are not limited to) medical management standards, formulary designs for prescription drugs, methods for determining usual, customary and reasonable charges, exclusions based on a failure to complete a course of treatment, and restrictions based on facility type or provider specialty.

### **New Proposed Compliance Guidance**

On April 22, 2018, the DOL released proposed guidance to promote compliance with the MHPAEA. The DOL has requested public comments on the guidance by June 22, 2018. After this date, final guidance will be issued.

## Focus on NQTLs

The DOL's proposed guidance is primarily focused on issues surrounding NQTLs, such as:

- exclusions of specific treatments for certain conditions (such as autism spectrum disorder);
- standards related to experimental or investigative determinations;
- medical necessity determinations for prescription drugs;
- step-therapy drugs; and
- standards for network provider participation.

## Multi-Part Guidance

The new MHPEA guidance includes:

- 12 [Proposed FAQs](#) (final FAQs will inform future DOL MHPAEA enforcement efforts);
- an updated plan [self-compliance tool](#) that includes a MH/SUD benefits questionnaire, compliance tips, examples of non-compliant plan provisions and guidance on how to respond to a MH/SUD disclosure request;
- [examples of NQTLs](#) that may violate the MHPAEA; and
- a [revised draft model disclosure request form](#) that participants may use to request information about their MH/SUD benefits.

## Model Disclosure Request Form

The MHPAEA requires group health plans and insurers to disclose information on medical necessity criteria for both medical and surgical and MH/SUD benefits, as well as the processes, strategies, evidentiary standards and other factors used to apply an NQTL (with respect to medical and surgical and MH/SUD benefits) upon request. Plan sponsors should respond to these requests within 30 calendar days to avoid penalties.

The DOL's new model disclosure form includes background and instructions to advise participants or their authorized representatives about MHPAEA and plan and employer obligations. The form may be used to request general information about the plan's coverage of MH/SUD benefits or specific information in response to a claim for MH/SUD benefits that was (or may be) denied or restricted by the plan.

Plan participants may – but are not required to – use the draft model form to request information about their MH/SUD benefits. Health plan sponsors and insurers must respond to these types of participant requests even if they are not submitted using the model form.

## Claim Denials

Employee Retirement Income Security Act (ERISA)-covered group health plans must provide the reasons for a denial of MH/SUD benefits in the plan's claim denial notice, in accordance with the DOL's claims procedure regulations. Participants covered under non-ERISA plans may request this information as well. Sponsors of non-ERISA plans must respond to such requests in a reasonable time and manner.

## MHPAEA Enforcement

The DOL, through the Employee Benefits Security Administration (EBSA), enforces the MHPAEA's requirements for private-sector employer plans. MHPAEA enforcement has been one of the DOL's top enforcement priorities for the last several years. When EBSA identifies MHPAEA violations in a specific group health plan, it asks the plan to make necessary changes to any noncompliant plan provision and to re-adjudicate any improperly denied benefit claims.

Because many MHPAEA violations involve NQTLs, employers should carefully review their coverage of MH/SUD benefits to confirm that any NQTLs satisfy parity requirements. NQTLs are often not readily apparent in plan materials so it may be necessary to present specific NQTL-related questions to insurers.

#### **ENFORCEMENT EXAMPLE**

An ERISA plan participant contacted EBSA for help after her son's mental health claims were denied based on the grounds that the treatment was not medically necessary. The plan also initially refused to provide its criteria for medical necessity, claiming that it was proprietary.

EBSA contacted the plan administrator on the participant's behalf, explained how the MHPAEA's requirements applied to the plan, and asked that the claims be reviewed. As a result, the plan voluntarily complied and paid \$48,000 in claims for intensive outpatient therapy for the participant's son.

#### **Penalties for Noncompliance**

The penalty for failing to comply with MHPAEA parity requirements overall is \$100 per day, per individual to whom a violation relates. The penalty is imposed on the employer plan sponsor – not the insurer or third-party administrator. Penalties of up to \$110 per day may apply for failure to respond to a participant disclosure request within 30 calendar days.

#### **Next Steps for Plan Administrators**

- Review medical plan(s) to evaluate parity of MH/SUD benefits.
- Be prepared to respond within 30 days to the types of requests provided in the sample disclosure form, since participants may begin using the sample request now.
- Take advantage of the DOL's MHPEA self-compliance tool and review the 12 new proposed FAQs.
- Stay tuned for final guidance.

#### **Additional Resources**

More information regarding MHPAEA compliance is available on the DOL's MH/SUD [webpage](#).

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