COMPLIANCE BULLETIN

New Resources for Mental Health Parity Compliance

HIGHLIGHTS

- The DOL is currently enforcing the MHPAEA to the fullest extent possible.
- The DOL has provided resources to help group health plan sponsors comply with the MHPAEA.
- Employers should consider using the DOL's resources to review their group health plan's compliance with the MHPAEA.

IMPORTANT DATES

30 Calendar Days

To avoid possible penalties under ERISA, health plan sponsors should respond to participants' requests for information about MH/SUD benefits within 30 calendar days.

OVERVIEW

The Department of Labor (DOL) has provided new resources to promote compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). The MHPAEA requires parity between mental health and substance use disorder (MH/SUD) benefits and medical and surgical benefits. The DOL's resources include:

- ✓ Proposed FAQs regarding mental health parity;
- ✓ An updated self-compliance tool for group health plans; and
- ✓ A revised draft model form that participants may use to request information about their MH/SUD benefits.

The DOL has also identified examples of nonquantitative treatment limitations (NQTLs) that may violate the MHPAEA.

ACTION STEPS

Employers should work with their issuers and benefit administrators to confirm that their health plan's coverage of MH/SUD benefits complies with the MHPAEA, including any NQTLs. Employers should consider using the DOL's resources to understand the MHPAEA's requirements and review their plan designs.

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Mental Health Parity

The MHPAEA is a federal law that generally prevents group health plans and health insurance issuers that provide MH/SUD benefits from imposing less favorable benefit limitations on those benefits than on medical and surgical coverage. The MHPAEA's parity requirements generally apply to group health plans and health insurance issuers that provide coverage for MH/SUD benefits in addition to medical and surgical benefits.

According to the DOL, it is vigorously enforcing the MHPAEA's requirements. Because many MHPAEA violations involve NQTLs, employers should carefully review their coverage of MH/SUD benefits to confirm that any NQTLs satisfy the parity requirements.

Parity Requirements

Under the MHPAEA, the **financial requirements** (such as coinsurance and copays) and **treatment limitations** (such as visit limits) 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.

In addition, the MHPAEA imposes parity requirements on the **NQTLs** that plans may place on MH/SUD benefits. An NQTL is generally a limitation on the scope or duration of benefits for treatment. NQTLs include medical management standards, formulary designs for prescription drugs, plan 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.

DOL Resources

The DOL's proposed FAQs and examples of NQTLs highlight aspects of plan design that should be carefully reviewed for MHPAEA compliance. The DOL's self-compliance tool includes a questionnaire that employers can complete to help determine if their group health plan complies with the MHPAEA.

Participant Disclosures

The MHPAEA requires group health plans and issuers to disclose certain information to plan participants regarding the plan's coverage of MH/SUD benefits, including the following:

- ✓ Upon request, health plan sponsors and issuers must 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. To avoid possible penalties under ERISA, plan sponsors should respond to these requests within 30 calendar days. If a plan sponsor does not respond within 30 calendar days, penalties of up to **$110 per day** may apply.

- ✓ Group health plans that are subject to ERISA 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 in plans that are not subject to ERISA may request this information, and the plan sponsor must respond within a reasonable time and in a reasonable manner.

DOL Draft Model Form for Participant Requests

To help improve MHPAEA disclosures, the DOL has released a draft model form that participants, enrollees or their authorized representatives may use to obtain information on their plan's coverage of MH/SUD benefits. The draft model 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 are not required to use the draft model form to request information about their MH/SUD benefits—health plan sponsors and issuers must respond to participant requests for this information even if the model form is not used.

MHPAEA Enforcement

The DOL, through its Employee Benefits Security Administration (EBSA), enforces the MHPAEA's requirements for private-sector employment based health plans. Vigorous enforcement of the MHPAEA has been one of the DOL's top enforcement priorities. 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.

In fiscal years 2016 and 2017, EBSA closed 671 health plan investigations, 378 of which included reviews of MHPAEA compliance. These investigations resulted in 136 citations for MHPAEA violations. During the 2017 fiscal year, almost 50 percent of MHPAEA violations involved NQTLs.

Enforcement Example: An ERISA plan participant contacted EBSA for help after the mental health claims for his son 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.

More Information

More information regarding MHPAEA compliance is available on the DOL's website for MH/SUD parity.