



legislativeUPDATE

January 5, 2017

Additional Mental Health Parity Guidance Issued

Several provisions of the recently enacted [21st Century Cures Act](#) directly affect employer group health plans, including expanded guidance related to mental health parity. Generally, under the Mental Health Parity Act (MHPA) and the Mental Health Parity and Addiction Equity Act (MHPAEA), to the extent that a health plan offers mental health or substance abuse (MHSA) disorder benefits, the plan must provide parity between the medical/surgical benefits and the MHSA disorder benefits. For health plans subject to the MHSA parity rules (small employer and retiree-only health plans are generally exempt) and with limited exceptions, parity should exist between the plan's medical/surgical and MHSA benefits with respect to annual and lifetime limits, financial requirements (ex. deductibles, copays), quantitative treatment limitations (ex. number of visits, days of treatment) and non-quantitative treatment limitations (ex. formulary design for prescription drugs).

Adherence to the MHSA parity rules continues to be a challenge. Despite the guidance issued to date, some plans continue to employ operational practices that are adverse to MHSA parity laws. To combat non-compliance, the government has issued guidance as a means to encourage enforcement. In June of this year, the U.S. Department of Labor (DOL) issued guidance on the non-quantitative treatment limitation parity requirement under the MHPAEA and provided practical examples of plan designs and operations that could be red flags as to an MHPAEA violation. For more information on this, see our Update, [Warning Signs - Mental Health Parity Compliance](#).

Enforcement efforts are expected to continue, as the Cures Act charges the Health and Human Services (HHS), DOL and Treasury (the "Agencies") with several "action items" to support MHPA/MHPAEA compliance. Some of the major provisions of the Cures Act that impact MHSA parity are as follows:

- The Cures Act clarifies that eating disorders are a mental health condition and if a health plan, subject to the MHPAEA, covers eating disorders, there should be parity between these benefits and medical/surgical benefits. Provisions under the Act also provide that HHS will work to increase public awareness of eating disorders by updating its website and identifying model programs designed to assist with eating disorders.
- Within 12 months of enactment of the Cures Act, the Agencies will issue compliance program guidance. This guidance is expected to focus on non-quantitative treatment limitations (NQTLs) and should provide examples of both compliant and non-compliant plan designs under the rules. The plan design examples will be based on actual investigations (de-identified) of violations and are required to explain in detail the criteria for approving

both MHSA benefits and medical/surgical benefits. During this period, the Agencies will also enter into various share agreements, allowing the transfer of information between the federal Agencies and states as a further tool for the government to address non-compliance.

- Additional guidance is also expected for group plans and health issuers to illustrate methods that these parties may use when required to disclose information to participants, beneficiaries, and others about the plan's compliance with the MHSA parity rules. This guidance is expected within 12 months of enactment of the Cures Act. The Agencies are also expected to solicit public comments and provide feedback regarding a plan's process for disclosing MHPAEA compliance to individuals and how such practices may be improved.
- Mandatory audits are required under the Cures Act for health plans and issuers that have violated the MHPAEA at least five times. Under these audits, the responsible government agency is expected to review the plan documents of health plans or issuers that violate the law.

Employers that offer MHSA benefits (including benefits for eating disorders) are encouraged to follow the guidance as it is issued. It's important to note that any congressional action to change or repeal parts of the ACA will not impact a plan's compliance obligations under the MHSA parity rules and health plan sponsors are encouraged to be proactive about compliance. Self-insured health plans should review any MHSA benefits offered under their plan (including prescription drug plans, if applicable) and if needed, work with their third party administrator to make plan accommodations, in description and in practice, that are in accordance with the guidance. Employers that sponsor fully-insured health plans will likely have contracts and benefits updated as required by the insurance carrier since health plan issuers are directly obligated to comply with MHSA parity rules.

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877-861-3220



news@connerstrong.com



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