



Legislative Update

July 22, 2010

Determining Parity for Outpatient Benefits Under Mental Health Act

A new [FAQ](#) from the Department of Labor (DOL) on the Mental Health Parity and Addiction Equity Act of 2008 ([MHPAEA](#)) provides important relief for plans with respect to the outpatient classification testing problem under MHPAEA. The issue involves the common practice of plans providing outpatient services that require a copayment for office visits (e.g., physician or psychologist visits) but coinsurance for other outpatient services (e.g., outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items).

Plans that do not uniformly use copayments or coinsurance for outpatient benefits (i.e., both forms of cost-sharing are used) often fail to satisfy the complex "substantially all" prong of the parity test. Under the "substantially all" prong of the parity test, the type of financial requirement or treatment limitation must apply to at least two-thirds of medical/surgical benefits in order for it to be applied to mental health or substance use disorder benefits.

The DOL was asked whether a plan can establish any sub-classifications for purposes of determining outpatient benefit parity. The ability to divide outpatient benefits into two permissible sub-classifications will help plans demonstrate compliance with the parity requirements.

The new FAQ established an enforcement safe harbor that allows a plan to establish sub-classifications within the outpatient benefit classification. The only sub-classifications allowed are: 1) office visits; and 2) all other outpatient items and services. Therefore, plans are permitted to test office visits separately from other outpatient benefits to determine if a plan meets the financial requirements and quantitative treatment limits set by interim rules. The relief lets plans avoid the testing challenge of combining office visits, which often have copayments, with other outpatient services typically subject to coinsurance. The limited safe harbor does not permit other distinctions (such as separate sub-classifications for generalists and specialists) and applies until final regulations are issued.

If you have questions, **please contact your Conner Strong account representative toll-free at 1-877-861-3220.**

This Legislative Update is provided for general informational purposes only and is not intended to be legal advice. Readers are urged to contact an attorney for legal advice or assistance.