

November 22, 2013

Final Mental Health Parity Rules Released

The agencies have issued final [rules](#) under the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). In February 2010, interim final regulations under MHPAEA set out rules regarding the imposition of financial requirements (e.g., coinsurance or copayments), quantitative treatment limitations (e.g., limits on number of visits), and non-quantitative treatment limitations to mental health and substance use disorder benefits. Incorporating clarifications discussed in previous FAQs addressing issues under healthcare reform law, the new final rules adopt, amend, and clarify the MHPAEA rules. All employer group health plans that provide mental health or substance use disorder benefits will need a careful review to ensure compliance.

Background. MHPAEA prohibits group health plans (both self-funded and insured) that provide medical and surgical benefits and mental health or substance use disorder benefits from applying financial requirements (such as coinsurance) or quantitative treatment limitations (such as visit limits or inpatient days covered) that are more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical and surgical benefits. It is important to note that the MHPAEA does not require group health plans to provide mental health and substance abuse benefits. The rules apply only if a plan provides those benefits.

Plans Affected. The final rules generally apply to most employment-based group coverage (including multi-employer plans), but there are a few exceptions. For example, MHPAEA does not apply to retiree-only plans. MHPAEA also contains an exemption for a group health plan of a small employer. However, note that under separate rules governing healthcare reform's requirement to provide essential health benefits (EHBs), non-grandfathered health insurance coverage in the individual and small group markets must provide all categories of EHBs, including mental health and substance use disorder benefits starting in 2014. MHPAEA also contains an increased cost exemption available to plans that meet the requirements, and the final rules establish standards and procedures for claiming the exemption under MHPAEA. Additionally, plans for State and local government employees that are self-insured may opt-out of MHPAEA's requirements if certain administrative steps are taken.

Effective Date for Group Coverage. The final MHPAEA rules apply to plan years (for grandfathered and non-grandfathered plans) beginning on and after July 1, 2014 (January 1, 2015, for most calendar year plans). Until the final rules become applicable, plans must continue to comply with the mental health parity provisions of the interim final regulations (which generally became applicable for plan years beginning on or after July 1, 2010).

FAQs Released. Along with the final rules, [Frequently Asked Questions](#) (FAQs) have also been released addressing the integration of the final rules with the healthcare reform law. The agencies previously issued [FAQ V](#), clarifying criteria for medical necessity determinations and providing an interim enforcement safe harbor, and [FAQ VII](#), partially addressing the permissibility of certain non-quantitative treatment limitations imposed by plans. Through the most recent FAQs, the agencies are requesting comments (due by January 8, 2014) on what additional steps should be taken to ensure compliance with MHPAEA through health plan transparency, including what other disclosure requirements would provide more transparency to participants, beneficiaries, enrollees, and providers.

Guidance in the Final Rules. Among other things, the final regulations and the recent FAQs address the following:

- Ensuring that parity applies to intermediate levels of care received in residential treatment or intensive outpatient settings;
- Clarifying the scope of the transparency required by health plans, including the disclosure rights of plan participants, to ensure compliance with the law;
- Clarifying that parity applies to all plan standards, including geographic limits, facility-type limits and network adequacy;
- Eliminating an exception to the existing parity rule that was determined to be confusing, unnecessary and open to abuse (for differences in “non-quantitative treatment limitations” between medical/surgical and mental health or substance use disorder benefits based on “clinically appropriate standards of care”);
- Providing that the MHPAEA parity requirements apply only to non-essential health benefits (MHPAEA permits aggregate lifetime and annual dollar limits on mental health benefits or substance use disorder benefits as long as the limits parity those of medical/surgical benefits provided under the plan; however, healthcare reform prohibits lifetime and annual limits on EHBs, which include a category labeled: “mental health and substance use disorder services, including behavioral health treatment”);
- Clarifying that MHPAEA does not require coverage of additional mental health or substance use disorder benefits (under healthcare reform, plans are required to cover certain “preventive” mental health or substance use disorder benefits without cost-sharing, even if the plan does not cover treatment for the condition the preventive service is intended to diagnose);
- Clarifying that the rules continue to prohibit plans from applying separate cumulative financial requirements (deductibles, co-pays, out-of-pocket maximums) or cumulative quantitative treatment limitations (annual or lifetime day or visit limits) to medical/surgical and mental health and substance use disorder benefits in a classification. For example, a single deductible would apply to coverage for outpatient in-network treatments for medical/surgical and mental health/substance use disorders.

Next Steps

The final rules provide welcome clarification and guidance for employer plans. Employers that offer mental health and substance use disorder benefits will need to revisit their group health care plan designs in 2014 to ensure compliance with these final rules.

Additional information and links to the MHPAEA guidance are available on [DOL's MHPAEA webpage](#) and [HHS' MHPAEA webpage](#). Questions regarding compliance with MHPAEA can be

directed to HHS at 1-877-267-2323 extension 6-1565 or emailing phig@cms.hhs.gov, or to the DOL's regional offices at www.askebsa.dol.gov or toll free at 1-866-444-3272. A [News Release](#) on the final rules is also available.

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