

Publications

Labor and Employment Alert: Mental Health Parity: Can You Show That Your Health Plan Complies?

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On June 16, 2017, the Department of Labor (DOL) published a draft of a model form that an employee (or his or her representative) could use to request documentation of compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). If an employer receives this type of request (even if not on the DOL's model form), it has just 30 days to respond. If an employer doesn't respond in 30 days, penalties of up to \$110 per day may apply.

Background

Mental health parity is measured for each of three types of requirements (financial requirements, quantitative treatment limitations, and non-quantitative treatment limitations) in each of eight classifications (network office visits, out-of-network office visits, other network outpatient services, other out-of-network outpatient services, network inpatient services, out-of-network inpatient services, emergency care, and prescription drugs). [See Vorys Chart: Comparability Testing under the Mental Health Parity and Addiction Equity Act](#). In each case, the requirements applicable to mental health and substance abuse disorder benefits must be comparable to (or less restrictive than) the requirements applicable to medical and surgical benefits.

Comparability with respect to financial requirements and quantitative treatment limitations is a function of plan design and many plans are designed to comply. The difficulty has been in the more subjective determination of comparability with respect to non-quantitative treatment limitations.

Demonstrating Comparability of Non-Quantitative Treatment Limitations

A provision in the 21st Century Cures Act [P.L. 114-255 (12/13/2016)] charged the DOL, IRS and HHS with soliciting feedback from the public on the "disclosure request process" related to mental health parity; the publication of the draft model form and the solicitation of comments

on the draft model form are in response to that charge. You may send comments to e-ohpsca-mhpaea-disclosure@dol.gov through September 13, 2017.

The DOL's draft model form is specifically intended to request information to demonstrate whether the application of non-quantitative treatment limitations to mental health and substance abuse disorder benefits is comparable to application to medical and surgical benefits.

Non-quantitative treatment limitations include:

- Standards for medical necessity.
- Medical management.
- Network tier design.
- Reimbursement rates.
- Exclusions based on failure to complete a course of treatment.
- Restrictions based on geographic location, facility type, provider specialty, and other limitations on the scope or duration of benefits.
- Fail-first and step therapy protocols.
- Formulary design for prescription drugs.

If a plan participant questions whether a non-quantitative treatment limitation is being applied comparably to mental health and/or substance abuse disorder benefits, he or she may ask his or her employer to provide:

1. Plan language regarding the limitation, along with a list of all of the medical/surgical and mental health and substance use disorder benefits to which it applies in the relevant classification;
2. The factors used in the development of the limitation and the evidentiary standards used to evaluate the factors;
3. The methods and analysis used in the development of the limitation; and
4. Evidence to establish that the limitation is applied no more stringently, as written and in operation, to mental health and substance use disorder benefits than to medical and surgical benefits.

Remember an employer has just 30 days to respond to this sort of request. In anticipation of future requests, we suggest that employers ask their claims administrators what documentation is readily available and whether additional documentation should be developed.