

FACT SHEET:

MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

Recently the U.S. Departments of Labor, Health and Human Services and the Treasury issued the interim final regulations governing the way employers must comply with the Mental Health Parity and Addiction Equity Act (MHPAEA). MHPAEA, which passed into law in 2008 and went into effect for most plan years beginning after October 3, 2010, requires group health plans (including ERISA plans) that provide mental health or substance abuse benefits to do so equally to medical and surgical benefits.

When “interim final rules” are released by federal agencies, they are followed by a public comment period to give individuals and organizations an opportunity to make concerns heard. The comment period on the new mental health parity rules is now open until May 3, 2010, although final rules may be published sooner. These rules apply to plan years beginning on or after July 1, 2010.

In the meantime, plans are required to make “good faith efforts” to comply with the statutory requirements of the MHPAEA. While a good faith effort will provide some insulation against federal penalties, the new regulations warn plans that enrollees can sue if they believe they have cause during the interim period.

The MHPAEA statute requires plans to provide enrollees with the reason for a denial upon request, while the new regulations clarify that ERISA plans are required to make these disclosures in a manner consistent with existing ERISA claims procedure regulations.

Interaction with Wisconsin's Parity Law

ERISA preempts state insurance laws for most self-funded employers. However, the state has the ability to regulate certain Alliance members, such as those who are fully-insured coalitions of smaller employers or self-funded government plans.

Wisconsin's current parity law mandates that fully-insured group plans that provide treatment for physical conditions must also provide a minimum level of (but not equivalent) mental health benefits. However, the intersection of the state and federal laws means that presently fully-insured employers with 51 or more employees **must** offer mental health benefits (state law), and they must offer them on an **equivalent basis** with surgical/medical benefits (federal law). Fully-insured employers with 50 or fewer employees are exempt from the federal law, but the state law would apply.

The Wisconsin State Legislature has introduced legislation that would change Wisconsin's current parity requirements to bring them more in line with the MHPAEA. There are important distinctions between the proposed state legislation and federal law however. For one, group plans would not be given the option under the state proposal to forgo mental health benefits altogether. Also, the state proposal applies to all state-regulated group plans, including self-funded government plans. The only exceptions allowed from the proposed requirements would be employers with 10 or fewer employees that proactively opt for Wisconsin's current minimums instead the new parity requirements and employers that would qualify for a cost exemption similar to the exemption allowed under federal law.

The legislation (Senate Bill 362) has been approved by one house of the legislature and is expected to be enacted into law this session.



Definitions

Under the new regulations, *financial requirements* and *treatment limitations* for mental health and substance abuse benefits cannot be more restrictive than the *predominant* requirements applied to *substantially all* medical and surgical benefits.

“Financial requirements” generally refer to copays, deductibles, coinsurance, out of pocket limits and annual and lifetime dollar limits. “Treatment limitations” refer to both quantitative coverage limitations (such as number of covered office visits, days of inpatient coverage and others) and nonquantitative limitations (such as medical management standards, drug formulary design, step therapy protocols and others). “Predominant” is defined as greater than one-half, while “substantially all” is defined as at least two-thirds. Financial requirements include deductibles, copays, out-of-pocket limits, annual limits and lifetime limits.

Plans must use a “generally recognized independent standard of current medical practice” to define mental health and substance abuse benefits. The regulations specifically refer to the most current version of the Diagnostic and Statistical Manual of Mental Health Disorder or a state guideline as valid standards, but leave open the possibility of using another resource.

In determining whether a plan has satisfied the parity requirements described above, plans must compare medical/surgical and mental health/substance abuse benefits or limitations within six specific benefit categories only. These categories are:

- 1) inpatient, in-network
- 2) inpatient, out-of-network
- 3) outpatient, in-network
- 4) outpatient, out-of-network
- 5) emergency care
- 6) prescription drugs

These comparisons should be based on “coverage unit” such as single or family coverage.

Other Provisions of Interest

Plans that provide mental health coverage through a carve out arrangement separate from medical and surgical benefits will be required to comply with the MHPAEA if the coverage is offered in connection with a health plan that offers medical/surgical coverage.

The new regulations also prohibit separate deductibles for mental health/substance abuse benefits and medical surgical benefits. Plans that currently use separate deductibles will have to modify their plans by July 1, 2010, in order to comply with the new regulations.

Plans that comply with the MHPAEA for the first full year of applicability and suffer a cost increase of two percent or more as a result will be exempt from the MHPAEA during the next year. The exemption threshold decreases to one percent in subsequent years, but plans may only qualify for the exemption in alternating plan years because a full year of compliance is required in order to trigger the exemption.

If you have questions about compliance with this act, contact your attorney.