

Insights

Recent Guidance for the Mental Health Parity Act: Are You in Compliance?

June 18, 2018

The Department of Labor (“DOL”) is buckling down on compliance with the Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”). On April 23, 2018, the DOL released a plethora of updated information that provides employers, who sponsor health plans, even more insight as to how to ensure MHPAEA compliance. See “Resources” section below for a list of available publications and links. The guidance focuses on several compliance areas with a highlight on: nonquantitative treatment limitations and disclosures.

The Mental Health Parity and Addiction Equity Act of 2008 - Background

Under MHPAEA, if any employment-based group health plan or health insurance issuer chooses to provide mental health and substance use disorder benefits (“MH/SUD”), such benefits must be comparable to—or in parity with—the medical and surgical benefits offered. Benefits for MH/SUD must not be more restrictive than medical and surgical benefits in terms of:

- Financial requirements such as copays and coinsurance;
- Quantitative treatment limitation (“QTL”) such as limited number of treatments annually; and
- Nonquantitative treatment limitation (“NQTL”) such as network adequacy, prior authorization requirements, medical management techniques, and fail-first policies.

Highlights of the DOL's Fact Sheet and FAQs

Employee Benefits Security Administration (“EBSA”), a division of the DOL, issues an annual MHPAEA Enforcement fact sheet (“Fact Sheet”), and reported for 2017, \$2.2 million private employment-based group health plans are subject to enforcement. The 2017 Fact Sheet also stated EBSA cited 92 violations for MHPAEA noncompliance. As a result of these violations and public input, the DOL, in conjunction with other agencies, released an updated self-compliance tool, draft disclosure template, and proposed FAQs to assist companies with complying with these requirements. Additionally, EBSA will be forming a specialized MHPAEA team to target and investigate possible NQTLs imposed by large behavioral health providers and issuers. EBSA primarily focuses on NQTLs because of the transparency issues NQTLs present when enforcing the MHPAEA. NQTLs are typically not apparent until benefits or reimbursements are denied and the workflow has already begun. The 2017 Fact Sheet disclosed a few examples of NQTLs EBSA discovered that help exemplify NQTLs. For instance, EBSA discovered a plan that required precertification for some outpatient medical and surgical services but required all psychiatric, chemical dependency, and substance use disorder therapies to be precertified. In another case, EBSA found a plan had precertified counseling visits for Post-Traumatic Stress Disorder and also precertified an outpatient program, yet denied the counseling and the outpatient program claims.

The proposed FAQs were updated on April 23, 2018 by the DOL, the Health and Human Services and the Treasury (“FAQs”) and drill down into NQTLs by offering specific guidance in the areas of:

- Experimental or investigative treatments
- Prescription drugs and dosage limits
- Exclusions of benefits for a particular condition
- Step therapy protocols or fail-first policies
- Reimbursement methodologies
- Network adequacy

Additionally, the FAQs provide guidance for ERISA disclosure requirements for MH/SUD as it applies to:

- Medical necessity criteria
- Updated summary plan descriptions
- Information provided electronically

The FAQs further emphasize the importance of disclosure by highlighting the updated draft template for a disclosure request form to be used by participants to request information about their mental health benefits. The DOL, Health and Human Services and the Treasury are seeking comments on the draft template disclosure request form as well as the proposed FAQs. The deadline to submit such comments ends on June 22, 2018.

Action Plan for Sponsors of Health Plans

Given the DOL's refined focus and creation of a specialized team to investigate NQTLs, employers should re-evaluate their plans to ensure they are MHPAEA compliant.

Steps for evaluating current compliance include:

- Reviewing the self-compliance tool, checklists, and other guidance on the EBSA website;
- Conducting reviews of plan benefits, coverage, and plan documents pertaining to MH/SUD; and
- Speaking with a broker or administrator about a policy's MHPAEA compliance.

Resources

Fact Sheet

Frequently Asked Questions

Updated Draft Template—Disclosure Request Form

Self-Compliance Tool

Pathway to Full Parity

If you have any questions please contact a member of the Krieg DeVault LLP Employee Benefits Group.