

update

New Guidance on the Mental Health Parity and Addiction Equity Act

The Departments of Labor, Treasury, and Health and Human Services (the Departments) recently released guidance and a request for comments on certain aspects of the Mental Health Parity and Addiction Equity Act (MHPAEA)¹ and the 21st Century Cures Act (the Act), which required the Departments to take steps in 2017 to strengthen enforcement of the MHPAEA.² The Act required the Departments to solicit public feedback on how to improve the process participants can use to request information from a health plan about the plan's compliance with the MHPAEA. The Act also clarified that if provided, coverage for eating disorders, including residential treatment, must be consistent with the MHPAEA.

This *Update* provides background information on the MHPAEA and summarizes the new guidance. Comments on this guidance are due by September 13, 2017.

Background

The MHPAEA requires parity between medical/surgical benefits and mental health/substance use disorder (MH/SUD) benefits. Health plans must provide parity in both numerical or “quantitative” financial requirements or treatment limits (e.g., cost sharing and day or visit limits) and “non-quantitative” treatment limits, which are described in the text box at the top of the next page. The MHPAEA requires that plan administrators provide upon request to any current or potential participant, beneficiary or contracting provider detailed criteria for medical necessity determinations relating to MH/SUD. Self-insured public sector plans can opt out of MHPAEA after providing notice to the Centers for Medicare & Medicaid Services (CMS) and to their enrollees.³

Guidance on Coverage of Eating Disorders

The Departments issued a Frequently Asked Question (FAQ) concerning how the MHPAEA applies to benefits offered for treatment of an eating disorder, and solicited comments on whether any additional clarification is necessary.



Health Compliance News Highlights:

- The 21st Century Cures Act requires the Departments to take various steps to strengthen enforcement of the MHPAEA.
- Guidance reinforces that a plan's coverage for eating disorders must comply with all aspects of the MHPAEA.
- The Departments have released for public comment a form that plan participants can use to gather information relevant to the plan's compliance with the MHPAEA.

¹ The [guidance](#) is available on the Department of Labor (DOL) website.

² The 21st Century Cures Act (Public Law 114-255) was enacted December 13, 2016. For a summary of the Act, see Segal Consulting's February 15, 2017 *Update*, "[21st Century Cures Act Enhances Mental Health Parity Oversight and Creates New Small Employer Health Reimbursement Arrangement.](#)"

³ Information about the opt-out process that plan sponsors must follow is posted on the [Self-Funded Non-Federal Governmental Plans](#) webpage on the CMS website.

What Are “Non-quantitative” Treatment Limits?

“Non-quantitative” Treatment Limits (NQTLs) are tools to manage the mental health or substance use disorder benefit.* Examples include:

- Prior authorization requirements,
- Determinations that a treatment is experimental,
- Methods for reimbursing providers,
- Step-therapy programs, and
- Restrictions based on geographic location or facility type.

* For a discussion of the evidence-based process that plan sponsors must follow and document to support the application of medical management tools to MH/SUD care, see Segal’s July 25, 2016 Update, “[Mental Health Parity and Addiction Equity Act Enforcement Is a Priority for Federal Agencies.](#)”

The guidance states that eating disorders are mental health conditions, and therefore treatment of an eating disorder is a “mental health benefit” as defined by MHPAEA.

Eating disorders include disorders such as anorexia nervosa, bulimia nervosa, binge-eating disorder and other conditions. Plans that cover treatment for eating disorders must assure that the financial cost sharing and limits on eating disorder treatments are no more restrictive than those for medical/surgical treatment. In addition, plans should assure that any medical management tools, such as prior authorization requirements, are not applied in a more restrictive manner for eating disorders when compared to their application to medical/surgical conditions.

Model Form to Request Documentation about Mental Health and Substance Use Disorder Coverage

The Departments published a draft model form that participants, enrollees or their authorized representatives could — but would not be required to — use to (1) request information from their health plan or insurer regarding MH/SUD benefits, or (2) to obtain documentation after an adverse benefit determination involving MH/SUD benefits to support an appeal.⁴ The Departments request comments on any aspect of the draft model form and the Departments’ outline of how plans should respond to information requests.

The draft model form is not an appeal form, although it states that information obtained can help the individual appeal a denial. The form requests that the plan provide the requested information within 30 calendar days of the date of the request. Plans would be required to provide:

- Specific plan language regarding the relevant limitation on mental health treatment, and the other benefits (including medical benefits) to which the limitation applies;
- The factors the plan used to develop the limitation, including the evidentiary standards used;
- The methods and analysis used in the development of the limitation; and
- Any 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.

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⁴ The [draft model form](#) is available on the DOL website.

Impact on Plan Sponsors

Plan sponsors should assure that coverage for eating disorders complies with the MHPAEA. This would include taking a detailed look at any treatment limitations or authorization rules to assure that they are not more restrictive than those applied to medical/surgical treatments.

In addition, plan sponsors already must respond to requests for information from participants and beneficiaries, and should be prepared to demonstrate that any treatment limitations or medical-management criteria, such as prior authorization or utilization review standards, are no more restrictive than those applied to medical or surgical benefits. Plans that wish to comment on the details of the form should review it and do so no later than September 13, 2017.

How Segal Can Help

Segal works with plan sponsors and their attorneys on compliance issues. Segal can review plan documents and operations and make recommendations with respect to compliance with the MHPAEA; estimate the cost implications of plan design changes needed to comply with the MHPAEA; draft plan amendments; and draft participant communications explaining changes to the benefits.

Questions?

For more information about how these new rules may affect your plan, please contact your Segal consultant or the [Segal office nearest you](#).

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