



BENEFIT NEWS BRIEFS

DOL Issues New FAQs on MHPAEA

Clarification on Participant Fee Disclosure FAB

The DOL posted new *Frequently Asked Questions (FAQs)* on the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)* applicable to health plans on its website at: <http://www.dol.gov/ebsa/pdf/faq-mhpaeaimplementation.pdf> or also available by "[clicking here.](#)" A copy with an added table of contents for ease of use is available by "[clicking here.](#)"

The *FAQs* are aimed at the general public and do not really break any new ground. It seems the main point of clarification is that health plans may not offer mental health or substance use benefits on an "in-patient" basis only if the also offer medical/surgical benefits on an outpatient basis. In such a case, mental health or substance use benefits must also be made available on an outpatient basis as well. The ten *FAQs* have been summarized below.

Q1: Who oversees MHPAEA implementation?

The Departments of Labor and the Treasury generally enforce these requirements for private, employment-based group health plans. States have primary enforcement responsibility with respect to health insurance issuers.

Q2: Have the Departments issued regulations implementing MHPAEA?

Yes. Jointly issued interim final regulations were released on February 2, 2010 and are generally applicable for plan years beginning on or after July 1, 2010.

Q3: What does it mean to issue an interim final regulation?

The regulations are "interim" in the sense that public comments were invited, which is used to inform the Departments' work. Plans and issuers are required to comply with interim final regulations.

Q4: Is it permissible for a health plan to define mental health coverage as consisting solely of inpatient care benefits?

No. The regulations set forth six classifications of benefits: 1) inpatient, in-network; 2) inpatient, out-of-network; 3) outpatient, in-network; 4) outpatient, out-of-

network; 5) emergency care; and 6) prescription drugs. If a plan covers mental health or substance use disorder benefits in one of the six classifications, the plan must provide coverage in all of the classifications in which medical/surgical benefits are available. Therefore, a plan that provides medical/surgical benefits on an outpatient basis may not limit mental health or substance use disorder benefits to inpatient care only.

Q5: Does my health plan violate MHPAEA because it uses a separate managed behavioral health organization to provide utilization review and other services with respect to mental health and/or substance use benefits (sometimes called a carve-out arrangement)?

No, the MHPAEA does not require that insurance arrangements be organized in any particular way.

Q6: MHPAEA and its implementing regulations impose mathematical tests for determining whether a financial requirement or quantitative treatment limitation (such as a copay or visit limit) on mental health/substance use disorder benefits is permitted. Are nonquantitative treatment limitations, or NQTLs, (such as medical management standards) analyzed the same way?

No. NQTLs are analyzed differently. Any processes, strategies, evidentiary standards or other factors used by a plan in applying an NQTL to mental health or substance use disorder benefits must be comparable to, and applied no more stringently than, used in applying the limitation to medical/surgical benefits, unless recognized clinically appropriate standards of care may permit a difference.

Q7: How does MHPAEA interact with State mandates?

States generally may impose stricter requirements on health insurance issuers than required by the MHPAEA. (States may not impose such requirements of self-funded plans due to ERISA preemption – see [Research Memo 2007-34](#)).

Q 8: Are there plans that are exempt from MHPAEA?

Yes. The MHPAEA applies to most employment-based health coverage but does not apply to small employers who have fewer than 51 employees or retiree-only plans.

Q9: What do I do if I think my plan is violating MHPEA?

Contact information for various state and federal agencies is provided.

Q10: What are the Departments doing to promote compliance?

An explanation of the compliance and outreach efforts by the government is given and available at <http://www.dol.gov/ebsa/mentalhealthparity/>.

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NOTE: In response to a questioner, we wish to clarify that the participant fee disclosure regulations and DOL FAB 2012-02 reported on in [Special Bulletin 2012-24](#) APPLY ONLY TO PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT DEFINED CONTRIBUTION PLANS. See [Benefit News Briefs 2010-75](#).

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