

Mental Health Parity Update: Proposed Disclosure Forms, Status of Eating Disorder Treatments

In recent FAQs, the departments solicited more feedback on improving the content of MH/SUD disclosures – including comments on a proposed model form that participants and beneficiaries could use to get information on nonquantitative treatment limits. The guidance also clarified that treatment for eating disorders is a mental health benefit. Group health plan sponsors should consider whether they would need to change administrative processes in order to respond to requests under the model forms as proposed, and make sure that coverage for eating disorder treatment complies with parity rules.

Background

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) prohibits group health plans from applying a financial requirement or quantitative treatment limitation to mental health and substance use disorder (MH/SUD) benefits in a classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical (M/S) benefits in the same classification. It also prohibits group health plans from imposing a nonquantitative treatment limitation on MH/SUD benefits that is more stringent than comparable limitations the plan applies to M/S benefits.

MHPAEA regulations set forth group health plan disclosure requirements generally designed to help participants and beneficiaries evaluate MH/SUD parity. (See our [May 19, 2016 For Your Information.](#)) In October 2016, the Departments of Labor, Treasury, and Health and Human Services (departments) sought comments on developing model forms that participants and beneficiaries could use to obtain information on NQTLs. (See our [December 2, 2016 For Your Information.](#)) Shortly thereafter, the 21st Century Cures Act (Cures Act) required the departments to solicit public feedback on how to improve MHPAEA disclosure requirements. (See our [December 12, 2016 Legislate.](#))

Classifications of “parity”

Parity must be provided in each of the following six classifications:

- inpatient, in-network;
- inpatient, out-of-network;
- outpatient, in-network;
- outpatient, out-of-network;
- emergency care; and
- prescription drugs.

Departments Seek (More) Feedback on Disclosures, Propose Model Form

On June 16, 2017, the departments released [FAQs](#) soliciting additional comments on the questions and issues raised in their October 2016 guidance – including input on the content of model disclosure forms, whether there is a need for different model forms for different types of NQTLs, and other ways to improve the scope and quality of disclosures.

What are NQTLs?

Nonquantitative treatment limitations (NQTLs) are not expressed numerically but otherwise affect the scope or duration of benefits for treatment. They include medical management techniques such as preauthorization, formulary design, and step therapy or fail-first requirements.

The departments also asked for feedback on a [proposed model form](#) that participants, enrollees and their authorized representatives (including providers) could – but would not be required to – use in (1) requesting general information on NQTLs that may affect their MH/SUD benefits, or (2) obtaining documentation to support an appeal after an adverse determination relating to MH/SUD benefits. The proposed model form, which includes an overview of parity rules and disclosure requirements, states that the plan must provide all the following information within 30 calendar days of its receipt of the request:

- Plan language on the NQTL and all M/S and MH/SUD benefits to which the NQTL applies in the benefit classification at issue
- The factors the plan used in developing the NQTL and the evidentiary standards the plan uses to evaluate those standards
- The methods and analyses the plan used in developing the NQTL
- Any evidence that the plan does not apply the NQTL any more stringently to MH/SUD benefits than to M/S benefits

Treatment for an Eating Disorder is a Mental Health Benefit

The guidance also clarifies that the mental health parity rules apply to any benefits for the treatment of eating disorders. The regulations define “mental health benefits” as those with respect to items or services for mental health conditions – as generally recognized under standards of current medical practice. Because eating disorders are considered mental health conditions, their treatment is a “mental health benefit” under MHPAEA.

The departments have asked for comments on the need for additional clarification on applying mental health parity rules to treatment for eating disorders.

Due Date for Comments

The due date for comments on the MHPAEA disclosure obligations, the proposed model forms, and/or the application of MHPAEA to eating disorder treatments is September 13, 2017.

In Closing

Plan sponsors should confirm that their plans can respond to disclosure requests within 30 days of receipt and change administrative processes if necessary. Because questions and appeals are likely, they should consider preparing explanations of how specific NQTLs comply with parity rules. Finally, sponsors should ensure that any covered treatments for eating disorders comply with mental health parity rules.

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