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## The Center for Consumer Information & Insurance Oversight

### The Mental Health Parity and Addiction Equity Act

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#### Introduction

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) is a federal law that generally prevents group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than on medical/surgical benefits.

MHPAEA originally applied to group health plans and group health insurance coverage and was amended by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the "Affordable Care Act") to also apply to individual health insurance coverage. HHS has jurisdiction over public sector group health plans (referred to as "non-Federal governmental plans"), while the Departments of Labor and the Treasury have jurisdiction over private group health plans.

Employment-related group health plans may be either "insured" (purchasing insurance from an issuer in the group market) or "self-funded." The insurance that is purchased, whether by an insured group health plan or in the individual market, is regulated by the State's insurance department. Group health plans that pay for coverage directly, without purchasing health insurance from an issuer, are called self-funded group health plans. Private employment-based group health plans are regulated by the Department of Labor. Non-Federal governmental plans are regulated by HHS. Contact your employer's plan administrator to find out if your group coverage is insured or self-funded and to determine what entity or entities regulate your benefits.

MHPAEA does not apply directly to small group health plans, although its requirements are applied indirectly in connection with the Affordable Care Act's essential health benefit (EHB) requirements as noted below. Under the Public Health Service Act, as amended by the Affordable Care Act, a small group health plan is one that has 100 or fewer employees. However, until 2016, States may elect to retain a definition of small groups of 50 or fewer employees. Although there were changes to the definition of a small group health plan, the Employee Retirement and Income Security Act and the Internal Revenue Code continue to define a small group health plan as one that has 50 or fewer employees. (Some states may have mental health parity requirements that are stricter than federal requirements. To view State specific information visit [www.ncsl.org](http://www.ncsl.org), and on the right hand side of the page enter "mental health parity" then select "State Laws Mandating or Regulating Mental Health Benefits".)

#### Summary of MHPAEA Protections

The Mental Health Parity Act of 1996 (MHPA) provided that large group health plans cannot impose annual or lifetime dollar limits on mental health benefits that are less favorable than any such limits imposed on medical/surgical benefits.

MHPAEA preserves the MHPA protections and adds significant new protections, such as extending the parity requirements to substance use disorders. Although the law requires a general equivalence in the way MH/SUD and medical/surgical benefits are treated with respect to annual and lifetime dollar limits, financial requirements and treatment limitations, MHPAEA does NOT require large group health plans or health insurance issuers to cover MH/SUD benefits. The law's requirements apply only to large group health plans and health insurance issuers that choose to include MH/SUD benefits in their benefit packages. However, the Affordable Care Act builds on MHPAEA and requires coverage of mental health and substance use disorder services as one of ten EHB categories.

## Key changes made by MHPAEA

Key changes made by MHPAEA, which is generally effective for plan years beginning after October 3, 2009, include the following:

- If a group health plan or health insurance coverage includes medical/surgical benefits and MH/SUD benefits, the financial requirements (e.g., deductibles and co-payments) and treatment limitations (e.g., number of visits or days of coverage) that apply to MH/SUD benefits must be no more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits (this is referred to as the "substantially all/predominant test"). This test is discussed in greater detail in the MHPAEA regulation (linked below) and the summary of the MHPAEA regulation found below.
- MH/SUD benefits may not be subject to any separate cost-sharing requirements or treatment limitations that only apply to such benefits;
- If a group health plan or health insurance coverage includes medical/surgical benefits and MH/SUD benefits, and the plan or coverage provides for out-of-network medical/surgical benefits, it must provide for out-of-network MH/SUD benefits; and
- Standards for medical necessity determinations and reasons for any denial of benefits relating to MH/SUD benefits must be disclosed upon request.

## Exceptions

There are certain exceptions to the MHPAEA requirements.

Except as noted below, MHPAEA requirements do not apply to:

- Non-Federal governmental plans that have 100 or fewer employees;
- Small private employers that have 50 or fewer employees;
- Group health plans and health insurance issuers that are exempt from MHPAEA based on their increased cost (except as noted below). Plans and issuers that make changes to comply with MHPAEA and incur an increased cost of at least two percent in the first year that MHPAEA applies to the plan or coverage or at least one percent in any subsequent plan year may claim an exemption from MHPAEA based on their increased cost. If such a cost is incurred, the plan or coverage is exempt from MHPAEA requirements for the plan or policy year following the year the cost was incurred. The plan sponsors or issuers must notify the plan beneficiaries that MHPAEA does not apply to their coverage. These exemptions last one year. After that, the plan or coverage is required to comply again; however, if the plan or coverage incurs an increased cost of at least one percent in that plan or policy year, the plan or coverage could claim the exemption for the following plan or policy year; and
- Large, self-funded non-Federal governmental employers that opt-out of the requirements of MHPAEA. Non-Federal governmental employers that provide self-funded group health plan coverage to their employees (coverage that is not provided through an insurer) may elect to exempt their plan (opt-out) from the requirements of MHPAEA by following the Procedures & Requirements for HIPAA Exemption Election posted on the Self-Funded Non-Federal Governmental Plans webpage (See [http://www.cms.gov/CCIIO/Resources/Files/hipaa\\_exemption\\_election\\_instructions\\_04072011.html](http://www.cms.gov/CCIIO/Resources/Files/hipaa_exemption_election_instructions_04072011.html)) and issuing a notice of opt-out to enrollees at the time of enrollment and on an annual basis. The employer must also file the opt-out notification with CMS.

Note, these exceptions do not apply to those non-grandfathered plans in the individual and small group markets that are required by Affordable Care Act regulations to provide EHB that comply with the requirements of the MHPAEA regulations.

## Regulation

A final regulation implementing MHPAEA was published in the Federal Register on November 13, 2013. The regulation is effective January 13, 2014 and generally applies to plan years (in the individual market, policy years) beginning on or after July 1, 2014. See <http://www.gpo.gov/fdsys/pkg/FR-2013-11-13/pdf/2013-27086.pdf> for the full text of the final regulation. This followed an interim final regulation, which was published in the Federal Register on February 2, 2010 and generally applies to plan years beginning on or after July 1, 2010. See <http://edocket.access.gpo.gov/2010/pdf/2010-2167.pdf> for the full text of the regulation.

The final regulation applies to non-Federal governmental plans with more than 100 employees, and to group health plans of private employers with more than 50 employees. It also applies to health insurance coverage in the individual health insurance market. It does not apply to group health plans of small employers (except as noted above in connection with the EHB requirements). Like the statute, it does not require group health plans to provide MH/SUD benefits. If they do, however, the financial requirements and treatment limitations that apply to MH/SUD benefits cannot be more restrictive than the predominant requirements and limitations that apply to substantially all of the medical/surgical benefits.

The provisions of the regulation include the following:

1. The substantially all/predominant test outlined in the statute must be applied separately to six classifications of benefits: inpatient in-network; inpatient out-of-network; outpatient in-network; outpatient out-of-network; emergency; and prescription drug. Sub-classifications are permitted for office visits separate from all other outpatient services, as well as for plans that use multiple tiers of in-network providers. The regulation includes examples for each classification. Additionally, although the regulation does not require plans to cover MH/SUD benefits, if they do, they must provide MH/SUD benefits in all classifications in which medical/surgical benefits are provided.
2. The regulation requires that all cumulative financial requirements, including deductibles and out-of-pocket limits, in a classification must combine both medical/surgical and MH/SUD benefits in the classification. The regulation includes examples of permissible and impermissible cumulative financial requirements.
3. The regulation distinguishes between quantitative treatment limitations and nonquantitative treatment limitations. Quantitative treatment limitations are numerical, such as visit limits and day limits. Nonquantitative treatment limitations include but are not limited to medical management, step therapy and pre-authorization. There is an illustrative list of nonquantitative treatment limitations in the regulation. A group health plan or coverage cannot impose a nonquantitative treatment limitation with respect to MH/SUD benefits in any classification unless, under the terms of the plan (or coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to MH/SUD benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical surgical/benefits in the classification. The final regulation eliminated an exception that allowed for different nonquantitative treatment limitations "to the extent that recognized clinically appropriate standards of care may permit a difference."
4. The regulation provides that all plan standards that limit the scope or duration of benefits for services are subject to the nonquantitative treatment limitation parity requirements. This includes restrictions such as geographic limits, facility-type limits, and network adequacy.

Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) are not group health plans or issuers of health insurance. They are public health plans through which individuals obtain health coverage. However, provisions of the Social Security Act that govern CHIP plans, Medicaid benchmark benefit plans, and managed care plans that contract with State Medicaid programs to provide services require compliance with certain requirements of MHPAEA. See <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-001.pdf> for the State Health Official letter regarding application of requirements of MHPAEA to Medicaid MCOs, CHIP, and Alternative Benefit (Benchmark) Plans.

We anticipate issuing further responses to questions and other guidance in the future. We hope this guidance will be helpful by providing additional clarity and assistance.

If you have concerns about your plan's compliance with MHPAEA, contact our help line at 1-877-267-2323 extension 6-1565 or at [phig@cms.hhs.gov](mailto:phig@cms.hhs.gov). You may also contact a benefit advisor in one of the Department of Labor's regional offices at [www.askebsa.dol.gov](http://www.askebsa.dol.gov) or by calling toll free at 1-866-444-3272.



A federal government website managed by the Centers for Medicare & Medicaid Services  
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