COMPLIANCE BULLETIN

New Draft Model Form for Mental Health Parity Requests

HIGHLIGHTS

- Group health plans must provide information to participants on their MH/SUD benefits, including any plan limits.
- A draft model form is available for participants to use to request this information.
- Plan sponsors should review the draft model form to prepare to respond to any requests.

IMPORTANT DATES

30 Calendar Days

To avoid possible penalties under ERISA, health plan sponsors should respond to participants' requests for plan information within 30 calendar days.

Provided By:
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OVERVIEW

On June 16, 2017, the Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) issued a draft model form that plan participants may use to request information on their mental health and substance use disorder (MH/SUD) benefits. A federal law—the Mental Health Parity and Addiction Equity Act (MHPAEA)—requires most group health plans to provide parity between MH/SUD benefits and medical and surgical benefits.

Under the MHPAEA, group health plans and health insurance issuers must provide plan participants with certain information regarding their MH/SUD benefits. The Departments issued the model form to help participants request relevant information.

ACTION STEPS

Employers with group health plans should review the draft model form in anticipation of requests for information on participants' MH/SUD benefits. The availability of the model form may generate requests for detailed information on plan benefits. Plan sponsors should respond to these requests within 30 calendar days in order to avoid possible penalties under the Employee Retirement Income Security Act (ERISA).

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Mental Health Parity

The MHPAEA is a federal law that generally prevents group health plans and health insurance issuers that provide MH/SUD benefits from imposing less favorable benefit limitations on those benefits than on medical and surgical coverage.

Under the MHPAEA, the **financial requirements** (such as copayments, coinsurance, deductibles and out-of-pocket maximums) and **treatment limitations** (such as visit limits or other limits on the scope or duration of treatment) applicable to MH/SUD benefits cannot be more restrictive than the predominant requirements or limitations applied to substantially all medical and surgical benefits.

The federal mental health parity law requires health plans to disclose certain information about MH/SUD benefits to participants upon request. A new draft model form makes it easier for participants to request this information.

In addition, the MHPAEA imposes parity requirements on the **nonquantitative treatment limitations (NQTLs)** that plans may place on MH/SUD benefits. NQTLs include medical management standards, formulary designs for prescription drugs, plan methods for determining usual, customary and reasonable charges, exclusions based on a failure to complete a course of treatment, and restrictions based on facility type or provider specialty.

The MHPAEA's parity requirements apply to group health plans sponsored by employers with more than **50 employees**. However, due to an Affordable Care Act (ACA) reform, insured health plans in the small group market must also comply with federal parity requirements for MH/SUD benefits.

Disclosure Requirements

The MHPAEA requires group health plans and issuers to disclose certain information to plan participants regarding the plan's coverage of MH/SUD benefits. Final regulations under the MHPAEA require the following disclosures:

- ✓ Upon request, health plan sponsors and issuers must disclose information on **medical necessity criteria** for both medical and surgical and MH/SUD benefits, as well as the processes, strategies, evidentiary standards and other factors used to apply an **NQTL** with respect to medical and surgical and MH/SUD benefits. To avoid possible penalties under ERISA, plan sponsors should respond to these requests within **30 calendar days**. If a plan sponsor does not respond within 30 calendar days, penalties of up to $110 per day may apply.
- ✓ Group health plans that are subject to ERISA must provide the **reasons for a denial of MH/SUD benefits** in the plan's claim denial notice in accordance with the DOL's claims procedure regulations. Participants in non-ERISA plans may request this information, and the plan must respond within in a reasonable time and in a reasonable manner.

To help improve these disclosures, the Departments released a **draft model form** that participants, enrollees or their authorized representatives may use to obtain information on their plan's coverage of MH/SUD benefits.

By issuing the draft model form, the federal government has indicated that mental health parity compliance, including the application of NQTLs, will continue to be a high priority. A bipartisan law from 2016—the 21st Century Cures Act—calls for more education on mental health parity and increased enforcement of the MHPAEA's requirements.

Draft Model Form

The Departments' draft model form may be used by health plan participants, enrollees or their authorized representatives to request information from their health plan or issuer about NQTLs that may affect their MH/SUD benefits, or to obtain documentation after a claim denial involving MH/SUD benefits to support a claim appeal.

The draft model form may be used to request general information about the plan's coverage of MH/SUD benefits or specific information in response to a claim for MH/SUD benefits that was (or may be) denied or restricted by the plan. If specific information is requested, the draft model form asks the plan or issuer to provide the following detailed information regarding the plan provision or limitation involved in the claim denial:

- ✓ Provide specific plan language regarding the limitation and identify all of the medical and surgical and MH/SUD benefits to which it applies in the relevant benefit classification;
- ✓ Identify the factors used in the development of the limitation and the evidentiary standards used to evaluate the factors;
- ✓ Identify the methods and analysis used in the development of the limitation; and
- ✓ Provide any evidence to establish that the limitation is applied no more stringently, as written and in operation, to MH/SUD benefits than to medical and surgical benefits.

Plan participants are not required to use the draft model form to request information about their MH/SUD benefits; health plan sponsors and issuers must respond to participant requests for this information even if the model form is not used. The availability of the model form, however, may make it more likely that health plan sponsors will receive participant requests for information on MH/SUD benefits.