

EXPERT UPDATE



EXPECT AN EXPERT

Agencies Issue MHPAEA Final Regulations

The DOL, HHS and Treasury in a collaborative effort have issued final regulations and new FAQ guidance for the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The final regulations include clarifications that were issued back in 2010, add new clarifications, and extend the regulations into the individual market. The MHPAEA regulations apply to group health plans beginning on or after July 1, 2014. For now, plans must continue to comply with the interim final regulations.

Highlights of the Final Regulations:

The final rules clarify that aggregate lifetime and annual dollar limits **can** apply to mental health & substance abuse disorder benefits that are not considered Essential Health Benefits. It is important to understand, however, that the Affordable Care Act's (ACA) prohibition on annual and lifetime dollar limits for any service considered an Essential Health Benefit greatly reduces the instances in which these limits would be permissible for mental health & substance abuse benefits. Ambulatory patient services, behavioral health treatment, prescription drug benefits and hospitalization, all of which are considered Essential Health Benefits, cannot be subject to a lifetime or annual dollar cap.

On par with previous FAQ guidance, the final regulations and new FAQs reiterate that under the MHPAEA's small employer exemption, the agencies will continue to exempt group health plans of employers with 50 or fewer employees (100 or fewer for most non-federal governmental plans) from the MHPAEA requirements. Nevertheless, few small employers will actually qualify for the exemption because the ACA requires all insured, non-grandfathered small group plans to cover Essential Health Benefits. The MHPAEA small employer exception seems open only to the small group health plans that are classified as self-insured plans (i.e. self-insured group health plans are not subject to the ACA Essential Health Benefit requirement).



The ACA requires non-grandfathered group health plans to provide coverage for certain preventive services without cost-sharing, including alcohol misuse screening and counseling, depression counseling, and tobacco use screening. The MHPAEA final regulations clarify that a group health plan providing preventive mental health/substance use disorder benefits solely to comply with the preventive services mandate is not required under the MHPAEA to provide additional mental health/substance use disorder benefits. This seems to put to rest the concern that required coverage of preventive services would trigger a broader requirement to comply with MHPAEA for non-grandfathered group health plans that do not otherwise offer mental health/substance use disorder benefits.

The regulations also include clarifications for tiered networks, guidance on Scope of Coverage for “Intermediate Services” and additional information for the applicability of parity requirements for Employee Assistance Plans (EAPs).

References

<https://www.federalregister.gov/articles/2013/11/13/2013-27086/final-rules-under-the-paul-wellstone-and-pete-domenici-mental-health-parity-and-addiction-equity-act>

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