

New Regulations Issued Under Mental Health Parity and Addiction Equity Act of 2008

Congress enacted in 1996 the Mental Health Parity Act of 1996 ("MHPA"), which requires parity in aggregate lifetime and annual dollar limits for mental health benefits and medical or surgical benefits. In 2008, Congress enacted the Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") which requires parity between mental health or substance use disorder benefits and medical or surgical benefits with respect to financial requirements and treatment limitations under group health plans. The changes made by the MHPAEA were effective January 1, 2010 for most group health plans.

It is important to remember that neither the MHPA nor the MHPAEA require group health plans to provide mental health benefits or substance use disorder benefits. Rather, these statutes provide that if a group health plan is offering such benefits, they must be provided on an equivalent basis when compared to medical or surgical benefits with regard to annual and lifetime dollar limits, financial requirements and treatment limitations.

On January 29, 2010, the Internal Revenue Service, Department of Labor, and the Department of Health and Human Services (collectively, the "Departments") jointly issued interim final regulations, effective for plan years beginning on or after July 1, 2010, implementing the MHPAEA. These interim final regulations also replace the 1997 regulations that were issued with respect to the MHPA. Set forth below is a brief overview of these new regulations.

Parity for Aggregate Lifetime and Annual Dollar Limits

The MHPAEA extended the MHPA parity requirements, regarding annual and lifetime dollar limits, applicable to mental health

benefits to substance use disorder benefits. Therefore, the regulations now provide that a group health plan that includes an aggregate lifetime or annual dollar limit and that provides both medical or surgical benefits and mental health or substance use disorder benefits must either:

- apply the aggregate lifetime or annual dollar limit to the medical or surgical benefits and to the mental health or substance use disorder benefits in a manner that does not distinguish between the available benefits; or
- apply an aggregate lifetime or annual dollar limit to the mental health or substance use disorder benefits that is not less than the aggregate lifetime or annual dollar limit, respectively, on medical or surgical benefits.

Parity with Respect to Financial Requirements and Treatment Limitations

The MHPAEA extends the parity requirements to "financial requirements" and "treatment limitations." Accordingly, the regulations

provide that a group health plan that provides both medical or surgical benefits and mental health or substance use disorder benefits may not apply any financial requirements or treatment limitation to mental health or substance use disorder benefits in any “classification” that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical or surgical benefits in the same classification.

According to the regulations, “financial requirements” include deductibles, copayments, coinsurance and out-of-pocket maximums. The term “treatment limitations” includes limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as 50 outpatient visits per year) and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits. Examples of nonquantitative treatment limitations include: medical management standards limiting or excluding benefits based on medical necessity or appropriateness or based on whether the treatment is experimental or investigative; formulary design for prescription drugs; and plan methods for determining usual, customary and reasonable charges.

The regulations provide for six “classifications” of benefits: inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs. The regulations provide that the parity requirements for financial requirements and treatment limitations are generally applied on a classification-by-classification basis. Therefore, to the extent that a plan provides benefits in a classification and imposes any separate financial requirement or treatment limitation for benefits in the classification, the parity rules apply separately with respect to that classification. A plan that provides mental health or substance use disorder benefits in any classification, must provide mental health or substance use disorder benefits in every classification in which medical or surgical benefits are provided, including out-of-network classifications. Within each of the six classifications, a plan must also apply the parity requirements to each “coverage unit,” meaning the grouping of individuals under the group health plan (e.g., self-only, family, and employee-plus-spouse) for purposes of determining benefits, premiums or contributions.

According to the regulations, the term “substantially all” includes the financial requirement or quantitative treatment limitation which applies to at least two-thirds of all medical or surgical benefits in a classification. If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of the medical or surgical benefits in a classification, then that type of requirement or limitation cannot be applied to the mental health or substance use disorder benefits in that classification. If a type of financial requirement or quantitative treatment limitation applies to substantially all medical or surgical benefits in a classification, the level that is considered “predominant” includes the financial requirement or quantitative treatment limitation which applies to more than one-half of the medical or surgical benefits in that classification.

Separate Deductibles Prohibited

In the preamble to the regulations, the Departments indicate that separate accumulating deductibles are not consistent with the policy goals that lead to the enactment of MHPAEA. In order to comply with the parity requirements applicable to the financial requirements and treatment limitations, group health plans will no longer be permitted to have separate deductibles for medical or surgical benefits and mental health or substance use disorder benefits; and, must instead, combine annual deductions for all benefits.

Special Rule for Multi-tiered Prescription Drug Benefits

The regulations also contain a special rule for the application of the parity requirements to prescription drug benefits with multiple levels of financial requirements. Group health plans must apply financial requirements based on reasonable factors including: cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up; without regard to whether the drug is generally prescribed with respect to medical or surgical benefits or with respect to mental health or substance use disorder benefits.

Availability of Plan Information

The MHPAEA requires, plan administrators to provide plan participants with the criteria for medical necessity determinations with respect mental health and substance use disorder benefits and the reason for any

denial of reimbursement or payment for services with respect to mental health or substance use disorder benefits. The regulations make clear that plan administrators may provide such information in accordance with the disclosure and claim procedures under ERISA.

Small Employer Exemption

The MHPAEA does not apply to group health plans maintained by small employers who during the preceding calendar year employed an average of no more than 50 employees.

Practice group contacts

If you have questions regarding the information in this legal update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at www.dechert.com/employeebenefits.

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