Mental Health Parity and Addiction Equity Act Regulations Take Effect on April 5, 2010
by Lori Partrick

The U.S. Departments of Labor, Health and Human Services, and the Treasury jointly issued interim final regulations on January 29, 2010, implementing the Mental Health Parity and Addiction Equity Act of 2008. The regulations are effective on April 5, 2010, and will be applicable to plan years beginning on or after July 1, 2010.

Background

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) supplements and expands the provisions of the Mental Health Parity Act of 2006 (MHPA). MHPA had required parity with respect to aggregate lifetime and annual dollar limits for mental health benefits and medical/surgical benefits.

MHPAEA extends the MHPA parity rules to substance use disorder benefits. Accordingly, group health plans and health insurance issuers that offer substance use disorder benefits must comply with the MHPAEA parity provisions with respect to aggregate lifetime and annual dollar limits.

In addition, MHPAEA mandates that group health plans and health insurance issuers ensure that financial requirements (such as co-pays and deductibles) and treatment limitations (such as limits on the number of visits) applicable to mental health or substance use disorder benefits be no more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits offered by the plan or issuer.

MHPAEA does not require that group health plans or health insurance issuers offer mental health and/or substance use disorder benefits. However, plans and issuers that do offer such benefits must comply with the MHPAEA parity provisions.

Parity With Respect to Financial Requirements

If a group health plan or health insurance issuer imposes financial requirements (such as co-pays, deductibles, coinsurance and out-of-pocket limitations), the financial requirements applicable to mental health and
substance use disorder benefits can be no more restrictive than the "predominant" financial requirements that apply to "substantially all" medical/surgical benefits.

The MHPAEA regulations identify six classifications of benefits:

- Inpatient, in-network
- Inpatient, out-of-network
- Outpatient, in-network
- Outpatient, out-of-network
- Emergency care
- Prescription drugs

Parity is required, and the "predominant/substantially all" test is applied, on a classification-by-classification basis. For example, requiring a co-payment for mental health/substance use disorder benefits that is higher than the predominant co-payment required for substantially all medical/surgical benefits within the same classification would violate the MHPAEA regulations.

The MHPAEA regulations establish rules for determining whether a financial requirement is considered to apply to substantially all medical/surgical benefits in a classification of benefits and, if so, what level of the financial limitation is considered the predominant level of that type in the classification.

**Parity With Respect to Treatment Limitations**

Similar parity requirements apply to treatment limitations (limits on the scope or duration of treatment, such as the number of visits, the frequency of treatment, days of coverage, or other similar limits).

The MHPAEA regulations clarify that treatment limitations may be quantitative or non-quantitative. Quantitative treatment limitations are subject to the same general test as the financial requirements. Thus, if a quantitative treatment limitation (such as a limit on the number of visits) applies to mental health/substance use disorder benefits, the limitation can be no more restrictive than the predominant treatment limitations that apply to substantially all medical/surgical benefits. As in the case of the parity rules with respect to financial requirements, the parity rules for quantitative treatment limitations are applied on a classification-by-classification basis.

The regulations include a separate parity requirement for non-quantitative treatment limitations (such as medical management standards, methods for determining usual, customary and reasonable charges, formulary design for prescription drugs, and exclusions based on failure to complete a course of treatment). A non-quantitative treatment limitation may not be imposed with respect to mental health/substance use disorder benefits in a classification unless the factors used in applying the limitation are comparable to, and applied no more stringently than, the factors used in applying the limitation to medical/surgical benefits in the classification. A limited exception applies to the extent that recognized, clinically appropriate standards of care may permit a difference.

For example, a requirement that employee assistance program benefits must be exhausted as a condition of obtaining access to mental health care benefits would violate the MHPAEA regulations if a similar non-quantitative treatment limitation does not also apply to medical/surgical benefits in the same classification.
Parity With Respect to Classifications of Benefits

A plan that offers mental health/substance use disorder benefits must provide them in every classification in which medical/surgical benefits are provided, including out-of-network classifications.

Exemptions

The MHPAEA requirements do not apply to small employers who have, on average, between two and 50 employees. The regulations include rules for determining employer size when an employer is part of a controlled group or has not been in existence for a full year.

MHPAEA also provides an increased cost exemption for employers who can demonstrate that compliance with MHPAEA increases their claims by at least two percent in the first year (one percent in subsequent years). This exemption will be addressed in future guidance.

Recommended Actions

Sponsors of non-exempt group health plans and health insurance issuers that offer mental health and/or substance use disorder benefits should review their plans and contracts to ensure that they comply with the parity requirements of the MHPAEA regulations for each of the six benefit classifications.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or any of the members of the Executive Compensation & Benefits group.

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