

PUBLICATION

Does Your Group Health Plan Still Have Parity?

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With the continuing potential for an overhaul of the national health care system still a front-burner issue, employers still need to make sure that their current group plans comply with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. (MHPAEA) On February 2, 2010, interim final regulations were published implementing the MHPAEA. (See 75 Federal Register 5410.) The interim final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after July 1, 2010.

What is the MHPAEA?

The MHPAEA extended the Mental Health Parity Act of 2006 (MHPA), which already requires parity of mental health benefits, to now cover substance use disorder benefits. The MHPAEA requires parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements¹ and treatment limitations² under group health plans and health insurance coverage offered in connections with a group health plan.

How do the recently published regulations affect the MHPAEA?

The provisions of the implementing regulations clarify the MHPAEA in part as follows:

1. The regulations identify six different classifications of benefits:

inpatient, in-network;

inpatient, out-of-network;

outpatient, in-network;

outpatient, out-of-network;

emergency care; and

prescription drugs.

2. The regulations require that cost parity exist, and that the "predominant/substantially all" test be applied separately to restrictions and requirements in each classification. Thus, the regulations provide that the co-pay for a substance use disorder within the Inpatient in-network classification be the same as the predominant co-payment required for substantially all of the medical/surgical benefits offered within the "inpatient, in-network" classification.
3. The regulations require treatment limitation parity within each classification of benefit between medical/surgical benefits and mental health/substance use disorder benefits.

4. The regulations require that if mental health or substance use disorder benefits are offered, mental health/substance use disorder benefits must be offered in every classification of benefits in which medical/surgical benefits are provided.
5. The regulations also provide for a special effective date for collectively-bargained plans.

What should employers do?

The parity requirements under the MHPAEA and the recently published regulations do not apply to small employers. Both the MHPAEA and the regulations define a "small employer" as an employer who employed an average of at least two, but not more than 50, employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

Keep in mind that a covered employer does not have to offer mental health or substance use disorder benefits under the MHPAEA or the recent implementing regulations. However, if an employer does offer mental health or substance use disorder benefits under its plan, the regulations require that an employer must comply with the parity requirements for mental health or substance use disorder benefits set forth in the MHPAEA for all classifications of benefits in which the employer offers medical/surgical benefits. While some exemptions do apply, covered employers need to review their plans to make sure that their current group health plans reflect parity with regard to any mental health or substance use disorder benefits provided.

If you need assistance with this or any labor and employment issue, do not hesitate to contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

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¹ The MHPAEA's definition of "financial requirements" includes deductibles, copayments, coinsurance, and out-of-pocket maximums.

² The MHPAEA's definition of "treatment limitation" includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on treatment scope or duration.