

ERISA: Title I, Part 7

U.S. Department of Labor



Employee Benefits Security Administration

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Mental Health Parity

**Mental Health Parity Act of 1996
(MHPA)**

**Mental Health Parity and Addiction
Equity Act of 2008 (MHPAEA)**

Mental Health Parity

- ◆ Mental Health Parity Act of 1996 (MHPA)
- ◆ Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)
 - Enacted October 3, 2008
 - Interim final regulations published February 2, 2010 and applicable for plan years beginning on or after July 1, 2010
 - Final regulations published November 13, 2013 and applicable for plan years beginning on or after July 1, 2014

Mental Health Parity

- ◆ Only applicable to plans offering both:
 - medical/surgical (med/surg) benefits; and
 - mental health or substance use disorder (MH/SUD) benefits
- ◆ Anti-abuse provision: look at all possible combinations of med/surg and MH/SUD benefits
- ◆ Does not apply to employers with 50 or fewer employees (but non-grandfathered, small group market coverage must include coverage for MH/SUD benefits for plan years beginning or after January 1, 2014).
- ◆ Increased cost exemption

Mental Health Parity

- ◆ MHPA ('96): a plan may not impose a lifetime or annual dollar limit on mental health benefits that is lower than the lifetime or annual dollar limit imposed on med/surg benefits.
- ◆ MHPAEA ('08)
 - Expanded '96 rules to substance use disorder benefits
 - New rules for parity in financial requirements and treatment limitations

Mental Health Parity

FINANCIAL REQUIREMENTS AND QUANTITATIVE TREATMENT LIMITATIONS

- ◆ General Rule: financial requirements or quantitative treatment limitations applicable to MH/SUD benefits can be no more restrictive than the predominant financial requirements or quantitative treatment limitations applied to substantially all medical and surgical benefits covered by the plan.

Mental Health Parity

SUMMARY - GENERAL RULE ANALYSIS

1. Within a classification
2. Substantially all med/surg benefits
3. Predominant applied to substantially all
4. Requirements or limitations that can be applied to MH/SUD benefits

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- ◆ General rule is applied within each of six classifications of benefits.
- ◆ Six Classifications:
 - Inpatient, in-network
 - Inpatient, out-of-network
 - Outpatient, in-network*
 - Outpatient, out-of-network*
 - Emergency care
 - Prescription drugs
- ◆ Classifications are mutually exclusive and must be used.
- ◆ If a plan provides benefits for a MH/SUD, the plan must provide benefits in all classifications in which medical/surgical benefits are offered (including out-of-network classifications).

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“Substantially All” and “Predominant”

Substantially all: does a type of financial requirement or treatment limitation imposed on MH/SUD benefits in a classification apply to at least two-thirds of med/surg benefits in that classification?

- **Example: Outpatient, in-network benefits**
 - \$1 million expected to be paid; \$700,000 expected to be subject to copayments.
 - Copayments apply to substantially all med/surg in this classification

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Substantially All and Predominant

If a plan can apply a type of financial requirement or quantitative treatment limitation to MH/SUD in a classification, what level can be applied?

Predominant: what level applies to more than one-half of substantially all med/surg benefits in that classification?

- **Same Example: Outpatient, in-network benefits**
 - \$1 million expected to be paid; \$700,000 subject to copayments.
 - \$15 copayment applies to 25% of substantially all and \$30 copayment applies to 75% of substantially all.
 - \$30 copayment is predominant level of copayment

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What can be applied to MH/SUD?

\$30 is predominant copayment applied to outpatient, in-network med/surg benefits.

→ Plan cannot impose a copayment in this classification that is more restrictive than \$30 copayment.

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- ◆ Multiple levels of a financial requirement or treatment limitation, but no one level applies to more than one-half.
 - Example: Outpatient, in-network benefits

Copayment Amount	\$10	\$20	\$30	\$40
Percentage subject to copayment amount	25%	25%	25%	25%

- Aggregation rule

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Special Rules

- ◆ Multi-Tiered Prescription Drug Benefits
- ◆ Multiple Network Tiers
- ◆ Sub-classification for office visits, separate from other outpatient services

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Cumulative Financial Requirements and Quantitative Treatment Limitations

- ◆ Statute: Ensure that there are no separate financial requirements or treatment limitations that are applicable only to MH/SUD benefits.
- ◆ Regulation: No separate cumulative financial requirements or quantitative treatment limitations.
- ◆ NOTE: Does not apply to lifetime and annual dollar limits.

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Nonquantitative Treatment Limitations

- ◆ Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness
- ◆ Formulary design
- ◆ Network tier design
- ◆ Standards for provider admission to participate in a network, including reimbursement rates
- ◆ Plan methods for determining UCR
- ◆ Fail-first policies or step therapy protocols
- ◆ Exclusions based on failure to complete a course of treatment
- ◆ Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits

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Nonquantitative Treatment Limitations

- ◆ Processes, strategies, evidentiary standards, or other factors used in applying nonquantitative treatment limitations to MH/SUD benefits must be comparable to, and applied no more stringently than, those used with respect to med/surg benefits.

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Interaction with Other Provisions

- ◆ PHS Act Section 2711 (prohibition on lifetime or annual dollar limits)
- ◆ PHS Act Section 2713 (coverage of preventive health services)

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Disclosure Requirements: Availability of Plan Information

- ◆ Criteria for Medical Necessity Determinations
- ◆ Reason for any Denial
- ◆ Provisions of Other Law



Resources



Subscribe to the DOL website for updates!

<http://www.dol.gov/ebsa/healthreform/>

Other Good Affordable Care Act Resources:

IRS website

www.irs.gov

HHS website

www.healthcare.gov

Contact Information

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www.dol.gov/ebsa
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QUESTIONS?

