

POPULATION HEALTH &
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Employer Update: Potential Mental Health Parity Changes & Enforcement

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In late July, the Health and Human Services (HHS), The Department of Labor (DOL) and the Internal Revenue Service (IRS) (“the Departments”) issued proposed regulations intended to assist in further defining certain key terms within the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), and also provide additional substantive requirements under the law. For an in-depth review of the specifics of these proposed regulations, please see a recent article [by Brown & Brown’s Regulatory & Legislative Team](#).

While appropriate access to mental healthcare has been a bipartisan priority for many years, these proposed regulations, if adopted, should further drive implementation and enforcement of the MHPAEA. To many in the healthcare policy realm, the MHPAEA has played a critical but incomplete role in advancing mental health and substance use disorder parity in the United States, helping to reduce barriers to care and ensure that employees receive equitable coverage. At a recent White House briefing, President Biden said that the proposed regulations “...represent a real step forward to help millions of people get mental health care they need and that insurance should be providing.”¹

Given that the MHPAEA is so heavily focused on health plan-related issues, it is crucial for employers to comply with the rules currently in force under the MHPAEA and understand what could change in the near future due to the Departments’ proposed rules. Here are several steps employers can take to address the MHPAEA within their benefits plans:

- 1 Understand the Law:** Employers should familiarize themselves with the current rules under the MHPAEA and review their health plan(s) through that lens to ensure that the financial requirements and treatment limitations imposed on mental health and substance use disorder (SUD) benefits do not violate any of those rules. In particular, self-funded employers/health plans need to understand and test their plan designs, in addition to developing and performing a Non-Quantitative Treatment Limitations (NQTL) Comparative Analysis regularly. Understanding the current MHPAEA rules helps build a strong foundation for effective compliance under the law.

1. Biden pledges ‘mental health care is health care’ with new rule ensuring mental health parity in insurance coverage | CNN Politics

2 Review Health Plans: After understanding the general principles under the MHPAEA, employers should review their health plans to ensure that they are designed and administered according to the MHPAEA. While the proposed regulations focus on the NQTLs (e.g., prior authorization, concurrent review and network adequacy), it is important to ensure that the plan's quantitative components (e.g., copayments, deductibles and visit limits) are also compliant.

3 Work with Benefit Administrators: Employers should continue to have open discussions with any health plan-related insurers and third-party administrators (TPAs) about how mental health and SUD services are covered under their health plan to help ensure they are in line with other medical/surgical service benefits as outlined by the current regulations. Employers should seek to understand how their carriers/TPAs plan to comply if/when the proposed regulations are adopted. Self-funded health plans should work closely with their TPA and any applicable pharmacy benefit manager (PBM) to help ensure that mental health parity is maintained in the plan administration process. Additionally, self-funded employers may need to engage a third-party vendor specializing in MHPAEA compliance to assist in the testing and analysis required under the rules if existing vendors cannot support this effort.

4 Evaluate Network Adequacy: The proposed regulations emphasize that network adequacy and access remain an area of focus for enforcement agencies. Health plans should assess mental health and SUD provider availability and accessibility and ensure that plan participants have access to, and may choose from, a diverse range of providers.

5 Monitor Compliance: Regularly monitor the plan's compliance with the MHPAEA. This can involve reviewing claims data, conducting audits and seeking employee feedback about their experiences accessing mental healthcare under the health plan. As noted above, employers may need to engage a third-party vendor with MHPAEA specialization to conduct a comparative analysis of any financial requirements and treatment limitations under the plan. If compliance seems to be an issue, use the proposed regulations to improve the current policy and process for reviewing and monitoring the mental health and SUD benefits offered under the plan going forward.

6 Address Disparities: If disparities are identified between mental health/SUD benefits and medical/surgical services, take appropriate steps to address them. This may involve adjusting benefit designs, removing unnecessary barriers to receiving care or negotiating with insurers.

Beyond compliance, employers can take many additional steps to promote mental health benefit awareness.

- **Communicate with Employees:** Clearly communicate the mental health and SUD benefits available under the health plan(s) to employees. Ensure employees understand their rights and can access the care they need without facing unnecessary barriers.
- **Educate Employees:** Provide information and education to employees about the importance of mental health and how they can access mental health and SUD services. Encourage a culture of openness and destigmatize seeking help for mental health concerns. This “destigmatize” message should come from the very top of the organization.
- **Advocate for Mental Health:** As an employer, you can use your influence to advocate for improved mental health policies, within your organization and at a broader societal level. You can participate in industry groups, advocate for legislative changes and support initiatives that promote mental health parity.

By taking these steps, employers can help not only with MHPAEA compliance but can also help improve access to mental health and SUD services for their employees.

World Mental Health Day

World Mental Health Day is observed annually on October 10 to raise awareness about mental health issues and advocate for improved mental health care worldwide. The theme of 2023's World Mental Health Day is **Mental Health is a Universal Human Right.**

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