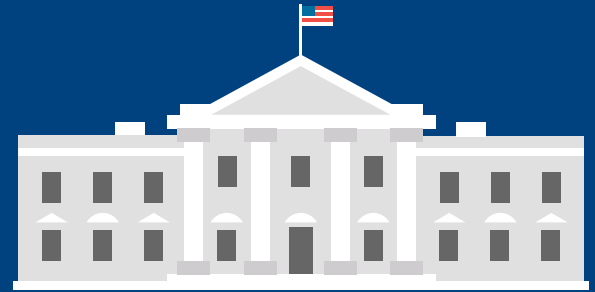


MENTAL HEALTH PARITY



ACA repeal-and-replace efforts have failed, and there is no indication that any roll-back on mental health parity law is on the list of healthcare initiatives that Congress intends to address with new legislation.

Since the passage of the Mental Health Parity and Addiction Equity Act in 2008 (MHPAEA), health insurers and employers have made progress toward improving coverage for mental health and substance abuse issues. The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires health insurance companies and self-insured employer plans to cover mental health conditions the same as coverage for any other medical issue and ensure that financial requirements (such as co-pays, deductibles) and treatment limitations (such as visit limits) applicable to mental health or substance use disorder (MH/SUD) benefits are no more restrictive than the requirements or limitations applied to medical/surgical benefits. The MHPAEA was enacted prior to the ACA but was expanded under health reform, particularly in the individual and small group market.

The federal government has stepped up enforcement, with the Labor Department renewing its focus on auditing ERISA plans and insurers for compliance. Regulators have issued several FAQs on parity issues, and the 21st Century Cures Act, which was signed into law in 2016, is aimed in part at bolstering the MHPAEA. Among other things, the Cures Act requires federal agencies to convene a public meeting to develop an “action plan” for improving federal and state coordination of MHPAEA enforcement and issue parity guidance to help plans comply with MHPAEA’s disclosure and NQTL requirements.

State enforcement activity has also increased, with The Centers for Medicare & Medicaid Services awarding \$9.3 million to states to help enforce parity protections. Litigation under both state and federal parity laws has increased in recent years.

An MH/SUD task force created during the Obama Administration published a final report in 2016 offering recommendations on how to:

- Support consumers
- Improve parity implementation
- Enhance parity compliance and enforcement

ARE YOU FAMILIAR WITH THE MHPAEA FINAL RULE?

The final rule provides insights into MHPAEA implementation. Among them:

- Plans must provide parity as to financial requirements (such as deductibles, copayments, coinsurance and out-of-pocket maximums) and quantitative treatment limitations (such as number of treatments, visits or days of coverage).
- Plans also must comply with other parity-related requirements for nonquantitative treatment limitations (such as medical management standards).
- Parity applies to all plan standards, including geographic limits, facility-type limits and network adequacy.
- Clarification was provided on the scope of the transparency required by health plans, including the disclosure rights of plan participants, to ensure compliance with the law.
- Parity applies to intermediate levels of care, such as treatment received in residential or intensive outpatient settings.

IS YOUR ORGANIZATION REQUIRED TO PROVIDE EQUAL COVERAGE UNDER THE LAW?

MHPAEA requirements apply to:

- Group health plans (including self-insured plans)
- Health insurance issuers (insurers)
- Individual market plans
- Many Medicaid programs
- Children's Health Insurance Program (CHIP) coverage

DOES YOUR ORGANIZATION QUALIFY FOR AN EXEMPTION?

There is a small-employer exemption, but for grandfathered or self-insured plans only. If you have no more than 50 employees or have a retiree-only plan, the exception may apply. Self-insured governmental plans may also have the ability to opt out of compliance.

A consultant can explain these exemptions and more that may fit your organization.

ARE YOU AWARE OF HOW MHPAEA IS ENFORCED?

Currently, many state and federal agencies share oversight and enforcement of parity. Enforcement varies based on the type of insurance plan. State insurance commissioners oversee individual and fully insured plans in the small and large group markets.

Some state laws provide even stronger consumer protections than the federal parity requirements. In those cases, the MHPAEA permits the state to enforce the law's stricter requirements, generally through the state's insurance commissioner.

The Department of Labor and the Internal Revenue Service generally have enforcement authority over self-insured private-sector employment-based plans that are subject to the Employee Retirement

Income Security Act. HHS has direct enforcement authority with respect to self-funded nonfederal governmental plans. Mental health parity violations can trigger an excise tax of up to \$100 per affected employee for each day of noncompliance and can result in a breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA).

WANT MORE INFORMATION ON REQUIREMENTS FOR MENTAL HEALTH PARITY?

There has been a seismic national shift in recent years of viewing mental health the same as physical health — and it's unlikely to stop. Seasoned consultants, with their fingers on the pulse of change as it happens, can provide you with the expertise needed to stay in compliance, which should help avoid possible penalties, no matter who dishes them out.

A STRATEGIC OPTION FOR UNDERSTANDING YOUR MENTAL HEALTH PARITY COMPLIANCE RISK

Mercer's Mental Health Parity (MHP) Risk Diagnostic Solution is a streamlined and affordable solution that helps you identify your compliance risk areas effectively and efficiently. It's the first step in a partnership that will help you improve your MHP compliance process and your broader Behavioral Health and Compliance strategies. Mercer consultants can provide you with the expertise to identify the areas of your mental health benefits strategy that need attention and address them moving forward. For more information, speak to your Mercer representative or [request follow-up](#).