



TOPIC: Request for Comments concerning the Mental Health Parity and
Addiction Equity Act

EXECUTIVE SUMMARY: THE DEPARTMENTS OF LABOR, TREASURY, AND HEALTH AND HUMAN SERVICES (HHS) HAVE ISSUED AFFORDABLE CARE ACT FAQ PART 38, WHICH REQUESTS COMMENTS ON TWO ASPECTS OF THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT (MHPAEA). THE DEPARTMENTS ARE SOLICITING COMMENTS ON: (1) A DRAFT MODEL FORM THAT PARTICIPANTS, ENROLLEES, OR THEIR AUTHORIZED REPRESENTATIVES COULD -- BUT WOULD NOT BE REQUIRED TO -- USE TO REQUEST INFORMATION FROM THEIR HEALTH PLAN ABOUT THEIR MENTAL HEALTH OR SUBSTANCE USE DISORDER BENEFITS; AND (2) WHETHER ANY ADDITIONAL CLARIFICATION IS NEEDED REGARDING HOW THE REQUIREMENTS OF MHPAEA APPLY TO TREATMENT FOR EATING DISORDERS. THE NCCMP REQUESTS INFORMATION FROM MEMBERS BY SEPTEMBER 1, 2017, SO THAT MEMBER CONCERNS CAN BE INCORPORATED INTO NCCMP COMMENTS.

PURPOSE: REQUEST FOR INPUT ON GUIDANCE

CATEGORY: ACA REGULATIONS

ISSUER: DEPARTMENTS OF LABOR, TREASURY, AND HEALTH AND HUMAN SERVICES

TARGET AUDIENCE: TRUSTEES OF AND PLAN ADVISORS TO MULTIEMPLOYER HEALTH PLANS

SEND COMMENTS TO: Multi-elert@nccmp.org

REFERENCE: VOL. XVII, ISSUE 4

INPUT REQUESTED IDENTIFICATION OF CONCERNS TO BE INCLUDED IN NCCMP COMMENTS

OFFICIAL COMMENT PERIOD ENDS SEPTEMBER 13, 2017

NCCMP COMMENT DEADLINE FRIDAY SEPTEMBER 1, 2017 FOR MEMBERS TO PROVIDE CONCERNS TO NCCMP

FOR ADDITIONAL BACKGROUND SEE FAQs ABOUT MENTAL HEALTH AND SUBSTANCE USE DISORDER PARITY IMPLEMENTATION AND THE 21ST CENTURY CURES ACT PART 38, <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-38.pdf>

DOL, TREASURY, AND HHS REQUEST COMMENTS ON MHPAEA

The Mental Health Parity and Addiction Equity Act (MHPAEA) requires parity between medical/surgical benefits and mental health/substance use disorder (MH/SUD) benefits. Health plans must provide parity in both numerical or “quantitative” financial requirements or treatment limits (e.g., cost sharing and day or visit limits) and “non-quantitative” treatment limits, such as prior authorization limitations, step-therapy requirements, or restrictions on facility or providers.

The NCCMP requests information about the concerns of members with respect to the Departments’ request for comments. In particular, we request that plan sponsors and administrators consider the following questions.

Model Form to Request Documentation about Mental Health and Substance Use Disorder Coverage

The Departments published a draft model form that participants, enrollees or their authorized representatives could — but would not be required to — use to (1) request information from their health plan or insurer regarding MH/SUD benefits, or (2) to obtain documentation after an adverse benefit determination involving MH/SUD benefits to support an appeal. The Departments request comments on any aspect of the draft model form and the Departments’ outline of how plans should respond to information requests.

The MHPAEA statute and regulations already require plans to provide participants and beneficiaries with the criteria for medical necessity determinations made under a group health plan concerning MH/SUD claims upon request.¹ In addition, they require plans to provide the reason for any denial of benefits in a manner consistent with the ERISA claims and appeals rules. The Departments published several FAQs expanding the information that plans must provide to participants and beneficiaries.

The new Mental Health and Substance Use Disorder Parity Disclosure Request (“Disclosure Form”) would be completed by participants, beneficiaries, or their authorized representative, including providers. The Disclosure Form requests that the plan provide, within 30 calendar days, the following information:

- Specific plan language regarding the relevant limitation on MH/SUD benefits, and the other benefits (including medical/surgical benefits) to which the limitation applies;

¹ IRC §9812(a)(4); 26 CFR 54.9812-1(d).

- The factors the plan used to develop the limitation on MH/SUD benefits, including the evidentiary standards used (such as the cost of treatment or clinical efficacy);
- The methods and analysis used in the development of the limitation; and
- Any evidence to establish that the limitation is applied no more stringently, as written and in operation, to mental health and substance use disorder benefits than to medical and surgical benefits.

The NCCMP plans to prepare comments on the Disclosure Form. In order to do so, we request information from members as to how the Form would affect their plan. Specifically, we request information on:

- What inquiries do plans currently receive from participants (or their health care providers) about mental health and substance use disorder benefits?
- Do plans have staff members who handle MH/SUD claims and have the expertise to address these questions, or would the plan have to request assistance from a service provider to complete the Form?
- How much staff time would it take to respond to the Disclosure Form?
- Do plans themselves develop limitations on MH/SUD benefits or do they rely on behavioral health companies to do so?
- Is thirty (30) days sufficient time to respond to the request?
- Are there differences in how the Form would be used in dealing with a prior authorization request as opposed to after a claim has already been denied?
- Does the Form request information beyond that required in existing statutes or regulatory guidance?
- What other guidance could the Departments provide that would assist plans in implementing the MHPAEA?

Please provide information to the NCCMP by September 1, 2017.

Eating Disorders

Eating disorders include disorders such as anorexia nervosa, bulimia nervosa, binge-eating disorder and other conditions. Congress recently passed the 21st Century Cures Act (PL 114-255), which required eating disorder treatment to be considered a “mental health benefit” as defined by MHPAEA. Consequently, plans that cover treatment for eating disorders must assure that the financial cost sharing and limits on eating disorder treatments are no more restrictive than those for medical/surgical treatment. In addition, plans should assure that any medical management

tools, such as prior authorization requirements, are not applied in a more restrictive manner for eating disorders when compared to their application to medical/surgical conditions.

The Departments have requested comments on whether any additional clarification is needed regarding how the requirements of MHPAEA apply to treatment for eating disorders.

Plans that cover eating disorders and that have questions about the application of the MHPAEA to these benefits should let us know of these concerns by September 1, 2017.



We strive to ensure that the information contained in this and every issue of Multi-Elert is correct to the extent information is available. Nevertheless, the NCCMP does not offer legal advice. Plan fiduciaries should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal laws or regulations to their plans.

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If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact the NCCMP, by phone at (202) 737-5315 or by e-mail at nccmp@nccmp.org.

