



**ALERT: Immediate Release**

**AssuredPartners**  
COMPLIANCE OBSERVER

May 4, 2018

## **Mental Health Parity Updated Guidance from DOL, HHS & Treasury**

### **Mental Health Parity and Addiction Equity Act Guidance Issued by Departments**

In an effort to encourage compliance with the MHPAEA (Mental Health Parity and Addiction Equity Act), the departments (DOL, HHS and Treasury) released a regulatory package that includes examples of mental health parity violations, as well as a new disclosure template used to request documentation from an employer-sponsored health plan or an insurer regarding treatment limitations. They are also enforcing civil monetary penalties for parity violations.

### **Background**

The Mental Health Parity and Addiction Equity Act of 2008 prevents group health plans from providing mental health and substance use disorder (MH/SUD) benefits, financial requirements, or nonquantitative treatment limitations (NQTL) that are more limiting or not as favorable than those benefits, financial requirements, or NQTLs provided for medical/surgical benefits. (Simple violations can occur when you have a \$30 copay on an MH/SUD treatment, but a medical/surgical visit has a \$20 copay. Or, when a pre-authorization requirement is applied to MH/SUD benefits and not to similar medical/surgical benefits).

Disclosure requirements were set in regulations published in 2013, and were intended to help participants and beneficiaries evaluate MH/SUD parity. In 2016, the Departments of Labor, Treasury, and Health and Human Services (the departments) thought to develop template forms for participants and beneficiaries to use to request information on NQTLs. In 2017, the departments made clear that treatment for eating disorders is classified as a mental health benefits, and requested comments on the disclosures.

According to current regulations, no civil monetary penalties are given for MHPAEA violations, but penalties do include requiring reimbursement or coverage of the inappropriately denied claim, called "equitable relief."

### **New Guidance**

A new package of guidance was released by the departments on April 23, 2018, and included tools such as [FAQs](#), [Pathways](#) to Full Parity (DOL's 2018 report to Congress), a [self-compliance](#) tool, disclosure [template](#), and an action [plan](#) from the HHS and [fact](#) sheet to help enforce the regulations. The package explains the departments' ideas that to enforce the MHPAEA more successfully, civil enforcement penalties should be implemented.

The [proposed FAQs](#) include examples of specific treatments that the plan cannot deny. For example, the plan could not deny experimental Applied Behavior Analysis therapy claims for a child with Autism Spectrum Disorder that is a professionally recognized treatment, while approving professionally recognized medical/surgical treatments. The plan could also not deny out-of-network inpatient treatment for eating disorders when it would cover a similar treatment for medical/surgical conditions with proper physician authorization.

The [Pathways to Full Parity report](#) describes the implementation and enforcement of the MHPAEA, as well as some pilot programs designed by the DOL such as the Regional Opioid Investigative Task Force and Specialized MHPAEA teams ([see page 15 of the report here](#)), whose purpose is to further enforce the Act.

The [Self-Compliance Tool](#) gives group health plans, plan sponsors, plan administrators, and insurers information to allow them to determine whether a group health plan or insurer complies with the act, and encourages the focus on strategies for compliance rather than the overall result.

The [HHS action plan](#) describes the plan to identify and take action on improper restrictions and the enforcement of compliance for group health plans.

The [revised model disclosure form](#) includes changes based on feedback from stakeholders, such as more examples of the standards used to identify NQTLs. Some examples of those standards are excessive utilization two standard deviation above average, and cost escalation of 10% or more per year for 2 years.

Comments on the FAQs are welcome and are due by June 22, 2018.

***Background Links:***

- May 2, 2016 - [Updates from the IRS, DOL and HHS - 2017 HSA Limits and More. Agencies Provide Guidance on Preventive Services, Rescissions, Mental Health Parity, and More](#)
- July 10, 2014 - [Effective Dates Have Arrived! Your Wellness Plan and Mental Health Coverages Must Comply](#)

***New Guidance Links (4/23/2018):***

- [FAQs](#)
- [Pathways](#)
- [Self-Compliance Tool](#)
- [Disclosure Template](#)
- [Action Plan](#)
- [HHS Fact Sheet](#)

***Procedure for sharing comments with the Departments:***

Please send comments on these disclosure issues to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by Email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; or by Email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov). Commenters should submit their views by June 22, 2018, to ensure consideration. Comments should reference control number 1210-0138.

**Should you have any questions or concerns please contact a member of the AssuredPartners' Employee Benefits Team**