

November 23, 2011

New FAQs on Mental Health Parity

The agencies have issued a new set of [Frequently Asked Questions \(FAQs\)](#) addressing mental health parity implementation. Under the mental health parity rules imposed by the Mental Health Parity and Addiction Equity Act of 2008 ([MHPAEA](#)), group health plans that provide both medical and surgical benefits, and mental health benefits, generally cannot impose financial requirements (such as a copayment or coinsurance) or a quantitative treatment limitation (such as a limit on the number of outpatient visits or inpatient days covered) on mental health or substance use disorder benefits in any of 6 classifications that is more restrictive than the financial requirements or quantitative treatment limitations that apply to at least 2/3 of medical/surgical benefits in the same classification. Thus, if a plan generally applies a \$25 copayment to at least 2/3 of outpatient, in-network, medical/surgical benefits, a higher copayment could not be imposed on outpatient, in-network mental health or substance use disorder benefits.

In addition to financial requirements and quantitative treatment limitations, the rules apply to nonquantitative treatment limitations often imposed by plans, such as:

- Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether a treatment is experimental or investigative;
- Formulary design for prescription drugs;
- Standards for provider admission to participate in a network, including reimbursement rates;
- Plan methods used to determine usual, customary, and reasonable fee charges;
- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols); and
- Exclusions based on failure to complete a course of treatment.

The FAQs address these nonquantitative treatment limitations under MHPAEA. The parity standard for nonquantitative treatment limitations does not require applying a simple arithmetic test to compare the treatment of mental health or substance use disorder benefits to the treatment of medical/surgical benefits. Rather MHPAEA requires that under the terms of the plan as written and in practice, the processes, strategies, evidentiary standards, and other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits must be comparable to, and applied no more stringently than to medical/surgical benefits, except to the extent that recognized clinically appropriate standards of care permit a difference. Examples are provided in the FAQs of plan designs that either demonstrate or fail to demonstrate compliance with the nonquantitative treatment limitation rules.

The FAQs answer questions regarding nonquantitative treatment limitations, and one other common question, to help people understand the law and benefit from it, as intended. The agencies characterize these mental health parity FAQs as “clarifying FAQs” and stress that they will continue to investigate complaints regarding the MHPAEA requirements and will take enforcement action for violations to ensure compliance (these requirements took effect with plan years beginning on or after July 1, 2010).

We will continue to issue updates as additional information becomes available on this topic. We encourage you to contact your Conner Strong & Buckelew account representative toll-free at 1-877-861-3220 for assistance. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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