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Mental Health Parity Non-Compliance Triggers

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The Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”) requires a group health plan that offers mental health and substance use disorder benefits to be at parity with medical and surgical benefits. As such, financial requirements and treatment limitations for mental health and/or substance use disorder benefits cannot be more restrictive than the medical and/or surgical benefits offered.

Non-Quantitative Treatment Limitations

While employers can easily discern differences between financial (\$30 copay vs. \$50 copay) and quantitative treatment limitations (3 visits vs. 5 visits), ensuring parity of non-quantitative treatment limitations (“NQTLs”) is more difficult to detect. As such, NQTLs require an in-depth review of plan documents and plan administration.

Examples of NQTLs include:

- Network tier designs;
- Formulary design for prescription drugs;
- Fail first policies or step therapy protocols;
- Network participation standards, including reimbursement rates;
- Exclusions based on failure to complete a course of treatment;

- Plan methods to determine usual, customary, and reasonable charges;
- Limits or exclusion of benefits based on experimental or investigative treatments; and
- Limits or exclusion of benefits based on medical necessity or medical appropriateness.

Recently, the DOL issued a list of “trigger” phrases that require additional review of plan documents and administration to ensure parity of benefits. In January, the Department of Labor issued a report to Congress describing the importance of mental health and substance use disorder benefits, compliance concerns, and future enforcement activity. Employers should expect to see a rise in investigations focusing on mental health and substance abuse disorder benefit provisions.

To read the warning signs, visit:

<https://www.dol.gov/ebsa/pdf/warning-signs-plan-or-policy-nqtl-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf>