

Final 2020 MHPAEA Self-Compliance Tool

Preface

The Mental Health Parity and Addiction Equity Act (MHPAEA) Self-Compliance Tool is published by the Department of Labor (DOL), in coordination with the Department of Health and Human Services (HHS) and the Department of the Treasury (the Treasury) (collectively, the Departments), to help group health plan sponsors and administrators, group and individual market health insurance issuers, state regulators, and other stakeholders determine whether a group health plan or health insurance issuer is in compliance with MHPAEA and its implementing regulations. On June 19, 2020, in coordination with HHS and the Treasury, DOL (collectively, the Departments) proposed an updated 2020 MHPAEA Self-Compliance Tool with a request for comments from stakeholders. The proposed update included certain amendments that generally fall into four main categories: (1) integration of recent guidance; (2) revised compliance examples; (3) best practices for establishing an internal compliance plan; and (4) inclusion of provisions or plan practices that serve as “warning signs” that may indicate a potential violation.¹

After careful consideration of the comments received, DOL is issuing a final 2020 MHPAEA Self-Compliance Tool with minor modifications and clarifications in response to these comments.

Integration of Recent Guidance: Since the publication of the 2018 MHPAEA Self-Compliance Tool, the Departments published Final Frequently Asked Questions (FAQs) part 39 on the implementation of MHPAEA.² DOL proposed to include the relevant guidance from these FAQs in the 2020 MHPAEA self-compliance tool to better ensure the regulated community is aware of their content. Commenters were generally supportive of these updates, though some offered suggestions for further improvement. In particular, several commenters offered feedback on the integrated guidance regarding how methods for establishing provider reimbursement rates must comply with MHPAEA’s requirements for non-quantitative treatment limitations (NQTLs). This final version of the self-compliance tool includes revisions in response to this feedback. For example, a “Note” on page 22 of the proposed tool has been revised to clarify that requirements for NQTLs apply to methods for establishing both in-network and out-of-network provider reimbursement rates. Additionally, many commenters asked for more information about the tool for comparing provider reimbursement rates to Medicare rates in Appendix II to the proposed update to the self-compliance tool. In response, DOL has added an introduction to the tool in Appendix II that explains the tool’s purpose and how it might be used.

¹ Section 13001(a) of the 21st Century Cures Act added section 2726(a)(6) of the Public Health Service Act, which directs the Departments to provide a publicly available compliance program guidance document which is updated every two years. DOL last updated the MHPAEA self-compliance tool in April 2018.

² FAQs about Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part 39 (September 5, 2019), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-39-final.pdf> and <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-39.pdf>.

Revised Compliance Examples: The 21st Century Cures Act emphasizes the need for more examples of compliance with the law. To meet this need, the proposed 2020 update revised the examples and illustrations of non-compliance included in the 2018 version of the self-compliance tool to add an explanation of how plans and issuers could correct certain parity violations. The proposed self-compliance tool also included a new Appendix I with additional examples and illustrations of compliance. Commenters were broadly supportive of these updates on how to correct parity violations and the inclusion of the additional illustrations of compliance.

Best Practices for Establishing an Internal Compliance Plan: Commenters were also generally supportive of the new section H in the proposed self-compliance tool. This section addressed best practices for establishing an internal MHPAEA compliance plan and provided examples of the types of records that a plan or issuer should be prepared to provide in the event of a DOL investigation. A number of commenters asked for an internal compliance plan to be described as a requirement. While internal compliance plans are not required by MHPAEA, the 21st Century Cures Act directs the Departments to include recommendations to advance compliance with MHPAEA, and encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. Consistent with the 21st Century Cures Act, DOL's goal in including this new section was to demonstrate how an internal compliance strategy that promotes the prevention, detection, and resolution of potential MHPAEA violations can help plans and issuers improve compliance with the law. Additionally, a few commenters asked for the section to be revised to recommend clear protocols and documentation of internal monitoring and compliance reviews when such responsibilities are delegated to other entities. Commenters also recommended including a reference to state reporting requirements for MHPAEA compliance and their role in establishing an internal MHPAEA compliance plan. The final version of the 2020 self-compliance tool contains revisions in response to this feedback.

Addition of Warning Signs: DOL has previously issued guidance on warning signs based on past investigations. These warning signs are not determinative of a MHPAEA violation but may serve as red flags regarding potential impermissible treatment limitations, warranting further review. In the proposed update, DOL incorporated additional examples of treatment limitations that may operate as warning signs of potential parity violations. Commenters offered a number of suggestions on additional warning signs that should be included or warning signs that could be omitted, and clarifications that could be made to those that were included in the proposed update. In response to this feedback, an additional warning sign for potential noncompliance regarding establishment of provider reimbursement rates has been added. Also, the warning sign on page 18 related to specialist copayments has been amended to refer to guidance elsewhere in the document explaining when a specialist copayment for mental health and substance use disorder benefits might be permitted. In addition, based on stakeholder feedback, DOL removed the warning sign related to drug screenings.

DOL, in coordination with the HHS and the Treasury, intends to continue to provide additional MHPAEA implementation guidance on a rolling basis, including updated enforcement data and revised compliance program documents.