The Mental Health Parity Act (MHPA) of 1996 Helpful Tips

Table of Contents

1. MHPA notice requirements
2. Enforcement
3. Large group market
4. 1% exemption
5. Annual limits and parity requirements
6. General mental health benefits
7. Level of benefits
8. Federal and State law
9. More information

1. MHPA notice requirements --- The Mental Health Parity Act of 1996 (MHPA) requires that notice be provided to all participants and beneficiaries of large employers with a group health plan. The notice may be furnished by any method of delivery that satisfies the requirements of section 104(b)(1) of ERISA. If notice is provided to the participant at the participant's last known address, then the requirements are satisfied with respect to the participant and all beneficiaries residing at that address. If a beneficiary's last known address is different from the participant's last known address, a separate notice is required to be provided to the beneficiary at the beneficiary's last known address.

The notice may be sent by itself or may, for example, be included in any of the following:

- A summary plan description (SPD), a summary of material modifications (SMM), or a summary annual report (SAR);
- A union newsletter or a benefits newsletter;
- Open enrollment materials;
- Policy renewal notification letter; or
- Any other written communication by the plan or issuer.

Self-funded non federal governmental plans may opt-out of the WHCRA requirements. For more information on WHCRA opt-outs go to http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/.

Example 1: Jane Smith joined Company ABC and now has group health coverage through a large employer. She did not receive an individual MHPA notice; however, the Employee Orientation materials included an SPD containing a MHPA notice. Her plan complied with the MHPA notification requirements.

Example 2: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the MHPA requirements. Therefore, the MHPA notice requirements do not

apply to Jane since her coverage does not include MHPA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

2. Enforcement --- The Mental Health Parity Act of 1996 (MHPA) provisions generally apply to large employers with a group health plan. They do not apply to small employers with a group health plan or health insurance issuers. The Secretaries of the Department of the Treasury, Department of Labor (DOL), and Health and Human Services (HHS) share jurisdiction over the MHPA provisions.

The Centers for Medicare and Medicaid Services (CMS, HHS) has backup responsibilities for fully insured group health plans. The State Departments of Insurance have primary enforcement authority over fully-insured group health plans for MHPA (except in Missouri where CMS has primary enforcement authority). Self-funded plans are under the jurisdiction of DOL. Check with your plan administrator to determine if your large employer group health plan is fully insured or self-funded. If it is self-funded contact DOL at 866-444-3272 to discuss MHPA protections.

Many states have enacted their own Mental Health Parity laws that are more protective than the federal MHPA. The state laws cover fully insured group health plans and/or individual health insurance plans. Accordingly, individuals should always contact their state's Department of Insurance to determine what protections they have under state law.

Self-funded non federal governmental plans may opt-out of the MHPA requirements. For more information on MHPA opt-outs go to http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/.

Example 1: Jane Smith joined Company ABC and now has group health coverage through a large employer. The company purchased a fully insured large group market plan. Jane has protections under the MHPA. She should also contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

Example 2: Jane Smith joined Company ABC and now has group health coverage through a large employer. The company purchased a self-funded large group market plan. Self-funded plans are under the jurisdiction of the Department of Labor (DOL). Jane should contact DOL at (866) 444-3272 to discuss her protections under the MHPA.

Example 3: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the MHPA requirements. Therefore, the MHPA enforcement does not apply to Jane since her coverage does not include MHPA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

3. Large group market --- The MHPA pertains to the large group market only. It does not pertain to the small group market or individual market policies. For the purposes of the MHPA, the following definitions apply:

- Large group market plans pertain to employers who employ an average of 51 (or more) employees on business days during the preceding calendar year and who employee at least 2 employees on the first day of the plan year, unless otherwise provided under State law.
- Small group market plans pertain to an employers who employ an average of 2 to 50 employees on business days during the preceding calendar year and who employ at least 2 employees on the first day of the plan year, unless otherwise provided under State law.
- Individual market plans pertain to health insurance coverage offered to individuals other than in connection with a group health plan. This is not employment based coverage.

Self-funded non federal governmental plans may opt-out of the MHPA requirements. For more information on MHPA opt-outs go to http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/.

Example 1: Jane Smith joined Company ABC and now has group health coverage through that company. There are an average of 200 employees in Company ABC. The company purchased a large group market plan. Jane has protections under the MHPA.

Example 2: Jane Smith joined Company ABC and now has group health coverage through that company. There are an average of 20 employees in Company ABC. The company purchased a small group market plan. The MHPA protections do not apply to small group market plans. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

Example 3: Jane Smith joined Company ABC. The company does not offer health insurance so she purchased an individual market policy. The MHPA protections do not apply to individual market policies. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

Example 4: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the MHPA requirements. Therefore, the MHPA does not apply to Jane since her coverage does not include MHPA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

4. 1% exemption - Large employers with a group health plan are exempt from the MHPA if they can demonstrate an increased cost of at least one percent due to the

application of mental health parity requirements. This exemption is based on actual (not projected) claims data and administrative expenses during the base period. The base period must begin on the first day in any plan year that the plan complies with the MHPA and must extend for a period of at least 6 consecutive calendar months.

The exemption is not effective until 30 days after the plan notifies participants and beneficiaries of the plan's decision to claim the one percent increased cost exemption. Plans must send a copy of the notice to the Federal agency that has jurisdiction over that plan. Plans are required to make this information available and any evidence that the cost information is not accurate maybe referred to the Federal agency that has jurisdiction over that plan.

Example 1: Jane Smith joined Company ABC and now has group health coverage through a large employer. The company compiled with the MHPA for 6 months, then demonstrated an actual (not projected) one percent cost increase. The plan notified Jane of their decision not to comply with the MHPA which became effective 30 days after the notification. Jane no longer has protections under the MHPA; however, she may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

5. Annual limits and parity requirements --- The MHPA may prevent your large employer group health plan from placing annual or lifetime dollar limits on mental health benefits that are lower than annual or lifetime dollar limits for medical and surgical benefits offered under the plan. If your group health plan has separate dollar limits for mental health benefits, the dollar amounts that your plan has for treatment of substance abuse or chemical dependency are not counted when adding up the limits for mental health benefits and medical and surgical benefits to determine if there is parity.

The MHPA does not prohibit group health plans from:

- Covering mental health services within network only, even though the plan will pay for out of network services for medical/surgical benefits (although with higher out-of-pocket cost to the subscriber);
- Increasing co-payments or limiting the number of visits for mental health benefits;
- Imposing limits on the number of covered visits, even if the plan does not impose similar visit limits for medical and surgical benefits; and
- Having different cost-sharing arrangements, such as higher coinsurance payments for mental health benefits, as compared to medical and surgical benefits.
- Not providing any mental health benefits.

Some additional information:

- A visit limit coupled with a usual, customary, and reasonable (UCR) charge is not the equivalent of an annual or lifetime dollar limit. As a result, it is not a violation of the MHPA requirements. Payments made by the plan on the basis of UCR charges will vary from one case to the next. What is not permitted is a limit on the number of visits, together with a fixed dollar limit per visit, for example, 60 visits annually at $50 per visit (totaling $3,000), unless the medical-surgical coverage is the same.
- You may be in a network plan that has an annual limit for mental health benefits received out-of-network, with no limits for out-of-network medical and surgical benefits. MHPA allows this as long as there is parity between medical and surgical benefits and mental health benefits received in the network.
- A group health plan (or health insurance coverage offered in connection with a group health plan) is not subject to MHPA if the application of its provisions to the plan raise costs by at least 1%.

Self-funded non federal governmental plans may opt-out of the MHPA requirements. For more information on MHPA opt-outs go to http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/.

Example 1: Jane Smith joined Company ABC prior to the effective date of the MHPA. She has group health coverage through a large employer. The plan had no annual limit on medical/surgical benefits and had a $10,000 annual limit on mental health benefits. To comply with the parity requirements, the plan considered each of the following options:

- Eliminating the plan's annual limit on mental health benefits;
- RB) Replacing the plan's previous annual limit on mental health benefits with a $500,000 annual limit on all benefits (including medical/surgical and mental health benefits); and
- Replacing the plan's previous annual limit on mental health benefits with a $250,000 annual limit on medical/surgical benefits and a $250,000 annual limit on mental health benefits.

Each option complies with the MHPA because each offers parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 2: Jane Smith joined Company ABC prior to the effective date of the MHPA. She has group health coverage through a large employer. The plan had a $100,000 annual limit on medical/surgical inpatient benefits, a $50,000 annual limit on medical/surgical outpatient benefits, and a $100,000 annual limit on all mental health benefits. To comply with the parity requirements, the plan considered each of the following options:

- Replacing the plan's previous annual limit on mental health benefits with a $150,000 annual limit on mental health benefits; and

- Replacing the plan's previous annual limit on mental health benefits with a $100,000 annual limit on mental health inpatient benefits and a $50,000 annual limit on mental health outpatient benefits.

Each option complies with the MHPA because each offers parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 3: Jane Smith joined Company ABC prior to the effective date of the MHPA. She has group health coverage through a large employer. The plan had an annual limit on medical/surgical benefits and a separate but identical annual limit on mental health benefits. The plan included benefits for treatment of substance abuse and chemical dependency in its definition of mental health benefits. Accordingly, claims paid for treatment of substance abuse and chemical dependency were counted in applying the annual limit on mental health benefits.

To comply with the parity requirements, the plan considered each of the following options:

- Making no change in the plan so that claims paid for treatment of substance abuse and chemical dependency continue to count in applying the annual limit on mental health benefits;
- Amending the plan to count claims paid for treatment of substance abuse and chemical dependency in applying the annual limit on medical/surgical benefits (rather than counting those claims in applying the annual limit on mental health benefits);
- Amending the plan to provide a new category of benefits for treatment of chemical dependency and substance abuse that is subject to a separate, lower limit and under which claims paid for treatment of substance abuse and chemical dependency are counted only in applying the annual limit on this separate category; and
- Amending the plan to eliminate distinctions between medical/surgical benefits and mental health benefits and establishing an overall limit on benefits offered under the plan under which claims paid for treatment of substance abuse and chemical dependency are counted with medical/surgical benefits and mental health benefits in applying the overall limit.

The first option WOULD NOT comply with the MHPA excludes benefits for treatment of substance abuse and chemical dependency. The inclusion of benefits for treatment of substance abuse and chemical dependency in applying an aggregate lifetime limit or annual limit on mental health benefits violates the MHPA.

However, the remaining options WOULD comply with the MHPA because they offer parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 4: Jane Smith joined Company ABC and now has group health coverage through that company. The company purchased a large group market plan. There are no

aggregate lifetime or annual limit for either medical/surgical benefits or mental health benefits. While the plan provides medical/surgical benefits with respect to both network and out-of-network providers, it does not provide mental health benefits with respect to out-of-network providers. The plan complies with the MHPA requirements because it offers parity in the dollar limits placed on medical/surgical and mental health benefits.

Example 5: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the MHPA requirements. Therefore, the MHPA enforcement does not apply to Jane since her coverage does not include MHPA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

6. General Mental Health Benefits --- Large employers with a group health plan are not required to include mental health coverage in their benefits packages. The requirements under the MHPA apply only to large employers with a group health plan offering mental health benefits. Parity does not apply to any policies sold in the small group market or in the individual market.

Some state laws require insurance companies to include mental health benefits in their health plans. Accordingly, individuals should contact their state's Department of Insurance to determine what protections they have under state law.

Self-funded non federal governmental plans may opt-out of the MHPA requirements. For more information on MHPA opt-outs go to http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/.

Example 1: Jane Smith joined Company ABC and now has group health coverage through that company. The company purchased a large group market plan and offers mental health benefits. Jane has protections under the MHPA. Jane may also have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

Example 2: Jane Smith joined Company ABC and now has group health coverage through that company. The company purchased a large group market plan which does not include mental health benefits. The MHPA does not apply to Jane since the policy does not cover mental health benefits; however, Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

Example 3: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the MHPA requirements. Therefore, the MHPA does not apply to Jane since her coverage does not include MHPA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

7. Level of benefits --- The law does not affect the terms and conditions (such as cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits. Therefore, large employers with a group health plan may impose other restrictions on mental health benefits and still be in compliance with the MHPA.

Self-funded non federal governmental plans may opt-out of the MHPA requirements. For more information on MHPA opt-outs go to http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/.

Example 1: Jane Smith joined Company ABC and now has group health coverage through that company. The company purchased a large group market plan and offers mental health benefits. The plan imposes limits on the number of covered visits, even though, the plan does not impose similar visit limits for medical and surgical benefits. The plan is in compliance with the MHPA.

Example 2: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the MHPA requirements. Therefore, the MHPA benefits do not apply to Jane since her coverage does not include MHPA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

8. Federal and State law – Generally, large employers with a group health plan must comply with the Federal parity requirements as well as state laws, whereas small employers with a group health plan are only subject to state laws. A state law that requires more favorable treatment of mental health benefits under health insurance coverage offered by issuers (generally, health insurance companies) would not be preempted by the provisions of MHPA and the interim rules. The combined effect of Federal and State rules will vary from state to state.

For more information on your state, contact the Department of Insurance (DOI) for the state in which you reside. Ask DOI about mental health parity and state laws mandating that mental health benefits be included in the plan. You may also go to http://www.ncsl.org/programs/health/Mentalben.htm for additional State specific information.

Self-funded non federal governmental plans may opt-out of the MHPA requirements. For more information on MHPA opt-outs go to http://www.cms.hhs.gov/SelfFundedNonFedGovPlans/.

Example 1: Jane Smith joined Company ABC. The company does not offer health insurance so she purchased an individual market policy. Jane lives in the XYZ State and XYZ State requires that individual market policies have mental health parity only for severe mental illnesses. Jane has some protections under State law.

Example 2: Jane Smith joined Company ABC and now has group health coverage through that company. The company purchased a small group market plan and is not subject to the MHPA. Jane lives in the XYZ State and XYZ State requires that small group market plans offer full mental health parity benefits. Jane has mental health parity protections under State law.

Example 3: Jane Smith works for a self-funded non Federal governmental plan that has opted out of the MHPA requirements. Therefore, the MHPA does not apply to Jane since her coverage does not include MHPA protections. Jane may have other protections under state law. She should contact the Department of Insurance (DOI) for the state in which she resides and ask DOI if she is entitled to any additional protections.

9. More information --- For more information on the MHPA go to the following Websites:

- CMS http://qa.cms.hhs.gov/HealthInsReformforConsume/ links to the MHPA statute. Click on "The Mental Health Parity Act" in the left column and scroll down to the statute.

- DOL http://www.dol.gov/elaws/ebsa/health/ has links to the MHPA statute, regulation, fact sheet and other publications. Click on "continue" then "Information on Applicable Laws, Regulations, Publications and Related Links" and scroll down to the MHPA.

- USA Government Made Easy http://www.usa.gov/ has a middle column on this webpage. Click on "Reference and General Gov" then in the right hand column under Featured sites, click on "Legislation" for legislation currently in Congress. You will be able to search by topic.

- The Henry Kaiser Family Foundation http://www.kaisernetwork.org/ has five radio buttons in the top left hand corner, HealthCast, Daily Reports, Issue Spotlight, Calendar, and Health Poll Search. Click on whichever topics will benefit you and you will be able to enter your email address and receive valuable updates.

- The National Conference of State Legislatures www.ncsl.org has a search box on the right hand side, enter "mental health parity" then select "State Laws Mandating or Regulating Mental Health Benefits."