



100 Fair Oaks Lane, Third Floor
Frankfort, Kentucky 40601

Telephone: (502) 564-2967
Toll Free: (800) 372-2988

TTY: (800) 372-2988
Fax: (502) 564-0848

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The U.S. Department of Health and Human Services
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-4140-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

RE: Interim Final Rules implementing the MHPAEA

To Whom it May Concern:

Kentucky Protection and Advocacy (P&A) is an independent state agency that advocates for the rights of individuals with disabilities in the state of Kentucky. We submit these comments in response to the Interim Final Rule Request for Comments Regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 published in the Federal Register on February 2, 2010.

We previously filed comments on May 28, 2009 in response to the Departments' MHPAEA request for information.

A. No Separate Cumulative Financial Requirements (§146.136(c)(3)(v))

Our request for information comments cautioned against using "separate but equal" deductibles. We applaud the interim final rule's requirement that there are to be no separate cumulative financial requirements or cumulative quantitative treatment limitations. For example, a plan cannot impose a \$250 deductible on all medical/surgical benefits and a separate annual \$250 deductible on all mental health and substance use disorder benefits.

B. Nonquantitative Treatment Limitations (§146.136(c)(4))

Kentucky P&A's request for information comments asked that the parity rules apply to nonquantitative treatment limitations as well as quantitative limits. The interim final rule provides an illustrative list of nonquantitative treatment limitations like medical management standards limiting or excluding benefits based on medical necessity, prescription drug formularies, and fail first policies.

We welcome this inclusion, but remain concerned that the regulation does not make it clear that health plans may not impose such limitations unless the processes used in applying the nonquantitative limitation to mental health or substance use disorder benefits are comparable to and no more stringently applied than those involving medical surgical benefits.

By allowing plans to use processes and standards differently “to the extent that recognized clinically appropriate standards or care may permit a difference” leaves the door open for health plans to utilize disparate processes and standards. We would suggest that the Departments narrow that exception by offering an exhaustive list of exceptions in which plans may apply different processes and standards.

C. Availability of Plan Information (§146.136(d))

The interim final rule requires plans to provide the criteria for medical necessity determinations and the reason for a denial. In our request comments, Kentucky P&A asked that plans be required to provide more information than is now typically received when a service is denied based upon medical necessity. We asked that a plain language explanation of why this particular service was not considered appropriate at this time for this person should be required.

We recommended that the regulations should specify that consumers may request at no charge copies of the documentation the plan used to make the coverage determination at issue; set timeframes for disclosure of reasons for claims denials; and outline the process for appealing the determinations, including time frames and enforcement mechanisms. Similar requirements are found in Medicaid’s fair hearing regulations—42 C.F.R 431, subpart E. Fair Hearings for Applicants and Recipients—and we encourage the Departments to take a similar approach with the MHPAEA.

D. General Applicability Provisions (§146.136(e))

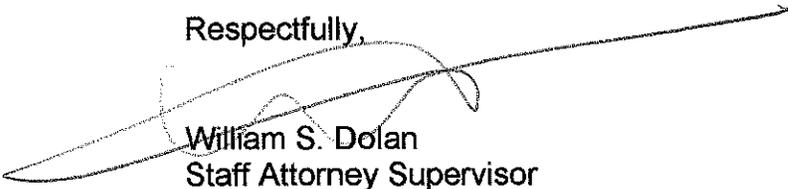
Many advocacy groups were concerned that plans would carve-out mental health benefit packages if the parity requirement were applied separately to each package. We applaud the decision that “[t]he rule is that all medical care benefits provided by an employer or employee organization constitute a single group health plan.”

E. Small Entities (Supplementary Information)

We were pleased to find that the interim final rule does not permit special consideration for small entities and that small entities are required to comply in the same manner as other plans subject to MHPAEA.

We appreciate the opportunity to provide these comments.

Respectfully,



William S. Dolan
Staff Attorney Supervisor