

An Introduction: DOL MHPAEA FY 2018 Enforcement Fact Sheet

September 5, 2019

The United States Department of Labor (DOL), Employee Benefits Security Administration (EBSA) is issuing its report on investigations regarding the Mental Health Parity and Addiction Equity Act (MHPAEA) for Fiscal Year (FY) 2018.¹ This information is being provided in compliance with section 13003 of the 21st Century Cures Act.² Enhanced early information is also being provided related to section 7182 of the SUPPORT for Patients and Communities Act.³

In addition to providing its FY 2018 enforcement data, EBSA is sharing information regarding its FY 2018 MHPAEA enforcement strategy. Informed by investigations conducted in prior years, and in light of the Agency's limited resources, EBSA's enforcement approach has shifted in the following two ways.

1. Investigations targeted to achieve high impact.

EBSA has approximately 400 investigators and 100 benefits advisors to oversee over 5 million private health, pension, and other employee benefit plans (such as those providing life or disability insurance). These plans cover about 150 million workers and their dependents, and include assets of about \$10 trillion. That equates to less than one investigator for every 12,500 employee benefit plans. In addition, EBSA does not have the authority to enforce MHPAEA directly against health insurance issuers in their capacity as insurers.

In light of these challenges, EBSA looks for ways to leverage its resources without compromising its commitment to rigorously enforce the law. Specifically, EBSA works with health insurance issuers and other service providers (such as third-party administrators and managed behavioral health organizations) to obtain voluntary global corrections whenever possible in cases where a violation relates to an insurance product, prototype document, or systemic operation affecting multiple group health plans. EBSA has jurisdiction to enforce MHPAEA relating to insurance companies when they serve as administrative services-only providers (ASOs) to self-funded ERISA-covered plans. ASOs that administer plans that are not in compliance with MHPAEA cause many ERISA-covered plans to be out of compliance.

¹ This report is available on EBSA's dedicated MHPAEA webpage at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity>. DOL's prior enforcement fact sheets, representing data from FY2011-2015, FY2016, and FY2017 are also available on this webpage. The Department of Health and Human Services (HHS) MHPAEA Enforcement Report for FY 2018 is available at: <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/FY2018-MHPAEA-Enforcement-Report.pdf>.

² Public Law 114-255, enacted December 13, 2016.

³ Public Law 115-271, enacted October 24, 2018. FY 2018 (which runs October 1, 2017 – September 30, 2018) closed prior to the enactment of the Support Act. However, to the extent feasible, we are providing information that was captured by EBSA, including the number of closed federal investigations in the preceding 12-month period, each benefit classification examined, and references to any guidance provided by the Agency. EBSA will compile additional data for case reviews conducted in FY 2019, which will be reported in future enforcement reports. These data include the number of MHPAEA complaints received in the preceding 12-month period, whether the plan is fully insured or self-insured for each investigation and whether DOL collaborated with other state or federal agencies on the investigation.

EBSA pursues such cases against the ASOs to achieve widespread compliance and greater impact for participants and beneficiaries. Finally, EBSA may enlist states and conduct parallel investigations of issuers who act as both insurers and ASOs within the state's jurisdiction.

Overall, this approach means fewer case openings than in some previous years, but more impactful results. For example, in FY 2018, EBSA reviewed a self-funded plan that required a written treatment plan for mental health and substance use disorders. The plan also required that the treatment plan be for a condition that can be improved, and not solely managed, with treatment. The plan did not impose these requirements on medical/surgical benefits. As a result of EBSA's investigation, the service provider for the plan removed the impermissible requirements not only from the plan that was investigated but also from all plan documents for all its self-funded plan clients.

2. Complex investigations conducted by specialized, interdisciplinary teams.

EBSA has begun using specialized, interdisciplinary teams to target and evaluate complex MHPAEA compliance issues. For example, review of non-quantitative treatment limitations (NQTLs), such as medical management standards and provider reimbursement rates, often requires a complex comparison of the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits to ensure they are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits, under the terms of the plan as written and in operation.

To evaluate compliance, EBSA has formed teams consisting of seasoned health investigators who specialize in medical claims data review and analysis. The teams are supported by the Agency's regulatory subject matter experts and economists, as well as attorneys from DOL's Office of the Solicitor. EBSA also coordinates with its counterparts at HHS and the Treasury, with whom DOL shares interpretive jurisdiction with respect to MHPAEA,⁴ and utilizes outside experts as needed for further support. Because of their complexity, many health investigations span more than one fiscal year. Therefore, many cases opened in FY 2018 remained open at the end of the FY, and are not reported in this year's enforcement fact sheet. The fact sheet represents solely the cases closed during FY 2018.

We hope this information is helpful to understand EBSA's enforcement approach to help ensure individuals receive the parity protections under the law and the health plan coverage to which they are entitled.

⁴ See section 104 of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191), which requires that shared provisions (including the MHPAEA provisions) must be administered so as to have the same effect at all times, and which also requires the coordination of policies relating to enforcement. See also the Memorandum of Understanding between the DOL, HHS, and the Treasury at 64 FR 70164 (December 15, 1999).