

An Introduction: DOL MHPAEA FY 2020 Enforcement Fact Sheet

January 15, 2021

The United States Department of Labor (DOL), Employee Benefits Security Administration (EBSA), in collaboration with the United States Department of Health and Human Services and the United States Department of the Treasury, is issuing a fact sheet on investigations regarding the Mental Health Parity and Addiction Equity Act (MHPAEA) for Fiscal Year (FY) 2020. This information is being provided in compliance with section 13003 of the 21st Century Cures Act,¹ as amended by section 7182 of the SUPPORT for Patients and Communities Act.² Because of their complexity, many health plan investigations span more than one year. Therefore, many cases opened in FY 2020 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 2020.³

EBSA enforces Title I of the Employee Retirement Income Security Act of 1974 (ERISA) with respect to 2.5 million private employment-based group health plans, which cover 136 million participants and beneficiaries. EBSA relies on approximately 350 investigators to review all pension and welfare benefit plans for compliance with ERISA, including the group health plan provisions added by MHPAEA. In light of its broad enforcement jurisdiction, EBSA continuously reviews and improves its enforcement, compliance assistance, and education programs to ensure compliance with ERISA (including MHPAEA) in an effective and efficient manner. In EBSA's 2020 Report to Congress on MHPAEA implementation and enforcement activities, a five-point Mental Health and Substance Use Disorder (MH/SUD) Enforcement Evaluation Program was announced with the following elements:

- 1) a quality assurance review of MHPAEA investigations;
- 2) capturing data on other ERISA violations impacting mental health and substance use disorder benefits;
- 3) providing additional compliance assistance by updating the MHPAEA self-compliance tool to reflect new trends and red flags;
- 4) holding a listening session with stakeholders to gather feedback on EBSA's interpretive guidance and enforcement program; and
- 5) the FY 2021 national enforcement initiative informed by the quality assurance review and stakeholder engagement efforts.

¹ Public Law 114-255, enacted December 13, 2016.

² Public Law 115-271, enacted October 24, 2018.

³ Except as otherwise noted.

Since that announcement, EBSA has taken several steps in furtherance of its five-point MH/SUD Enforcement Evaluation Program.

- First, EBSA is undertaking a two-step quality assurance review of its health investigations to determine whether the proper investigative steps and MHPAEA analysis were conducted in recently closed investigations. EBSA has completed the first step, a peer review by field personnel, and expects to complete the second step, a review by National Office personnel, early in calendar year 2021.
- Second, EBSA has instituted new centralized recordkeeping for tracking which investigations involve MHPAEA. EBSA also now requires the centralized collection of data on the number of plans and participants affected by corrections obtained in all health investigations, including MHPAEA investigations. In addition, we are now tracking health results that affect mental health benefits even if not cited as a MHPAEA violation. EBSA also created a method to better track public complaints received by its Benefits Advisors concerning potential MHPAEA violations.
- Third, on October 26, 2020, EBSA issued a final update to the MHPAEA self-compliance tool after issuing it in proposed form and requesting public comments.
- Fourth, on July 16, 2020, EBSA hosted a listening session with consumer advocates, group health plan representatives, health insurance issuers, managed behavioral health organizations, provider groups, federal and state regulators, and other interested parties to discuss MHPAEA implementation compliance issues.
- Fifth, with respect to the FY 2021 national enforcement initiative, EBSA has chosen three focus areas to emphasize as part of its MHPAEA enforcement project for FY 2021. These focus areas were selected based on information gathered through stakeholder engagement (including the July 16, 2020 listening session) and EBSA's own quality assurance review. The focus areas include: (1) processes for determining whether provider reimbursement rates might indicate a MHPAEA violation, (2) accuracy of provider network directories, and (3) treatment limitations regarding Autism Spectrum Disorder.

EBSA looks forward to providing a fuller update on its five-point MH/SUD Enforcement Evaluation Program in its next report to Congress. We hope this information is helpful to understanding EBSA's enforcement approach, which aims to ensure individuals receive benefits under programs that fully comply with parity requirements.