



Texas Department of Insurance

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Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attention: MHPAEA Comments

Dear Sir or Madam:

The Texas Department of Insurance (Department) appreciates the opportunity to submit comments regarding specific points of clarification it believes would be helpful for the Departments of Treasury, Labor, and Health and Human Services to include in any rulemaking to implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

The Department believes the following are among points about which clarification would be helpful both to departments of insurance and to the employer health benefit plans and plan issuers over which the departments have regulatory purview.

First, the Department suggests clarifying whether a state mandate for minimum levels of a particular type of coverage automatically triggers a requirement for full parity under the federal act, even if the intent of the state law and the manner in which it is set out is to require a specific, discrete coverage type and not to require or mandate provision of mental health or substance use benefit coverage equivalent to other coverage.

For example, would state imposition of a defined minimum requirement for benefit coverage for a specific serious mental illness bring the health benefit plan issuer and the plan under the federal requirements of MHPAEA even though the issuer and plan include the coverage simply to be compliant with the requirements of state law and not because either the plan or issuer, independent of the state requirement for the coverage, is offering or providing mental health or substance use benefit coverage.

Second, the Department suggests clarification as to the point at which a state requirement or mandate for minimum levels of a particular type of coverage (or types of coverages) constitutes or is tantamount to defining a mental health benefit under MHPAEA provisions indicating that the terms “mental health benefits” and “substance use disorder benefits” mean benefits with respect to services for such conditions or disorders, as defined under the terms of the plan and in accord with applicable federal and state law.

Third, the Department suggests clarification as to whether a state law which requires or mandates minimum levels of a specific or particular type of coverage but is neither a general requirement to provide mental health benefits nor a mandate that is consistent in every detail with MHPAEA would be treated as a state law that “prevents the application” of MHPAEA and therefore possibly subject to federal preemption provisions.

Fourth, the Department suggests clarification as to whether specific, discrete requirements applicable to health plan benefits for coverage generally would be permitted for mental health/substance use disorder benefits for coverage under MHPAEA. For example, if a health plan with respect to inpatient hospital visits for covered conditions requires pre-authorization, would such requirements also be permitted for inpatient hospital visits for mental health/substance use disorder benefits.

Thank you again for the opportunity to comment on implementation of MHPAEA. Please let us know if additional information would be helpful.

Sincerely,



Katrina Daniel
Associate Commissioner
Life, Health & Licensing Program

KD:NH:lj