Department of Health and Human Services (HHS) Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) Enforcement Report

For the 2018 Federal Fiscal Year

The Centers for Medicare & Medicaid Services (CMS) is publishing this report to increase transparency with respect to CMS enforcement of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). CMS, along with the U.S. Department of Labor and the U.S. Department of the Treasury, enforces MHPAEA together with the states. This report includes information regarding MHPAEA investigations completed by CMS and the resulting corrective actions obtained during the 2018 Federal fiscal year. [1]

MHPAEA is a Federal law that generally prohibits group health plans and health insurance issuers that provide coverage for mental health or substance use disorder (MH/SUD) benefits in addition to medical/surgical benefits from imposing more restrictive financial requirements and treatment limitations on MH/SUD benefits than on medical/surgical benefits.

CMS, a component of the U.S. Department of Health and Human Services (HHS), has primary enforcement authority with respect to MHPAEA and other applicable Federal laws over non-Federal governmental plans. Public Health Service Act (PHS Act) section 2791(d)(8)(C) defines the term "non-Federal governmental plan" as a governmental plan that is not a Federal governmental plan. Non-Federal governmental plans are group health plans that are sponsored by states, counties, school districts, and municipalities for their employees. Sponsors of self-funded, non-Federal governmental plans may opt out of certain requirements of Title XXVII of the PHS Act, including MHPAEA (sometimes referred to as HIPAA opt-outs). [2] The Patient Protection and Affordable Care Act (PPACA) limited the PHS Act provisions from which self-funded, non-Federal governmental plans may opt out. CMS reviews self-funded, non-Federal governmental plans' opt-out elections to ensure compliance with the requirements for opting out of the applicable PHS Act provisions, including MHPAEA. [3] CMS investigates, for compliance with MHPAEA, non-Federal governmental plans that have not opted out of MHPAEA when CMS receives information that indicates potential noncompliance with respect to MHPAEA. [4] CMS also has the authority to initiate a market conduct examination to determine whether a non-Federal governmental plan that has not filed a valid MHPAEA opt-out is out of compliance with MHPAEA. [5]

With respect to health insurance issuers selling health insurance products in the individual and group markets, CMS has primary enforcement authority with respect to MHPAEA only when a state elects not to enforce or fails to substantially enforce MHPAEA. Currently, CMS is enforcing MHPAEA with respect to issuers in four states: Missouri, Oklahoma, Texas, and Wyoming. In these states, CMS reviews health insurance policy forms of issuers in the individual and group markets for compliance

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[1] The United States Federal fiscal year 2018 ran from October 1, 2017 to September 30, 2018.

[2] Pursuant to PHS Act Section 2722(a)(2) and its implementing regulation at 45 C.F.R. 146.180.

[3] For more information about the PHS Act provisions from which self-funded, non-Federal governmental plans may currently opt out, visit https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/nonfedgovplans.html.

[4] See 45 C.F.R. 150.303 for CMS's authority to initiate an investigation of a potential violation of applicable Federal law by health insurance issuers and non-Federal governmental plans.

[5] See 45 C.F.R. 150.313 for CMS's authority to initiate a market conduct examination to determine whether a non-Federal governmental plan or a health insurance issuer is out of compliance with applicable Federal law.

with MHPAEA prior to the products being offered for sale in the states. Through this process, parity issues are identified by CMS reviewers and are corrected by the issuers before individuals and groups enroll in the products. CMS has also established a market conduct examination process through which health insurance issuers, in states where CMS is responsible for enforcement of the PHS Act, are audited for compliance with applicable Federal requirements. CMS additionally conducts market conduct examinations of issuers in states that have a collaborative enforcement agreement with CMS if the state requests such an examination in order to obtain issuer compliance with a Federal requirement. CMS will enter into a collaborative enforcement agreement with any state that is willing and able to perform regulatory functions but lacks enforcement authority.[6] If the state finds a potential violation and is unable to obtain voluntary compliance from an issuer, it will refer the matter to CMS for possible enforcement action.[7]

The issues and subsequent enforcement actions discussed below are intended to summarize results obtained in CMS's closed investigational actions completed during the 2018 Federal fiscal year with respect to MHPAEA. The enforcement actions taken in these cases are based on all of the relevant facts and circumstances in each investigational action and are not determinative of future enforcement actions by CMS or other Federal agencies.

Previously denied MH/SUD claims reprocessed and increased transparency for consumers

During the 2018 Federal fiscal year, CMS closed three investigations related to MHPAEA, all of which concerned non-Federal governmental plans' compliance with HIPAA opt-out requirements.

In order to opt out of MHPAEA, non-Federal governmental plans are required to submit an opt-out election to CMS in an electronic format, as specified in guidance,[8] before the first day of the plan year to which the election is to apply and to provide annual written notice to the plan's enrollees about the plan's election to opt out of MHPAEA as specified at 45 C.F.R. 146.180.[9] The plan must also submit to CMS a copy of the enrollee notice with its initial opt-out election. If the plan renews the opt-out for the following years, it must state to CMS that it provides the required notice to enrollees.

During the course of the 2018 Federal fiscal year, CMS determined that two non-Federal governmental plans did not properly submit an opt-out election to CMS and/or failed to properly notify enrollees of the plan's election to opt out of MHPAEA. CMS determined these plans' opt-outs to be invalid and required both plans to take the following corrective actions related to MHPAEA compliance:

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[6] The following states have collaborative enforcement agreements with CMS: Alabama, Florida, Louisiana, Missouri (for rate review), Montana, and Wisconsin.

[7] For more information about compliance with the health insurance market reforms and CMS enforcement, visit https://www.cms.gov/cciio/programs-and-initiatives/health-insurance-market-reforms/compliance.html.

[8] For more information on the opt-out process and accompanying CMS guidance, visit https://www.cms.gov/CCIIO/Resources/Files/hipaa_exemption_election_instructions_04072011.html.

[9] If a non-Federal governmental plan is governed by a collective bargaining agreement that was ratified before March 23, 2010, a plan sponsor or entity acting on behalf of a plan sponsor must file an election with CMS before the first day of the first plan year governed by a collective bargaining agreement, or by the 45th day after the latest applicable date specified in 45 C.F.R. 146.180(b)(2)(i), if the 45th day falls on or after the first day of the plan year.

- Retroactively apply parity requirements to MH/SUD benefits in compliance with the law for the entire plan year(s) to which the election would otherwise have applied;
- Notify plan enrollees of the benefits afforded to them under the law;
- Allow enrollees to retroactively file claims for benefits not received; and
- Review previously-denied claims and make appropriate claim payments.

Each of the plans determined to be out of compliance with MHPAEA was also required to provide documentation to CMS that it had followed its respective corrective action plan.

During the course of the third investigation, CMS obtained evidence that confirmed the plan properly notified its enrollees of its election to opt out of MHPAEA, which resolved all of CMS's concerns regarding a potential MHPAEA violation. Therefore, CMS closed the case without requiring any corrective action by the plan.

Below is a table summarizing the investigations closed in FY2018.

Table: Closed CMS MHPAEA Investigations for FY2018

Type of Coverage	Source of Information/Complaint	Type of Investigational Action	MHPAEA Issue	Date Closed
Self-funded, non-Federal governmental plan – school district	Plan administrator self-reported error	Non-Federal Governmental plan corrective action	Invalid MHPAEA HIPAA opt-out	February 8, 2018
Self-funded, non-Federal governmental plan – county	Improper MHPAEA opt-out submission	Non-Federal Governmental plan corrective action	Invalid MHPAEA HIPAA opt-out	March 1, 2018
Self-funded, non-Federal governmental plan – school district	Improper MHPAEA opt-out submission	Non-Federal Governmental plan investigation	Notice to enrollees of plan's MHPAEA HIPAA opt-out	August 30, 2018