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NOREEN VERGARA
KANSAS CITY:
816.983.8000
NOREEN.VERGARA@
HUSCHBLACKWELL.COM

The Status of Exemptions Under Recently Proposed MHPAEA Regulations

The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)—the federal law that prohibits covered health plans from imposing less favorable limitations on mental health and substance use disorder benefits than they do for a medical condition or surgical procedure—contained certain important exceptions or carveouts, and as the U.S. Departments of Labor (DOL), Health and Human Services (HHS), and Treasury recently finalized a new rule to clarify and extend MHPAEA, the fate of MHPAEA exceptions has become a topic of interest to patients, providers, employers, and health plans alike.

The Final Rule clarifies existing exemptions but does not introduce new ones. The primary change sunsets the opt-out provision for self-funded non-federal governmental plans as outlined in the 2023 Consolidated Appropriations Act.

Otherwise, existing MHPAEA exceptions are still available. These include:

Small employers: Although MHPAEA includes a small employer exemption, group health plans sponsored by employers with less than 50 employees who purchase non-grandfathered small group coverage are required to comply with MHPAEA under the Essential Health Benefits requirements of the Affordable Care Act. If a group health plan with less than 50 employees was created before 2008, then it is exempted from MHPAEA. However, despite a federal exemption, some states have more stringent laws that will apply to groups with less than 50 employees.

Medicare: Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) are government healthcare programs and are not group health plans or issuers of health insurance. However, there are provisions of the Social Security Act governing CHIP plans, Medicaid benchmark plans, and

Medicaid managed care organizations that require compliance with certain requirements of MHPAEA. The Centers of Medicare and Medicaid Services (CMS) also issued a final rule in 2016 containing similar requirements for Medicaid to those found in MHPAEA's 2013 final rule for commercial health plans.

Grandfathered health plans: Those health plans that were in existence before the Affordable Care Act (ACA) took effect in 2010 and have not made significant changes to reduce benefits or increase costs for members are considered grandfathered exempt from MHPAEA requirements. Health plans that make significant changes to plan design will lose their grandfathered status.

Coverage exceptions: Certain categorical types of coverage are exempted, such as stand-alone dental and vision plans; health savings accounts (HSAs) when paired with a high-deductible health plans; disability insurance; employee assistance programs, and long-term care insurance.

Retiree-only plans: Plans that cover only retirees with no active employees are also generally exempt from MHPAEA.

Short-term limited duration insurance (STLDI): These temporary insurance plans are typically not required to comply with MHPAEA standards.

Religious exemptions: Certain religious organizations may be exempt, although the limit of such exemption may be subject to differing interpretation under state laws.