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U.S. Department of Labor FAQ #7 Delays Summary of Benefits and Coverage Requirement under ACA; Clarifies Rules under MHPAEA

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The U.S. Department of Labor (DOL) recently published the seventh installment of a series of answers to Frequently Asked Questions regarding implementation of the Affordable Care Act and the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The FAQ, along with others in the series, can be found at http://www.dol.gov/ebsa/healthreform/.

The FAQ provides that compliance with the Affordable Care Act's summary of benefits and coverage (SBC) requirement is delayed until final regulations are issued, in order to provide the DOL with additional time to incorporate comments and feedback received after it released proposed regulations, templates, and other related material on August 18, 2011. The SBC requirement was intended to be effective March 23, 2012. It is expected that when final regulations are released, the applicability date will leave group health plans and health insurers with sufficient time to comply. See our August 23, 2011 client alert, Health Care Reform: Guidance Released on Uniform Summary of Benefits and Coverage for more information on the SBC requirement.

The FAQ also addresses questions regarding the use of nonquantitative limitations on mental health and substance use disorder (MH/SUD) benefits under MHPAEA. Under MHPAEA, a group health plan that offers MH/SUD benefits must offer those benefits at parity with medical/surgical benefits with respect to quantitative treatment limitations, such as copayments and visit limits, as well as *nonquantitative* treatment limitations, such as standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether a treatment is experimental or investigative.

The FAQ clarifies that a plan may require prior authorization for MH/SUD benefits on the same basis as medical/surgical benefits; however, a plan that in practice routinely approves treatments for MH/SUD benefits for a shorter period of time than for medical/surgical benefits generally would not comply with MHPAEA.

The FAQ recognizes that some differences in plan requirements for prior authorization might be permissible based on recognized clinically appropriate standards of care, so long as they are applied consistently to both medical/surgical benefits and MH/SUD benefits. The fact that some limitations may affect a greater proportion of MH/SUD benefits than medical/surgical benefits is not inconsistent with MHPAEA, assuming the evidentiary standard used by the plan is applied no more stringently to MH/SUD benefits.

For example, in practice, the application of a concurrent review standard to inpatient care affects 30 percent of medical/surgical conditions but affects 60 percent of MH/SUD conditions. As long as the evidentiary standard used by the plan is applied no more stringently for MH/SUD benefits than for medical/surgical benefits, the plan may continue to apply the concurrent review standard even though it results in an overall difference in the application of concurrent review for MH/SUD conditions than for medical/surgical conditions.

Lastly, the FAQ clarifies that a group health plan may determine the maximum that can be applied to MH/SUD benefits based on the predominant copayment that applies to substantially all medical/surgical benefits within a classification (e.g., inpatient and outpatient (in- and out-of-network), emergency services, and prescription drugs). For example, if the copayment that meets this standard is the one charged for a medical/surgical *specialist*, that copayment can be charged for all MH/SUD benefits within that classification. On the other hand, if the copayment that meets this standard is the one charged for a medical/surgical *generalist*, then that is the copayment that can be charged to all MH/SUD benefits within that classification.

Please contact your Proskauer lawyer or any member of our Health Care Reform Task Force should you have questions regarding compliance with the Affordable Care Act or MHPAEA.