



# Mental Health Parity Implementation: Are We There Yet?

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# Presented by

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**Lesley R. Yeung**

Associate

[lyeung@ebglaw.com](mailto:lyeung@ebglaw.com)

202-861-1804

# Mental Health Parity

## BASIC CONCEPT

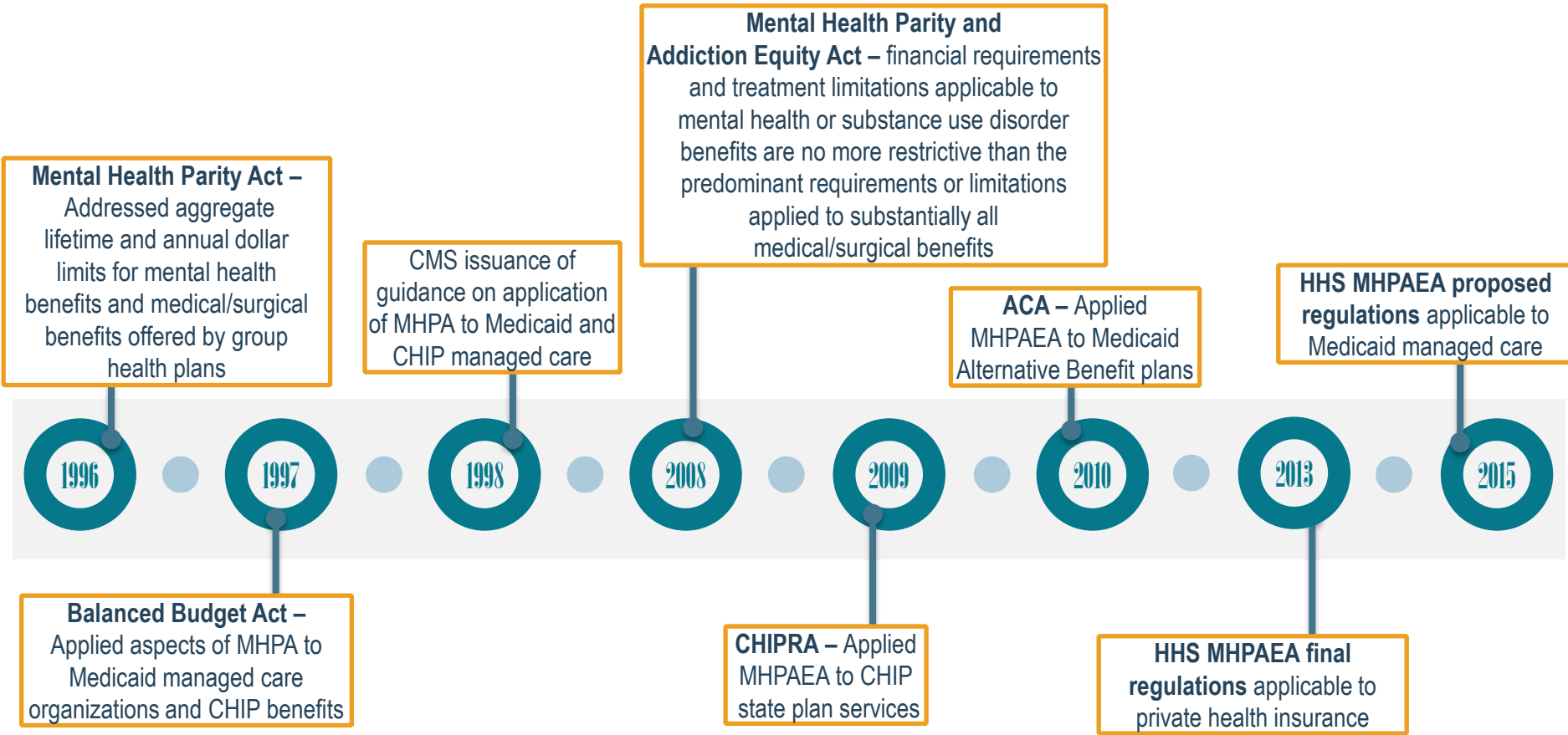


Insurers should provide the same coverage benefits for mental health and substance use disorder treatments as they do for medical and surgical treatments.



At its core, mental health parity is driven by the belief that treatment for mental illness is as important to the overall health of a patient as is treatment for one's physical wellbeing.

# Timeline and Trends



# MHPAEA Final Regulations

ISSUED NOVEMBER 2013



- ***Financial requirements*** and ***quantitative and non-quantitative treatment limitations*** applied to mental health and substance use disorder (“MH/SUD”) benefits must be no more restrictive than the predominant type applied to substantially all medical/surgical benefits
- No separate cost sharing requirements or treatment limits applying only to MH/SUD benefits
- Medical necessity guidelines must be provided to participants and beneficiaries and the basis for a denial must be given to participants
- If out-of-network coverage is available for medical/surgical benefits, it must be made available for MH/SUD benefits
- Parity requirements apply to benefits for intermediate levels of care

# MHPAEA Final Regulations

## EXAMPLES OF KEY IMPLEMENTATION ISSUES

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- Non-quantitative treatment limitations (“NQTLs”)
  - How to develop medical management standards
  - Provider reimbursement rates
  - Standards for provider participation
- Ban on separate cumulative financial and quantitative treatment limitation
  - An integrated deductible and visit limits present a major challenge for carved out MH/SUD benefits
- Scope of services
  - MHPAEA does not mandate coverage beyond six broad classifications
  - Intermediate services (skilled nursing, rehab hospitals, intensive outpatient) present a challenge; final rule says to classify them “consistently” between MH/SUD and medical/surgical among the six classifications

# Medicaid Mental Health Parity

PROPOSED RULE ISSUED IN APRIL 2015



- On April 10, 2015, CMS published a proposed rule to implement mental health parity requirements for:
  - Medicaid managed care organizations (“MCOs”)
  - Medicaid alternative benefit plans (“ABPs”)
  - The Children’s Health Insurance Program (“CHIP”)
- All beneficiaries who receive services through MCOs, ABPs, or CHIP will have access to MH/SUD benefits regardless of whether services are provided through the MCO or another service delivery system
- The proposed rule aligns with the approach taken in the MHPAEA final regulations to create consistency between the commercial and Medicaid markets
- The final rule is expected in April 2016



# Enforcement

## FEDERAL AND STATE RESPONSIBILITIES

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- Enforcement authority is split between state governments and the federal government
- Federal enforcement is further split among three different agencies, depending on the type of health plan at issue
  - The Department of Health and Human Services (“HHS”) – group and individual market, Qualified Health Plans in the exchanges
  - The Department of Labor (“DOL”) – ERISA plans
  - The Internal Revenue Service (“IRS”) – ERISA plans and their sponsors, Church Plans

# Enforcement

## STATE AND PRIVATE ACTION EXAMPLES

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- New York Attorney General:
  - Enforcement actions primarily related to NQTLs has led to series of five settlements since Jan. 2014; used percentage difference between medical/surgical benefits denied as proof of NQTL parity violation
- California: 9th Circuit ruled that state parity law requires plans to cover all “medically necessary” services for the enumerated conditions even if not covered; State court of appeals later affirmed 9th circuit approach
- Kentucky: plaintiff with autism seeking class certification under MHPAEA for financial and QTL benefit design; ongoing
- Oregon: plaintiff class with autism granted partial summary judgment under MHPAEA for developmental disability exclusion under theory that MHPAEA prohibits separate treatment limits applicable only to MH/SUD; ongoing
- Utah: district court determined that the exclusion of all services received at a residential treatment facility is an NQTL, and such exclusion violates MHPAEA

# On-Going Evolution

## EXAMPLES OF RECENTLY PROPOSED LEGISLATION



- Mental Health Reform Act of 2016 (S. 1945) – introduced by Sen. Alexander (R-TN) on Mar. 7, 2016
  - Legislation includes HIPAA clarification, grants to encourage the integration of primary and behavioral health care, and mental health parity clarification
- Helping Families in Mental Health Crisis Act of 2015 (H.R. 2646) – introduced by Rep. Murphy (R-PA) in Jun. 4, 2015
  - Legislation eliminates the restriction on Medicaid coverage of IMDs, clarifies permitted health information disclosures under HIPAA, and creates an assistant secretary position for mental health care at HHS
  - Comprehensive Behavioral Health Reform and Recovery Act of 2016 (H.R. 4435) – introduced by R. Green (D-TX) on Feb. 2, 2016 as an alternative to H.R. 2646
- Behavioral Health Coverage Transparency Act (H.R. 4276) – introduced by Rep. Kennedy (D-MA) on Dec. 16, 2015
  - Legislation focuses on strengthening mental health parity by addressing disclosure and enforcement requirements; companion bill (S. 2647) introduced on Mar. 7, 2016

# Questions?

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# Upcoming Webinars

## Behavioral Health Crash Course Series

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- **Managed Care and Behavioral Health**

March 29 at 2:00 - 2:15 p.m. ET

Jackie Selby

To register, please visit: <http://www.ebglaw.com/events/>

**Thank you.**