

Are Any Group Health Plans Exempt From the Federal Mental Health Parity Requirements?

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QUESTION: We are wondering if our company's medical plan might qualify for an exemption from the federal mental health parity requirements. What exemptions are available?

ANSWER: The federal mental health parity requirements apply to most employer-sponsored group health plans, but there are a few exceptions. As a reminder, the mental health parity rules under the Mental Health Parity Act (MHPA) and the Mental Health Parity and Addiction Equity Act (MHPAEA) require parity between medical/surgical benefits and mental health or substance use disorder benefits in the application of annual and lifetime dollar limits, financial requirements (such as deductibles, copayments, coinsurance, and out-of-pocket maximums), quantitative treatment limitations (such as number of treatments, visits, or days of coverage), and nonquantitative treatment limitations (such as medical management standards). However, some exceptions apply:

- **Small Employer and Small Plan Exemptions.** An exception is available for small employers that employed an average of at least two (one in the case of an employer residing in a state that permits small groups to include a single individual) but no more than 50 employees (100 or fewer employees for certain non-federal governmental plans) on business days during the preceding calendar year. When determining whether an employer qualifies as a small employer, certain related employers (including members of a controlled group or an affiliated service group as defined in Code § 414) are treated as one employer. An employer not in existence throughout the preceding calendar year will determine whether it is a small employer based on the average number of employees that it reasonably expects to employ on business days during the current calendar year. There is also an exception for plans with fewer than two participants who were current employees on the first day of the plan year (including retiree-only plans). Note that if an employer provides coverage through a group policy purchased in the small group insurance market, that group policy will be required to cover mental health and substance use disorder services in a manner that complies with the mental health parity requirements.
- **Increased Cost Exemption.** An increased cost exemption is available for plans that make changes to comply with the mental health parity rules and incur an increased cost of at least 2% in the first year that the MHPAEA applies to the plan (generally, the first plan year beginning on or after October 3, 2009, unless a later date applies, e.g., because the plan ceased to qualify for an exemption) or at least 1% in any subsequent plan year. Plans that comply with the parity requirements for one full plan year and satisfy the conditions for the increased cost exemption are exempt from the parity requirements for the following plan year (i.e., the exemption lasts for one plan year). After that year ends, the plan must again comply with the parity requirements for a full year before it may (potentially) qualify for the exemption again. Given the complexity of administering coverage with an every-other-year exemption, use of the increased cost exemption may be impractical.
- **Excepted Benefits.** The federal mental health parity requirements do not apply to group health plans that provide only excepted benefits (e.g., certain limited-scope dental or vision plans and most health FSAs).

Self-insured non-federal governmental plans could previously opt out of the requirements, but the Consolidated Appropriations Act, 2023 eliminated that right as of December 29, 2022. No new mental health parity opt-out elections may be made on or after that date, and opt-out elections expiring on or after June 27, 2023, may not be renewed. For more information, see EBIA's Group Health Plan Mandates manual at Section IX.A ("What Is Mental Health Parity and Who Must Comply?"). See also EBIA's Health Care Reform manual at Section XIV.F ("Comprehensive Health Coverage Requirement (Essential Health Benefits Package)—Applicable Only in the Individual and Small Group Markets") and EBIA's Self-Insured Health Plans manual at Section XIII.C.2 ("MHPA and MHPAEA: Mental Health Parity").

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