

Tenth Circuit Clarifies Mental Health Parity and ERISA Disclosure Obligations

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M.S. v. Premera Blue Cross, 2024 WL 4356319 (10th Cir. 2024)

Available at <https://www.ca10.uscourts.gov/sites/ca10/files/opinions/01011122026.pdf>

A federal appellate court has weighed in on a dispute involving a self-insured health plan that denied coverage for a minor child's residential mental health treatment because the treatment did not meet the plan's definition of medically necessary. The child's family sued the plan, plan administrator, and claims administrator for denial of benefits under the terms of the plan, violation of the Mental Health Parity and Addiction Equity Act (MHPAEA), and violation of ERISA's disclosure requirements. The trial court held that there had been no improper denial of benefits under the plan because the administrator had followed the plan's terms, including its criteria for medical necessity. However, the court found a mental parity violation in that the administrators used additional criteria (the "InterQual Criteria") to determine the medical necessity of mental health benefits, while it relied solely on the plan's criteria to determine the medical necessity of medical/surgical benefits in the same classification. The court also held that the administrators violated ERISA's disclosure requirements by ignoring the family's requests for the administrative services agreement (ASA) between the plan administrator and claims administrator, and for the specific criteria used to deny the claim. The court imposed statutory penalties of \$100 per day for the delay in providing the documents (a total of \$123,100) but denied relief for the parity violation, concluding that the child's treatment would not have been considered medically necessary even without the application of the additional criteria.

On appeal, the Tenth Circuit vacated the trial court's judgment as to the mental health parity violation, holding that the family had no standing to raise the parity claim when they would have suffered the same alleged injury—the denial of benefits—even absent a violation of the parity requirements. The Tenth Circuit agreed with the trial court that the administrators violated ERISA by refusing to provide a copy of the ASA. The court explained that ERISA requires disclosure within 30 days of a participant's request for any "contract, or other instruments under which the plan is established or operated," and concluded that the ASA fell squarely within that category. The court reversed the trial court's decision, however, with respect to the failure to disclose the InterQual Criteria, reasoning that "other instruments" in this context means legal documents, and the evaluation criteria were simply a reference that did not establish legal rights or duties. The court nevertheless affirmed the \$123,100 penalty amount because the trial court had imposed a single penalty of \$100 per day, even though it had determined that there were two discrete violations. And it determined that the family's success on the penalty claim was sufficient to affirm the trial court's award of nearly \$70,000 for attorney's fees and costs.

EBIA Comment: The longevity of this dispute underscores the importance of ensuring compliance with both MHPAEA and ERISA's disclosure requirements. To reduce the risk of costly litigation, plan administrators should review their plan documents and administrative practices to ensure that the criteria used for determining the medical necessity of mental health or substance use disorder benefits is no

more stringent than the criteria used for medical/surgical benefits. Additionally, timely responses to document requests can avoid substantial penalties. Note that while this court concluded that ERISA did not require the disclosure of the InterQual Criteria, MHPAEA regulations state that the ERISA requirements include documents with information on medical necessity criteria, as well as the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation (such as a medical necessity requirement). For more information, see EBIA's Group Health Plan Mandates manual at Sections IX.E ("Mental Health Parity: Nonquantitative Treatment Limitations") and IX.H ("Disclosure of Criteria for Medical Necessity Determinations, Claims Denials, and Other Document Requests") and EBIA's ERISA Compliance manual at Sections XXV ("Participant Requests for Plan Materials") and XXXVI.J.4 ("Can Attorney's Fees Be Recovered?"). See also EBIA's Self-Insured Health Plans manual at Section XXVIII.E ("Participant-Requested Disclosures").

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