

Empowered DOL and NY AG Settle Mental Health Parity Case with US' Largest Health Insurer

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Demonstrating that the Biden administration has wasted no time in moving aggressively on enforcement of federal mental health parity law, the U.S. Department of Labor (DOL) and the New York State Attorney General (NY AG) recently inked a \$15.6 million settlement with UnitedHealthcare (United) based on allegations of Mental Health Parity and Addiction Equity Act (MHPAEA) violations. The suit is *Walsh v. United Behavioral Health et al.*, No. 1:21-cv-04519 (Aug. 11, 2021 E.D.N.Y.).

The DOL alleged that United systematically under reimbursed out-of-network mental health services when compared to the reimbursement methodologies used for out-of-network medical or surgical services across its various plan types. Having differing methodologies for treatment of mental health services versus medical/surgical services can give rise to MHPAEA violations in certain circumstances.

In this case — the first time the DOL has ever filed such a suit — the government alleged that United applied outlier management (a type of utilization management) to outpatient mental health benefits disproportionate to and more stringent than the outlier management applied to outpatient medical/surgical benefits. In its statement regarding the settlement, United confirmed that the company no longer uses the practices at issue, and it maintained a commitment to reimbursing providers consistent with the terms of the member's health plan and state and federal rules.

While the DOL has historically not used its enforcement powers under ERISA to pursue potential violations of mental health parity coverage requirements, the DOL's Employee Benefits Security Administration (EBSA) confirmed that the Biden administration DOL is charting a new path and making enforcement of mental health parity a priority. The December 2020 Consolidated Appropriations Act (CAA) provided the DOL with additional tools to pursue potential violations of the MHPAEA in addition to corresponding MHPAEA compliance requirements for group health plans and health insurance issuers. Namely, the DOL is now empowered to investigate and enforce compliance with CAA requirements for health plans for nonquantitative treatment limitations, such as medical necessity determinations, pre-certification requirements, and the criteria to designate medical providers as in-network providers.

The DOL confirmed that it is currently investigating multiple plans and issuers for violations of both the MHPAEA and the Employee Retirement Income Security Act and anticipates opening more investigations in the future. "I predict it will be a very active issue for us for years to come," said EBSA Acting Assistant Secretary Ali Khawar. As such, employers, health insurance carriers, and third-party administrators of employee health plans should review their plans and practices to ensure MHPAEA and CAA compliance.

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