

Benefits Bulletin: Health & Welfare Plans – February 2022

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Governor Signs Bill Delaying WA Cares Fund to July 2023

Employers were to begin collecting premiums from employees last month for the WA Cares Fund – a program to provide affordable long-term care options for employees in Washington State. On January 27, 2022, Washington Governor Inslee signed two bills into law. The first bill **delays the payroll tax until July 1, 2023** and permits workers near retirement to qualify for a partial benefit on a pro-rated basis. The second bill establishes **voluntary exemptions for certain populations** (veterans with service-connected disabilities of 70% or higher, spouses or domestic partners of active-duty service members, persons living outside of Washington State while working in-state, and persons working in the U.S. under temporary, non-immigrant work visas).

Winston Takeaway: Washington State employers should stop making premium deductions and delay premium contributions to the WA Cares Fund until July 1, 2023 and return employee premiums collected to date within 120 days. In addition, employers should continue monitoring legal challenges to the fund as discussed in **the December 22, 2021 Benefits Bulletin**.

First Public Report on Mental Health Parity Enforcement Activities Highlights Compliance Failures

Last week, the Tri-Agencies (U.S. Departments of Labor, Treasury, and Health and Human Services) released their **first report** to Congress on group health plan and issuer compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA) as amended by the Consolidated Appropriations Act, 2021 (CAA). Under the CAA, plans and issuers must document a **comparative analysis** that demonstrates **parity of non-quantitative treatment limitations (“NQTL”s) between mental health/substance abuse benefits and medical/surgical benefits**.

The initial report found that **none of the comparative analyses the Tri-Agencies reviewed contained sufficient information to comply with the CAA**. The report indicates that these are preliminary determinations, and that group health plans and issuers may still take corrective actions; however, if any of the reviews result in a final

determination of non-compliance, that determination will be included in the next report and further enforcement activity will be considered on a “case-by-case” basis. The report also included common trends identified in the preliminary submissions and provided examples of corrective actions for non-compliance. Additionally, the report noted that EBSA has expanded its resources dedicated to the NQTL enforcement program (including increased staffing and training) and is partnering with state regulators to ensure compliance by health insurance issuers.

The report concluded with recommendations for additional consumer protections, including: (a) assessing civil monetary penalties for parity violations, (b) authorizing the DOL to directly pursue violations by entities that provide administrative services to group plans (including issuers that provide administrative services), (c) amending ERISA to allow participants to recover amounts lost due to MHPAEA violations, (d) expanding access to telehealth and remote care services, and (e) amending the MHPAEA to ensure that mental health and substance abuse disorder benefits “are defined in an objective and uniform manner pursuant to external benchmarks that are based in nationally recognized standards.”

Winston Takeaway: We recommend that group health plans and issuers review the initial MHPAEA report to better understand the requirements for NQTL comparative analyses as well as the agencies’ enforcement approach. In addition, we recommend that plans and issuers keep an eye out for further clarification of MHPAEA compliance requirements, including a proposed rule (scheduled for publication in summer 2022), which may provide further guidance on compliance with the CAA, the 21st Century Cures Acts and other applicable guidance.

Winston & Strawn Paralegal Kristine Lofquist also contributed to this blog post.

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