

ERISA Penalties Assessed for Failure to Provide Medical Necessity Criteria and Mental Health Parity-Related Information Upon Request

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PRACTICES Employee Benefits and Executive Compensation

Our prior alert, available [here](#), reminded employers to carefully consider disclosures made in response to ERISA plan document requests. A recent case highlights the statutory penalties that may be imposed on an employer under ERISA for a failure to properly respond to a request for mental health parity-related information. Within 30 days of receipt of a request from a person or entity who is permitted under the law to request such information, an employer-sponsored group health plan subject to ERISA is required to provide (i) medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits, and (ii) the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health and substance use disorder benefits. In the case at hand, a plan participant requested a copy of (a) the medical necessity criteria for skilled nursing facilities, sub-acute inpatient rehabilitation treatment, and inpatient hospital treatment and (b) documents identifying the processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder benefits under the plan. Because it was undisputed that these requests were not fulfilled, the court concluded that the disclosure requirements were violated and assessed statutory penalties of \$110 per day, totaling approximately \$32,000.

The opinion in *W.H., and Z.H. v. Allegiance Benefits Plan Management Inc.* is available [here](#).