

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Rankin County (Unincorporated Areas), City of Brandon	
<i>Pelahatchie Creek Tributary 1:</i> Just upstream of State Route 43	÷ 351
Approximately 375 feet upstream of Ragan Road	÷ 370
Town of Pelahatchie	
<i>Pearl River Tributary 3:</i> Approximately 3,000 feet downstream of U.S. Highway 25	• 282
Approximately 150 feet upstream of Flowood Drive ...	• 282
City of Flowood Rankin County (Unincorporated Areas)	
Maps available for inspection at the Rankin County Building, 211 East Government, Brandon, Mississippi.	
City of Brandon	
Maps available for inspection at the Brandon City Hall, 201 North College Street, Brandon, Mississippi.	
City of Flowood	
Maps available for inspection at the Flowood City Hall, 2101 Airport Road, Flowood, Mississippi.	
City of Pearl	
Maps available for inspection at the Pearl City Hall, 2420 Old Brandon Road, Pearl, Mississippi.	
Town of Pelahatchie	
Maps available for inspection at the Pelahatchie City Hall, 705 Second Street, Pelahatchie, Mississippi.	
City of Richland	
Maps available for inspection at the Richland City Hall, 380 Scarborough Street, Richland, Mississippi.	

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 146

[CMS-2152-F]

RIN 0938-AL42

Amendment to the Interim Final Regulation for Mental Health Parity

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Amendment to interim final regulation.

SUMMARY: This document contains an amendment to the interim final regulation that implements the Mental Health Parity Act (MHPA) to conform the sunset date of the regulation to the sunset date of the statute under legislation passed by the 107th Congress.

DATES: *Effective date:* The amendment to the regulation is effective July 28, 2003.

Applicability dates: Under the amendment, the requirements of the MHPA interim final regulation apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan during the period commencing July 28, 2003 through December 30, 2003. Under the extended sunset date, MHPA requirements do not apply to benefits for services furnished on or after December 31, 2003.

FOR FURTHER INFORMATION CONTACT:

Dave Mlawsky, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at 1-877-267-2323, ext. 61565.

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SUPPLEMENTARY INFORMATION:

I. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104-204). MHPA amended the Public Health Service Act (PHS Act) and the Employee Retirement Income Security Act of 1974 (ERISA) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105-34).

The provisions of MHPA are set forth in Title XXVII of the PHS Act, Part 7 of Subtitle B of Title I of ERISA, and Chapter 100 of Subtitle K of the Code. The Secretaries of Health and Human Services, Labor, and the Treasury share jurisdiction over the MHPA provisions. These provisions are substantially similar, except as follows:

- The MHPA provisions in the PHS Act generally apply to health insurance issuers that offer health insurance coverage in connection with group health plans and to certain State and local governmental plans. States, in the first instance, enforce the PHS Act for issuers. Only if a State does not substantially enforce the MHPA provisions under its insurance laws will the Department of Health and Human Services enforce the provisions, through the imposition of civil money penalties. Moreover, no enforcement action may be taken by the Secretary of Health and Human Services against any group health plan except certain State and local governmental plans.

- The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under State law.

- The MHPA provisions in the Code generally apply to all group health plans other than governmental plans, but they

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

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BILLING CODE 6718-04-M

do not apply to health insurance issuers. A taxpayer that fails to comply with these provisions may be subject to an excise tax under section 4980D of the Code.

II. Overview of MHPA

The MHPA provisions are set forth in section 2705 of the PHS Act, section 712 of ERISA, and section 9812 of the Code. MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions would not apply to benefits for services furnished on or after September 30, 2001. On December 22, 1997, the Departments of Health and Human Services, Labor, and the Treasury issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107-116), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education ("Appropriations Act").¹ This legislation extended MHPA's original sunset date under the PHS Act, ERISA, and the Code, so that MHPA's provisions in all three statutes would not sunset until December 31, 2002. The Appropriations Act did not specifically address whether MHPA's provisions in any of the three statutes applied retroactively during the "gap" that began upon the expiration of the original legislation (September 30, 2001) and ended on the day before enactment of the Appropriations Act (January 9, 2002).

On March 9, 2002, President Bush signed H.R. 3090 (Pub. L. 107-147), the Job Creation and Worker Assistance Act of 2002 ("Job Creation Act"). That legislation amended section 9812 of the Code (the mental health parity provisions), but did not amend the corresponding MHPA provisions in the PHS Act or ERISA. The Job Creation Act extended the sunset date under the

Code to December 31, 2003. However, for services furnished "on or after September 30, 2001, and before January 10, 2002" it specifically precluded retroactive application of the Code's MHPA provision. In other words, the Code's provisions would not apply to services furnished during the "gap" between the original sunset date and the enactment of the Code's sunset extension in the Appropriations Act.

Because the Job Creation Act did not amend the MHPA provisions of the PHS Act or ERISA, we conclude that the MHPA provisions of the PHS Act apply during the "gap," based on language in the Joint Committee on Taxation's technical explanation of H.R. 3090, the underlying bill that became the Job Creation Act. The Joint Committee report essentially explained that H.R. 3090 was undoing that part of the Appropriations Act that had "restored" the Code's MHPA provisions retroactively to September 30, 2001. Since the Appropriations Act made identical changes to the MHPA provisions of the Code, the PHS Act, and ERISA, that observation made by the Joint Committee on Taxation report clearly supports the conclusion that the Appropriations Act had "restored" the MHPA provisions of the PHS Act and ERISA as well. In other words, because the MHPA provision contained in the PHS Act was made retroactive by the Appropriations Act, and was not amended by the Job Creation Act, the PHS provisions were "restored" retroactively to September 30, 2001.

On December 2, 2002, President Bush signed H.R. 5716 (Pub. L. 107-313), the Mental Health Parity Reauthorization Act of 2002. This legislation further extends MHPA's sunset date under the PHS Act and ERISA so that MHPA's provisions will apply to any services furnished before December 31, 2003. The new legislation does not contain any language that conflicts with the technical explanation of the Joint Committee on Taxation, described above, and therefore does not change our conclusion that the PHS Act's MHPA provisions are retroactive to September 30, 2001.

These various amendments have not altered MHPA's scope. It continues to apply to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.² As

a result of the statutory amendments, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department is publishing this amendment to the interim final regulations, conforming the regulatory sunset date to the new statutory sunset date. The Department is making the effective date of this amendment to the interim final regulations effective as of July 28, 2003. The Department is also making conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date.

Since the extension of this sunset date is essentially self-implementing, this amendment to the MHPA regulations is published on an interim final basis under section 2792 of the PHS Act.

This amendment to the interim final regulations is adopted under the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as added by HIPAA (Pub. L. 104-191), and amended by MHPA (Pub. L. 104-204, as amended by Pub. L. 107-116, and Pub. L. 107-313).

III. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). Pursuant to the terms of the Executive Order, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order. Rather, it is an amendment to the 1997 interim final

¹ During the 107th Congress, legislation was passed by the Senate to substantively amend and expand the provisions of MHPA already in place. This legislation was offered as an amendment to the provisions of H.R. 3061. The Conference Report accompanying the underlying provisions of H.R. 3061 states that instead of the amendment proposed by the Senate, the amendment to MHPA contained in H.R. 3061 extends the original sunset date of MHPA, so that MHPA's provisions will not apply to benefits for services furnished on or after December 31, 2002. H.R. Rep. 107-342, at 170 (2001).

² The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term "small

employer" is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

regulations that makes no substantive changes to those regulations, and merely extends the regulatory sunset date to conform to the new statutory sunset date added by Pub. L. 107-313. Because it is not a major rule, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule and have determined that it will not have a substantial effect on State or local governments.

We have reviewed this rule and determined that, under the provisions of

Pub. L. 104-121, the Contract with America Act, it is not a major rule.

List of Subjects in 45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 45 CFR part 146 as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 1. The authority citation for part 146 is amended to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as added by HIPAA (Pub. L. 104-191), and amended by MHPA (Pub. L. 104-204, as amended by Pub. L. 107-116, and Pub. L. 107-313), NMHPA (Pub. L. 104-204), and WHCRA (Pub. L. 105-277), sec. 102(c) of HIPAA.

§ 146.136 [Amended]

■ 2. In § 146.136, the following amendments are made:

■ a. The last sentence of paragraph (f)(1) is amended by removing the date "September 30, 2001" and adding in its place the date "December 31, 2003."

■ b. Paragraph (g)(2) is amended by removing the date "September 30, 2001" and adding in its place the date "December 31, 2003."

■ c. Paragraph (i) is revised to read as follows:

§ 146.136 Parity in the application of certain limits to mental health benefits.

* * * * *

(i) *Sunset.* This section does not apply to benefits for services furnished on or after December 31, 2003.

Dated: December 23, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 21, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 596

[Docket No. NHTSA-03-15438]

RIN 2127-AH99

Federal Motor Vehicle Safety Standards; Child Restraint Systems, Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: This document responds to the remaining outstanding issues raised by petitions for reconsideration of the agency's March 1999 final rule establishing Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems*, and of the agency's previous responses to petitions, published in August 1999 and July 2000. Key issues pertain to: The strength requirement for the tether anchorage and for the lower anchorages of child restraint anchorage systems; how the test for the strength requirement is conducted; how the lower anchorage bars must be configured and marked; where the bars must be located relative to the vehicle seat bight; where tether anchorages must be located relative to seating positions within a vehicle; the installation of child restraint anchorage systems in vehicles with advanced air bags; and whether to require backless booster seats to be equipped with attachments for connecting to the lower anchors of a child restraint anchorage system.

DATES: The amendments made in this rule are effective August 26, 2003. If you wish to petition for reconsideration of this rule, your petition must be received by August 11, 2003.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Michael Huntley, Office of Crashworthiness Standards, NHTSA (telephone 202-366-0029).

For legal issues: Deirdre R. Fujita, Office of the Chief Counsel, NHTSA (telephone 202-366-2992).

You can reach both of these officials at the National Highway Traffic Safety