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My employer insurance plan is self-funded or ERISA. They say Developmental Disabilities, Autism and/or ABA are Not Covered. Is That True? How Do I Know?

Most employer based insurance plans are self-funded or regulated under a federal law called “ERISA.” Do these plans have to cover developmental disabilities, autism and ABA? The short answer? – MAYBE.

Following are questions to ask your employer’s Human Resources or Benefits Department to determine if autism and/or ABA are covered under your employee health plan.

Note: Always get it in writing! Make sure to get the answers to these questions in writing via email or letter. If you speak to a person over the phone, ask them to send you the information via email or letter. Some employers use a third party administrator for their health plan and the answers may come from this company. We have seen several cases where Human Resources or Third Party Administrators told employees incorrect information over the phone, which resulted in months of confusion and delayed treatment or uncompensated treatment.

1. Does our plan have to comply with federal mental health parity law? If not, why not?
 - a. Some employers are exempt from the federal mental health parity law or have filed paperwork to be exempt.
 - b. Some employers do not offer any mental health coverage at all, which may allow them to deny coverage for autism.
2. Does our health plan cover mental health treatment as part of the medical plan?
 - a. Again, not all plans must offer mental health coverage.
 - b. Some employers offer Employee Assistance Programs and other non-insurance programs to assist with mental health issues – but since these are not health insurance based programs, they may not be required to cover autism or ABA.
3. For persons with developmental disabilities who also need mental health services, if mental health services are covered, they should not be denied for a person with developmental disabilities based upon their disability. If your health insurance plan does cover mental health conditions, but it excludes autism, or covers autism but excludes ABA therapy, it may be in violation of federal law.

4. Is our health plan required to be compliant with the Affordable Care Act (PPACA or ACA for short)?
 - a. The ACA has non-discrimination clauses that may help you to argue for coverage – benefit design may not discriminate against persons with disabilities
 - b. The ACA requires coverage for mental health conditions as part of the essential health benefits
 - c. The ACA requires coverage for habilitative services on par with rehabilitative services – important for persons with DD. If your plan must comply with the ACA, this may help your appeal

If I think my self-insured (ERISA) employer plan violates federal mental health parity law, what can I do?

First file an internal appeal and keep appealing using the internal process. This creates the written documentation you will need to address the problem. Keep all records and get everything you can in writing. Contact The Arc of Indiana’s Insurance Advocacy Resource Center for assistance.

Second, contact the US Department of Labor (US DOL)– Employee Benefits Specialists at: dol.gov/agencies/ebsa/about-ebsa/about-us/what-we-do. This link provides the toll free number you can use to contact the US DOL Employee Benefits Specialists, as well as what information you will need to provide and have on hand to help them assist you with your complaint.

Questions? Contact Michele Trivedi, MHA
The Arc of Indiana Insurance Advocacy Resource Manager
317-977-2375 | 800-382-9100 | mtrivedi@arcind.org