

BENEFITS BUZZ

DOL Guidance on FMLA and Mental Health Conditions



The Department of Labor's (DOL) Wage and Hour Division has released new resources on workers' rights to leave for mental health conditions under the Family and Medical Leave Act (FMLA). The DOL said it published the new guidance in recognition of Mental Health Awareness Month.

New DOL Fact Sheet and FAQs

The new guidance includes:

- [Fact Sheet #280: Mental Health Conditions and the FMLA](#)
- [Frequently asked questions \(FAQs\)](#) on the FMLA's mental health provisions

Mental Health as a Serious Health Condition

An eligible employee may take FMLA leave for their own serious health condition or to care for a spouse, child or parent because of their serious health condition. The new resources make clear that mental health conditions are considered serious health conditions under the FMLA if they require inpatient care or continuing treatment by a health care provider, such as an overnight stay in a treatment center for addiction or continuing treatment by a clinical psychologist. Chronic conditions such as anxiety, depression or dissociative disorders that cause occasional incapacitated periods and require treatment at least twice a year qualify as "continuing treatment."

FMLA leave may also be used to care for adult children with mental health conditions in certain circumstances. Employers may not retaliate against employees for taking FMLA leave for mental health reasons.

The FAQs provide additional examples of situations that qualify for FMLA leave, including treatment sessions for anorexia nervosa and caring for an adult child with a mental health condition that meets the definition of disability under the Americans with Disabilities Act.

HIPAA Guidance on Audio-only Telehealth

The Department of Health and Human Services issued guidance to help covered entities understand how they can use remote communication technologies for audio-only telehealth in compliance with the privacy and security rules under the Health Insurance Portability and Accountability Act (HIPAA). This guidance was issued in the form of FAQs addressing the following topics:

- The HIPAA Privacy Rule allows covered entities to use remote communication technologies to provide audio-only telehealth services as long as reasonable safeguards are adopted to protect the privacy of protected health information (PHI).
- The HIPAA Security Rule applies to electronic PHI, but does not apply to telehealth services using a standard telephone line because the information transmitted is not electronic.
- In some circumstances, the HIPAA rules allow a covered entity to conduct audio-only telehealth using remote communication technologies without a business associate agreement in place with the vendor.
- Covered providers may offer audio-only telehealth services consistent with the HIPAA rules, regardless of whether any health plan covers or pays for those services.