Segal Consulting

update

Compliance News for Plan Sponsors

September 24, 2019

Federal Agencies Issue Guidance and Report on Enforcement of Mental Health Parity and Addiction Equity Act

On September 5, 2019, the federal departments implementing the Mental Health Parity and Addiction Equity Act (MHPAEA) — the Departments of Health and Human Services, Labor and Treasury (the Departments) — issued answers to Frequently Asked Questions (FAQs) regarding implementation of MHPAEA, the 21st Century Cures Act (Cures Act) and the SUPPORT for Patient and Communities Act (Support Act). These FAQs make final previously proposed FAQ guidance issued by the Departments in 2018.[1]

The Departments also issued a disclosure template that may be used to request mental health and substance use disorder benefit information from a plan.

Finally, the Department of Labor (DOL) issued an Enforcement Fact Sheet for fiscal year 2018.

Background on Mental Health Parity

MHPAEA requires parity between medical/surgical benefits and mental health/substance use disorder (MH/SUD) benefits. Health plans must provide parity in quantitative financial requirements and treatment limits (*e.g.*, cost sharing and day or visit limits).

Health plans must also provide parity in non-quantitative treatment limits (NQTLs), tools to manage MH/SUD benefits. Examples of NQTLs include medical management standards, formulary designs, step-therapy protocols, network admission standards and factors used in setting provider reimbursement methodologies.

Self-insured public sector plans can opt out of MHPAEA after providing notice to the Centers for Medicare & Medicaid Services (CMS) and to their enrollees.[2]

Health Compliance News Highlights:

- Documents released by the Departments reaffirm their commitment to vigorous enforcement of MHPAEA.
- New answers to FAQs provide final guidance after 2018 proposed answers.
- The FY 2018 Enforcement Report describes investigations overseen by specialized teams convened to analyze parity compliance.

[1] Segal Consulting summarized the proposed FAQ guidance in our May 23, 2018 *Update*, "Federal Agencies Issue Guidance and Increase Enforcement of Mental Health Parity and Addiction Equity Act."

[2] Information about the opt-out process that plan sponsors must follow is posted on the Self-Funded Non-Federal Governmental Plans webpage on the CMS website.

Answers to FAQs About MHPAEA

The Departments issued 11 answers to FAQs addressing various issues under MHPAEA.

FAQs on NQTLs

The majority of the FAQs addressed the application of NQTLs in various contexts. The FAQs are generally based on specific facts, but key takeaway messages include:

- Plans that exclude coverage for experimental or investigational treatment must apply the exclusion in the same manner for medical/surgical and MH/SUD claims. For example, if a treatment for a mental health condition, such as Applied Behavioral Analysis (ABA) therapy used to treat Autism Spectrum Disorder, is supported by professionally recognized treatment guidelines, a plan cannot deny ABA therapy as experimental if it also relies on professionally recognized treatment guidelines to determine whether medical/surgical treatment is experimental.
- If a plan follows professionally recognized treatment guidelines to set dosage limits for drugs used to treat medical conditions, the plan cannot deviate from recognized guidelines in setting dosage limits for buprenorphine to treat opioid use disorder.
- Plans cannot apply step-therapy requirements before covering inpatient treatment for a mental health condition (*e.g.*, a set number of unsuccessful attempts at outpatient treatment) unless such a requirement applies to inpatient treatment for a medical condition.
- The methodology used to set provider reimbursement rates (*e.g.*, the difference in rates for physicians compared to non-physician practitioners) must be the same for medical/surgical services and MH/SUD services.
- If a plan takes steps to ensure an adequate number of medical/surgical providers in its network (*e.g.*, by increasing reimbursement rates and developing a process to accelerate network participation), it must take comparable steps to ensure an adequate number of MH/SUD providers. MHPAEA does not require plans to have the same number of medical/surgical providers and MH/SUD providers in the plan's network, but comparable processes must be followed.
- If a plan provides coverage for eating disorder benefits, excluding residential treatment for eating disorders is impermissible if the plan covers inpatient treatment outside of a hospital for medical/surgical conditions.

FAQs on Disclosure Requirements

The FAQs also address disclosure requirements for network provider lists. Plans that have a provider network must include a general description of the network in the Summary Plan Description (SPD). The provider list may be distributed separately from the SPD if it is furnished automatically and without charge, and the SPD contains a statement to this effect. The provider list may also be provided electronically (*e.g.*, as a hyperlink or URL address). Plans should also include an Internet address for obtaining a list of network providers in the plan's Summary of Benefits and Coverage (SBC). In any case, the provider list must remain up-to-date and accurate.

The Departments' FAQs note:

> The Departments intend to continue to provide additional MHPAEA implementation information on a rolling basis, including revised compliance program documents and updated enforcement data.

Final MHPAEA Disclosure Template

In June 2017, the Departments published a draft model form that participants, enrollees or their authorized representatives may (but are not required to) use to request information from a group health plan or insurer regarding MH/SUD benefits and compliance with MHPAEA. The Departments solicited comments with respect to the first proposed model form and reissued a revised draft model form in 2018, which has now been issued in final form.

DOL Fiscal Year 2018 Enforcement Fact Sheet

Under MHPAEA, the DOL is required to provide a bi-annual report to Congress regarding MHPAEA implementation. The 2018 Fact Sheet summarizes DOL's enforcement activity. Violations related to NQTLs remain the most prevalent at 55 percent of parity-related violations. Corrective action in several examples provided by DOL required the plan to readjudicate impacted claims and pay additional benefits to plan participants. For example, a plan that imposed an impermissible preauthorization requirement on outpatient mental health treatment was required to readjudicate claims for all affected participants and pay benefits for any care that was improperly denied.

An introduction to the Fact Sheet gives an overview of DOL's investigative approach and global corrective actions that may be pursued particularly in the case of systemic violations by an insurer or third-party administrator (TPA).

Implications for Health Plans

The FAQ guidance and other materials issued by the Departments signal an ongoing commitment to vigorously enforce the requirements of MHPAEA. The FAQs provide insight into how the Departments compare NQTLs applied to MH/SUD benefits with comparable limits on medical benefits.

Plan sponsors should assess their plan documents and administrative practices for parity compliance, including with respect to any NQTLs being imposed. This will require coordination among service providers for plans with multiple service providers (*e.g.*, one TPA for medical/surgical benefits and a separate service provider for MH/SUD benefits). Plan sponsors should maintain records of their parity compliance efforts in order to be prepared in the event of a plan audit.

With issuance of the final disclosure template, plan sponsors may receive inquiries about benefits in this or other formats. Regardless of the manner requested, plans' disclosure requirements remain the same. Plan sponsors should ensure they are providing disclosures as required under the law. As always, plan sponsors should consult legal counsel to ensure thorough responses are provided to any disclosure request, including those made using the new form.

How Segal Can Help

Segal can work with plan sponsors and their attorneys on compliance issues and can assist plan sponsors in ensuring compliance with MHPAEA. Segal can help plan sponsors of public sector plans consider whether to opt out of MHPAEA and what is required if they decide to do so.

Questions?

For more information about how this new guidance may affect your plan, please contact your Segal consultant.

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