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Mental Health Parity Updates

New Law Applicable to Mental Health Parity

On December 27, 2020, the Consolidated Appropriations Act was signed into law.¹ This law requires plans, including Medicaid managed care organizations (MCOs), Individual, Small Group, Large Group², to perform comparative analysis on the design and application of non-quantitative treatment limits (NQTLs) on mental health or substance use disorder benefits. In addition, state and federal regulators can now request this information at any time.

The comparative analysis should include a description of relevant benefits in each category, factors used to determine that the NQTLs apply to mental health or substance use disorder benefits versus medical or surgical benefits, evidentiary standards for those factors, and specific findings and conclusions regarding the results of the comparative analyses. The new law also requires federal officials to request at least 20 such comparative analyses per year from entities that have potentially violated mental health parity laws. This NQTL comparative analysis requirement also applies to Medicaid and CHIP MCOs but they will be deemed compliant if they adhere to the separate parity rules that apply to Medicaid and CHIP MCOs.

Although this law does not address quantitative treatment limits (QTLs), it has created additional focus on compliance relative to the mental health and substance abuse benefits in general, including QTLs.

¹ This is the omnibus bill that includes, amongst numerous other provisions, the \$600 stimulus checks. <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

² Includes ASO and alternatively funded plans

Mental Health Parity and Addiction Equity Act

On November 13, 2013, the regulations relating to the Mental Health Parity and Addiction Equity Act (MHPAEA) were published in the federal register.³ This rule has two major components, one regulating NQTLs and one QTLs. The major steps⁴ in evaluating compliance are as follows:

- Classify all medical and surgical benefits
- Evaluate benefits against the “Substantially All” and “Predominant Amount” tests (collectively the QTL tests)
- Evaluate NQTLs for compliance, including comparative analysis

Benefit Classifications

The first step in evaluating compliance with the MHPAEA is to classify all medical and surgical benefits into the following allowable classifications:

- Inpatient
- Outpatient, with optional sub-classification of Office Visits and non-Office Visits
- Emergency Care
- Prescription Drugs

Note that the Inpatient and Outpatient Classifications are evaluated separately for in network⁵ and out of network benefits.

Each of these classifications must be evaluated for compliance for both QTLs and NQTLs.

Substantially All Test

The regulation states that a financial requirement, such as a deductible, copay, or coinsurance, may not apply to mental health and substance abuse benefits in a given classification if it is not applied to

³ Regulations adopted also addresses changes to the MHPAEA resulting from the Affordable Care Act. <https://www.federalregister.gov/documents/2013/11/13/2013-27086/final-rules-under-the-paul-wellstone-and-pete-domenici-mental-health-parity-and-addiction-equity-act>

⁴ There are other requirements to comply with MHPAEA requirements that are not reviewed in this paper

⁵ For tiered networks, each in-network tier is also evaluated separately

substantially all of the medical and surgical benefits in the same classification. For the purposes of this test “substantially all” is defined as at least two-thirds of the expected allowed charges.

Predominant Amount Test

If a financial requirement passes the substantially all test, the cost sharing amount must pass the Predominant Amount test. The maximum copay or coinsurance that can be applied to mental health and substance abuse benefits is the amount that applies to at least half of the allowed charges subject to the financial requirement. If no amount rises to one-half of the total allowed charges, then categories can be combined in order to reach the one-half level. In this case, the lowest cost-sharing amount within the combined category would be the amount allowed to apply to mental health and substance abuse benefits (e.g., if one-third of the allowed charges in a classification was subject to \$20 copay, one-third to a \$40 copay, and one-third to a \$60 copay, then the \$40 and \$60 copay levels can be combined to reach at least one-half, resulting in a maximum mental health and substance abuse copay of \$40)

Non-Quantitative Treatment Limits

NQTLs within a classification must be comparable to and applied no more stringently than the processes, strategies, evidentiary standards, and other factors used in applying the limitation to medical and surgical benefits. A non-exhaustive list of NQTLs are:

- Medical management standards applied to deny claims due to medical necessity
- Drug Formularies
- Network tier design (for multi-tiered networks)
- Standards for provider admission to a network, including reimbursement rates
- Methods for determining Usual, Customary and Reasonable charges
- Step Therapies (for drugs, medical, and surgical services)
- Benefit restrictions based on geographic location, facility type, or provider specialty

The new law requires comparative analysis of the NQTLs to demonstrate compliance with the MHPAEA, and produce the analysis to regulators upon request.

Actions for Issuers to Consider to Stay in Compliance

- Stay up to date on MHPAEA regulation and guidance. The Department of Labor, HHS and the Department of Treasury have worked to insure issuers are equipped with guidance needed to comply with MHPAEA testing requirements. From the original rule in November 2013 to this latest update in December 2020, they have released a number of frequently asked questions (FAQs), checklists, and other compliance assistance material.

- In addition, applicable plans should stay up to date with state rules, where there may be additional mental health parity requirements, from additional reporting, a separate certification, or other rules that may apply.
- Develop an annual MHPAEA review process. A coordinated effort is required to complete the MHPAEA testing process each year. As part of the review process, document methodology and assumptions and be consistent with their application year over year.

Wakely has tools and consultants available to help clients with MHPAEA compliance. Please reach out to your Wakely consultant, Adam Rudin, or Zach Davis, for additional information.

Please contact Adam Rudin at adam.rudin@wakely.com or Zach Davis at zach.davis@wakely.com with any questions or to follow up on any of the concepts presented here.

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