May 2, 2018

Health Policy in Transit

A Purchaser Viewpoint

National Alliance of Healthcare Purchaser Coalitions
Driving Innovation, Health and Value

Mental Health Parity Revisited

Proposed FAQs Raise the Bar on Compliance

On April 21, 2018, the Department of Labor published proposed sub-regulatory guidance, in the form of Frequently Asked Questions (FAQs), regarding non-quantitative treatment limitations (NQTLs) and disclosure requirements in connection with the Mental Health Parity and Addiction Equity Act (MHPAEA).

In general, MHPAEA requires that the financial requirements (such as coinsurance and copays) and treatment limitations (such as visit limits) imposed on mental health or substance use disorder (MH/SUD) benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical/surgical benefits in a classification. The proposed FAQs explain how MHPAEA also applies parity for non-financial requirements using several examples of non-quantitative treatment limitations (NQTLs). Such examples include experimental or investigative treatment, dosage limits for prescription drugs, step therapy/"first fail" protocols, and coverage of treatment by non-physician practitioners. The FAQs attempt to clarify that, in all of these instances, the limitations placed on coverage of mental health and substance use disorder treatment cannot be any more restrictive than for medical and surgical benefits.

The FAQs also discuss the ERISA disclosure requirements imposed on employers by the Mental Health Parity Act, and clarify that ERISA plan sponsors have specific obligations to provide notice regarding coverage of mental health and substance use disorder treatment. For example, plan sponsors must provide notice regarding the criteria for medical necessity determinations, reasons for claim denials, notice of the right to appeal a claim denial, as well as the processes, strategies, evidentiary standards, and other factors used to apply an NQTL.

Employer Implications

Employers need to pay particular attention to these proposed mental health parity requirements as many ERISA-governed plans may not have been designed or administered with an eye to this level of scrutiny. ERISA law will hold the plan sponsor accountable for any violations of these requirements, not the insurer or plan administrator.

Employers should not assume that their insurers or plan administrators are in compliance with parity; it may be beneficial to ensure there has been an independent review by a third party with expertise in the mental health parity requirements. They may also want to contractually negotiate the inclusion of a hold harmless clause for potential parity violations with the administrators of the plan. Note that this becomes more complicated for employers when there is more than one party involved in administering the plan.

The FAQs can be found at https://www.dol.gov/general/topic/health-plans/mental. Public comments on the proposed FAQs are invited and should be submitted by June 22, 2018, to E-OHPSCA-FAQ39@dol.gov.