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Proposed Guidance on Implementing Mental Health Parity and Substance Use Disorder Rules

The agencies have issued a package of recent guidance on mental health parity implementation that reflects an enhanced focus on compliance enforcement on the part of the agencies.

Background
The Mental Health Parity Act (MHPA) and the Mental Health Parity and Addiction Equity Act (MHPAEA) require parity between medical or surgical (M/S) benefits and mental health or substance use disorder (MH/SUD) benefits in the application of (1) annual and lifetime dollar limits; (2) financial requirements (such as deductibles, copayments, coinsurance, and out-of-pocket maximums); (3) quantitative treatment limitations (such as number of treatments, visits, or days of coverage); and (4) nonquantitative treatment limitations (NQTL), such as restrictions based on facility type. The rules prohibit group health plans (GHPs) from applying a financial requirement or quantitative treatment limitation to MH/SUD benefits in a classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all M/S benefits in the same classification. It also prohibits GHPs from imposing a NQTL on MH/SUD benefits that is more stringent than comparable limitations the plan applies to M/S benefits.

Guidance
Regulations issued in 2013 set forth GHP disclosure requirements designed to help participants and beneficiaries evaluate MH/SUD parity. Then in 2016, the agencies sought comments on developing model forms that participants and beneficiaries could use to obtain information on NQTLs. In 2017, prompted by a directive in the 21st Century Cures Act, the agencies solicited more feedback on disclosures and clarified that treatment for eating disorders is a mental health benefit. Now, this collection of newly released guidance includes the following:

- Proposed FAQs Part 39 explaining, among other examples, that a plan cannot deny as experimental claims for applied behavior analysis therapy for autism spectrum disorder that is supported by professionally recognized treatment guidelines where the plan approves treatment for M/S conditions that are supported by similar guidelines, and cannot exclude coverage for inpatient, out-of-network treatment outside of a hospital for eating disorders (such as a residential treatment center) where it covers such treatments for M/S conditions following physician authorization and a determination that the treatment is medically appropriate based on clinical standards of care
- DOL 2018 Report to Congress: Pathway to Full Parity addressing MHPAEA implementation.

FY2017 MHPAEA Enforcement Fact Sheet reporting recent enforcement activity, which highlights that out of the 187 applicable investigations the DOL closed in 2017 where MHPAEA applied, 92 were cited for noncompliance with the parity rules.

- 2018 MHPAEA Self-Compliance Tool for evaluating MHPAEA compliance by plans.
- Revised Draft MHPAEA Disclosure Template that participants may use to request information from their plan about NQTLs, including examples of factors used in the development of an NQTL (like excessive utilization, recent medical cost escalation, high variability in cost for each episode of care, and safety and effectiveness of treatment)
- HHS Action Plan for enhanced enforcement of the mental health parity requirements and related provisions of the 21st Century Cures Act.

Proposed FAQs on Disclosure Rules

The FAQs also include additional proposed guidance on how to properly implement the disclosure rules. If an ERISA-covered plan utilizes a provider network, its summary plan description (SPD) must provide a general description of the network. The list of providers in that SPD must be up-to-date, accurate, and complete (using reasonable efforts). In addition, the plan must disclose a summary of material modifications (SMM), or changes in the information required, to be included in the SPD not later than 210 calendar days after the close of the plan year in which the modification or change was adopted. ERISA-covered plans that use provider networks are permitted to provide a hyperlink or URL address in enrollment and plan summary materials for a provider directory where information related to MH/SUD providers can be found, as long as DOL's electronic disclosure safe harbor requirements are satisfied. (See Q&A 11 and 12).

Next Steps

MHPAEA enforcement is one of DOL's primary enforcement priorities. Plan sponsors should expect to see continued focus on mental health parity compliance in 2018, especially considering the Cures Act mandate to improve compliance with the MHPAEA. As a result, plans may wish to evaluate their MHPAEA compliance using the DOL's self-compliance tool, which includes a framework for conducting this evaluation along with expanded examples and compliance tips. As to the above-described proposed FAQs, public comments are welcome and should be submitted by June 22, 2018 and all comments will be shared among the agencies.

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