Compliance Bulletin

Mental Health Parity Compliance Remains a Key Focus in 2024

FOUNDATION BENEFITS

The federal government is continuing its efforts to improve access to mental health and substance use disorder (MH/SUD) care in 2024, with a top enforcement priority being compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA) for employer-sponsored health plans.

MHPAEA is a federal law that prevents group health plans and health insurance issuers that provide MH/SUD benefits from imposing more restrictions on those benefits than what generally applies to comparable medical or surgical benefits.

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) enforces MHPAEA. According to a July 2023 report to Congress, EBSA devotes nearly 25% of its enforcement program work to focusing on MHPAEA nonquantitative treatment limitations (NQTLs). Generally, if violations are found by an EBSA investigator, the health plan must remove any noncompliant plan provisions and pay any improperly denied benefits.

Action Steps

Given EBSA's continued focus on MHPAEA compliance, employers should consider taking the following steps:

- Reach out to their issuers or third-party administrators (TPAs) to confirm that a comparative analysis has been completed for their health plan's NQTLs and that it has been updated to reflect terms and coverage for 2024;
- Monitor any new legislation or regulatory guidance on MHPAEA;
- Watch for warning signs of problematic NQTLs, such as fail-first protocols or written treatment plan requirements; and
- Consider MHPAEA's parity requirements before making any changes to the plan's coverage of medical/surgical benefits or MH/SUD benefits.

Mental Health Parity

MHPAEA is a federal law that generally prevents group health plans and health insurance issuers that provide MH/SUD benefits from imposing less favorable limitations on those benefits than on medical and surgical coverage. MHPAEA generally applies to health plans sponsored by employers with more than 50 employees. However, due to an Affordable Care Act reform, non-grandfathered health plans in the small group market must provide essential health benefits (which include MH/SUD services) and comply with MHPAEA.

Employers often rely on their carriers or TPAs to design and administer their MH/SUD benefits in a way that complies with MHPAEA. However, employers have a fiduciary duty to ensure their health plan vendors comply with applicable laws, including MHPAEA. Carefully monitoring MHPAEA compliance can also help protect employers from EBSA enforcement action and participant lawsuits. Employers should maintain documentation showing their due diligence regarding MHPAEA compliance. In addition, employers who help eliminate impermissible barriers to mental health care may see benefits in the workforce, such as a more productive workforce and positive company culture.

Parity Requirements

MHPAEA contains the following parity requirements:

- The financial requirements (such as deductibles, copayments, coinsurance and out-of-pocket limits) applicable to MH/SUD benefits cannot be more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits; and
- Treatment limitations (such as frequency of treatment, number of visits, days of coverage or other similar limits on the scope or duration of coverage) must also comply with the MHPAEA's parity requirements.

In addition, MHPAEA imposes parity requirements on the NQTLs that plans may place on MH/SUD benefits. NQTLs include, for example, medical management standards, formulary designs for prescription drugs, plan methods for determining usual, customary and reasonable charges, exclusions based on a failure to complete a course of treatment, and restrictions based on facility type or provider specialty.

A proposed rule was issued in August 2023 that, if finalized, would make extensive changes to MHPAEA's requirements, especially those for NQTLs. To evaluate parity, the proposed rule would require health plans and issuers to collect, evaluate and consider relevant data on access to MH/SUD coverage relative to access to medical/surgical coverage instead of relying on descriptions of coverage. The proposed rule would also impose a special rule for NQTLs related to network composition and establish additional standards for comparative analysis.

Comparative Analysis

MHPAEA requires health plans and issuers to conduct comparative analyses of the NQTLs used for medical/surgical benefits compared to MH/SUD benefits. These analyses must contain a detailed, written and reasoned explanation of the specific plan terms and practices at issue and include the basis for the plan's or issuer's conclusion that the NQTLs comply with MHPAEA. Plans and issuers must make their comparative analyses available to the federal government or applicable state authorities upon request.

According to EBSA, comparative analyses are "an opportunity for plans and issuers to think carefully and deeply about how they apply NQTLs to MH/SUD benefits as compared to medical/surgical benefits, either through a longstanding practice or a new limitation." However, according to its July 2023 report, all of the comparative analyses submitted to EBSA during its investigations have been inadequate.

MHPAEA Enforcement

EBSA enforces MHPAEA's requirements for private-sector employment-based health plans. EBSA conducts MHPAEA compliance reviews, including for compliance with NQTL requirements, in all its investigations where MHPAEA applies. When EBSA identifies MHPAEA violations in a specific group health plan, it asks the plan to make necessary changes to any noncompliant plan provision and pay any improperly denied benefit claims. EBSA may also require the plan or service provider to provide notice to potentially affected participants and beneficiaries.

EBSA Enforcement Examples

- A large self-funded plan covering over 22,000 participants excluded treatment for opioid use disorder with methadone (which must be provided through an opioid treatment program) but covered methadone to treat medical/surgical conditions. The plan did not have a comparative analysis that addressed the exclusion of methadone for the treatment of opioid use disorder when EBSA requested it. EBSA issued an initial determination letter citing the plan for imposing an impermissible NQTL. The plan took corrective action by removing the impermissible exclusion and reprocessing and paying all claims that had been wrongfully denied because of the exclusion.
- A self-funded plan covering over 800 participants excluded MH/SUD benefits at residential treatment facilities but covered benefits at medical/surgical residential treatment facilities, such as skilled nursing facilities and stroke rehabilitation programs. The plan did not have an explanation for the difference in coverage or a comparative analysis that addressed this exclusion when EBSA requested it. EBSA issued an initial determination letter citing the plan for imposing an impermissible NQTL. The plan removed the exclusion and reprocessed previously denied MH/SUD residential treatment claims.
- A self-funded plan excluded MH/SUD benefits provided via telephone, email or internet. The plan did not have any similar restrictions on medical/surgical benefits. EBSA issued an initial determination of noncompliance to the plan, citing the exclusion as an impermissible NQTL. The plan removed the impermissible NQTL and notified participants of the change in plan terms.