

The Mental Health Parity and Addiction Equity Act:

And How To Put it To Work in
Colorado

Wave of initiatives to improve behavioral health

- International: WHO initiatives
- National: Mental Health Parity and Addiction Equity Act (2008), the Affordable Care Act (2010)
- Colorado: State Innovation Model (SIM)

Regulations

- Deductibles and Out-of-Pocket Limits
- Assessments of Parity within classes:
 - Quantitative Treatment Limitations
 - Non-Quantitative Treatment Limitations

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-13/pdf/2013-27086.pdf>

Assessments within class

- Six classes
 - Inpatient, in network
 - Inpatient, out of network
 - Outpatient, in network
 - Outpatient, out of network
 - Emergency services
 - Prescription drugs

QTLs

- Comparison of QTLs uses a formula:
 - Based on the dollar amount of all plan payments in a class is there a quantitative treatment limitation applied to “substantially all” benefits, meaning at least 2/3?
 - And if so, is there a particular structure that predominates, meaning that it applies to at least half of benefits?

QTL Example

- Example: based on the dollar amount of all plan payments for outpatient, out-of-network benefits, 80% of benefits are subject to coinsurance.
- That means that coinsurance applies to “substantially all” benefits.
- If over half of those benefits subject to coinsurance are subject to 15% coinsurance, that would mean that no more than 15% coinsurance could be required for MH/SUD benefits in this class.

The Problem

- Providers and consumers will not have access to most of this information unless they go to court, or unless carriers are required to provide that information to the public.
- But the provider and consumer could determine that the cost-sharing is different, based on policy documents

NQTLs

- Comparison of NQTLs does not use a formula:
 - A non-quantitative treatment limitation must be comparable to and may be applied no more stringently than a NQTL for a medical or surgical benefit.

NQTL Example

- For inpatient medical benefits, approval of a prior authorization request is good for 7 days, while approval for a PAR for inpatient MH/SUD benefits is good for only 3 days.
- Medical drugs with black box warnings can be provided with prior authorization; MH/SUD drugs with black box warnings are not included in the plan formulary.

The Problem

- Providers and consumers do not have access to some of this information.
- But the provider and consumer could request medical necessity criteria, and policy documents may yield some information.

Enforcement in NY

- New York's approach
 - Action taken by Attorney General's office, which has power to investigate and enforce, and helpful state statutes
 - Five cases settled
 - Basic premise: AG Eric Schneiderman argued that where behavioral health services are denied far more frequently than medical services, there must be a parity violation.

<http://www.ag.ny.gov/press-release/ag-schneiderman-announces-settlement-excellus-health-plan-end-wrongful-denial-mental>

Excellus, continued

- Some statistics:
 - In one year, Excellus issued denials for 48% of inpatient SUD treatment reviews, but only 20% of medical/surgical requests
 - Denial rate for outpatient behavioral services was 29% versus 13% for medical surgical
 - Fail-first requirements were applied only to SUD benefits, not to medical/surgical benefits
 - Concurrent MU review for inpatient behavioral services, but most medical cases were exempted from such review
 - Inadequate notice, with generic denial letters that did not provide enough information to allow a meaningful appeal
 - Higher cost-sharing (specialist rate) for routine outpatient behavioral health services, rather than the lower primary care copayment for routine medical health services

NY cases, cont'd

- Settlements reached with Cigna, MVP Health Care, Emblem Health and ValueOptions.
- Focus on rates of denial, particularly with higher levels of care, fail-first policies, higher cost-sharing
- Cigna case focused on eating-disorder treatments.

Enforcement through regulation

With their superior resources and investigative powers, state regulators and law enforcement agencies are able to review claims records and internal company policies in a way that consumers or private lawyers cannot.

California Insurance regulations

- Plans must publicly report on internal parity analyses
- Analysis must show compliance with financial requirements, QTLs, NQTLs
- In 2015, an additional 2.5 million per year was provided to regulatory agencies to enforce mental health parity laws

Other states: regulation

- Massachusetts
 - Requires health plans to submit annual compliance reports
 - State law requires that agencies issue regulations to establish a reporting and certification process for health plans
- Connecticut
 - Provides a consumer report card on carriers, with a portion devoted to behavioral benefits and services
 - Requires submission of documentation to support compliance with parity laws
 - Has a track record of intervention

What can individuals do?

- Encourage the Division of Insurance to provide information about parity on their website, to be more transparent about how they regulate parity in Colorado, and to share results of that analysis
 - Parity and EHB
- Consider working with other stakeholders to develop legislation that would require that the Division of Insurance issue regulations regarding parity
- File complaints!

What to look for: Red Flags

- Separate deductibles
- Limits on visits or days of MH/SUD treatment
- High(er) cost-sharing for MH/SUD treatment
- Financial requirements for MH/SUD prescription drugs that seem more restrictive than those for medical drugs
- Exclusions that seem to apply only to MH/SUD services
- “Fail first” or step therapy requirements for MH/SUD treatment
- Limitations or exclusions of intermediate levels of care for MH/SUD benefits
- Limitations on location for accessing MH/SUD benefits

Always request

- The reason for the denial
- Medical necessity criteria

And it may be necessary to access or request a description of plan benefits

Questions?