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Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group
Orlando, Florida
December 2, 2023

The MHPAEA (B) Working Group of the Regulatory Framework (B) Task Force met in Orlando, FL, Dec. 2, 2023. The following Working Group members participated: Erica Weyhenmeyer, Chair (IL); Jane Beyer, Vice Chair (WA); Crystal Phelps (AR); Gio Espinosa (AZ); Kate Harris (CO); Kurt Swan (CT); Howard Liebers (DC); Andria Seip (IA); LeAnn Crow and Julie Holmes (KS); Mary Kwei (MD); Paul Hanson (MN); Amy Hoyt (MO); Ted Hamby (NC); Chrystal Bartuska (ND); Sarah Cahn (NH); Paige Duhamel (NM); Kyla Dembowski (OH); Landon Hubbart (OK); Shannon Logue and Lindsi Swartz (PA); Jill Kruger (SD); Ryan Jubber and Shelley Wiseman (UT); Julie Fairbanks (VA); Darcy Paskey and Rebecca Rebholz (WI); Joylynn Fix (WV); and Tana Howard (WY).

1. Heard a Panel Discussion on the Tri-Departments' Proposed Rule on Mental Health Parity

Swartz shared news of the death of Sam Muszynski. She recognized the contributions Muszynski made to the passage of the federal Mental Health Parity and Addiction Equity Act (MHPAEA) and the compliance tool used to support its implementation. She said he carried the torch of parity for five decades and inspired others to work to improve the lives of those living with mental health and substance use disorders.

Beth Baum (Employee Benefits Security Administration, U.S. Department of Labor—DOL) said the DOL received 9,500 comments on its proposed regulations on mental health parity. She said many comments were very detailed and lengthy and that the DOL would take care in reviewing them.

Weyhenmeyer summarized state regulators' comments on the proposed regulations. She said state regulators focused on the application of the predominant and "substantially all" tests to non-quantitative treatment limits (NQTLs); the exceptions for independent standards and fraud, waste, and abuse; and the collection of outcomes data. She asked the panelists about applying the predominant and substantially all tests to NQTLs.

Meghan Stringer (AHIP) said the organizations' members are committed to making sure their enrollees have access to mental health services. She said AHIP's priority is that patients can access the right care at the right time in the right setting.

Stringer said AHIP believes the predominant and substantially all tests are not appropriate or workable. She said they could prohibit all medical necessity reviews prior to or concurrent with care. She said AHIP agrees with NAIC's comments that the tests could add a substantial burden without proportional benefits in access to care. Kate Berry (AHIP) said health insurers are fully committed to mental health parity. She added that the new terms and tests would shift from processes and standards being the focus of compliance to outcomes. She said much has been done to improve access and quality and more work needs to be done, but AHIP has concerns with the proposed rule's ability to improve access and availability of care.

Tim Clement (American Psychiatric Association—APA) said the predominant test may not be workable in the real world and could be skipped. He said applying the substantially all test would not limit utilization review in the inpatient category. For outpatient benefits, he said the test would increase access and reduce utilization review. He said plans and issuers could meet the substantially all test by designing benefits differently for medical services.

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He said some post-payment reviews could be reduced, which would be a benefit. He said the proposed rule is not the end of utilization review.

Lauren Finke (The Kennedy Forum) said the forum is supportive of applying the tests to NQTLs. She said the statute is clear that benefits for mental health should not be more restrictive. She said the rule should stay as close as possible to the statute. She said the tests have been successful for quantitative treatment limits and should be extended to NQTLs.

Weyhenmeyer asked about ways to reduce the burden of applying the tests. Stringer said Fiscal Year 2021 Consolidated Appropriations Act updates to the MHPAEA statute codified tests for NQTLs that were previously in the rules. She said AHIP supports updating those design and application tests. She said those tests would be more workable than the proposed rule. She said the proposal hinders the ability to apply utilization management, requiring a math test rather than clinical evidence. She said building on the current tests could include finding meaningful outcomes data.

Clement said the NQTL language that existed since 2010 is still in place. He said the predominant and substantially all tests have been in the statute since 2008 and apply to treatment limitations. He said it could be argued that those tests should have been in place for 15 years, but he did not endorse this view. He said with creative thinking, the proposed rule would not necessarily transform utilization review. He said there is a way to make it workable and agreed that the work should be built upon the last several years. He said the impacts of the tests would not necessarily be game-changing.

Finke agreed and said state and federal regulators have recently been more successful in holding plans and issuers accountable for compliance. She said a fundamental piece of parity is that NQTLs do limit access. She said the current regulations have been insufficient to hold plans accountable for NQTLs, increasing the burden of mental health. She said the status quo is not acceptable because of inadequate access to care.

Weyhenmeyer asked about exceptions included in the proposed rule. Clement said the exceptions for independent treatment standards or fraud, waste, and abuse are ways to get around the substantially all test. He said these exceptions moderate the test. He said the phrasing of the exceptions could allow almost anything through since almost any limit could be deemed an effort to reduce waste. He urged state insurance departments to narrow the exceptions with more structure on what qualifies as efforts to combat fraud, waste, and abuse.

Finke said independent standards and efforts to combat fraud, waste, and abuse should be embedded into the existing NQTL framework as well as the proposed extensions. She said state insurance departments should establish additional safeguards around the exceptions. She said the exceptions are too open-ended in the proposal and should be incorporated into the existing framework.

Stringer said plans are concerned the exceptions may be too narrow. She said standards of care and combatting fraud, waste, and abuse improve patient care. Because the proposed rule does not fully explain the exceptions, plans remain concerned. AHIP recommends that federal departments adopt Georgia's definition of generally accepted standards of care. Berry supported more emphasis on adding guidelines for standards of care. Stringer said plans are concerned the exceptions may not allow them to address fraud.

Weyhenmeyer asked about the proposal's requirements to collect outcomes data. Finke said the forum supports collecting data to assess the impact of treatment limits. She said standardized data is important and that data on access are rarely collected and analyzed. She said state insurance departments should clarify that mental health and substance use disorder data should be collected and analyzed separately.

Stringer said health plans need to know what data regulators are looking for so they can provide it the first time. She said regulators should develop a definitive list of data to be collected for each NQTL, even if the list is not static. She said plans need to know what to expect and the time to collect needed data. She said not all NQTLs have data that can be easily assessed. She asked for consistency across states, with federal regulators, and across product lines.

Clement agreed that data would not be useful for all NQTLs but said those outlined in the proposed rule do have relevant data. He recommended a fusion between out-of-network utilization data and reimbursement data. He said provider shortages exist for both mental health and physical health providers. He said regulators should compare out-of-network utilization and reimbursement for physical health provider types that have shortages to mental health providers that also have shortages.

Weyhenmeyer asked whether regulators should require plans to submit standardized data. Finke said plans and issuers should be required to submit standardized data. She said regulators should not rely on only process-related measures but instead require outcomes data that directly address disparities.

Stringer outlined AHIP's priorities on outcomes data, including workability, meaningfulness, certainty, and consistency. She said state regulators should use metrics consistent with those in the final federal rule or deem compliance with state standards when federal standards are met.

Clement said regulators should decide how the data are reported. He said organizations are not trying to hide information, but categories, such as denials, can mean different things to different plans. He said more precision is needed in the definition of terms, such as fraud, waste, and abuse.

Finke said the spirit and text of the parity law should be followed. She said medically necessary access to care is the goal, and many aspects of the proposed rule move forward in that direction.

Berry said access and quality in mental health services are important. She said the proposed rules won't move in that direction and instead could erode access to care. She said a collaborative engagement process could improve the proposal.

Having no further business, the Mental Health Parity and Addiction Equity Act (B) Working Group adjourned into regulator-to-regulator session, pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings, to continue work on its goals.

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