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POTENTIAL CHANGES COMING TO MENTAL HEALTH PARITY REQUIREMENTS

In 2008, Congress passed the Mental Health Parity and Addiction Equity Act (MHPAEA) that required Insurers to cover mental health benefits in a way that is at least equal to what they cover physical health care benefits, if mental health benefits are offered. Recently, the Biden Administration released a proposed rule¹ that would change what data would be evaluated as part of demonstrating compliance with MHPAEA. The regulation, if finalized as proposed, would take effect for the 2025 plan year in the group market and 2026 plan year for the individual market; the regulation also impacts Medicaid managed care and the Children's Health Insurance Program (CHIP) but does not impact Medicare or Medicaid fee-for-service plans.

Change in Requirements

MHPAEA was enacted to increase access and affordability to mental health and substance use disorder benefits. As a result, insurers need to provide mental health and substance use (MHSA) benefits equal to non-MHSA medical benefits. Private insurers must meet the requirement by testing their benefits via quantitative treatment limitations (QTLs) and non-quantitative treatment limits (NQTLs). However, there has been growing concern that the regulatory standards have been insufficient as access challenges and high out of pocket costs have continued, if not increased.

To improve access to services, the Biden Administration proposed significant changes to the approach insurers must use to evaluate and demonstrate that they meet the parity standards. One of those changes is a requirement for insurers to collect and evaluate several data points with a focus on evaluating the **outcomes** addressing the impact of their network.

The Administration is proposing to update the framework insurers use to evaluate compliance with mental health and addiction parity.

To best capture outcomes of coverage, the Administration proposed that Insurers evaluate at least the following data points:

- Number/percentage of claims denials to determine how prior authorization is being implemented
- Network adequacy metrics to ensure no material differences between mental health providers and physical health providers, such as time and distance standards by provider type

¹ <https://www.federalregister.gov/documents/2023/08/03/2023-15945/requirements-related-to-the-mental-health-parity-and-addiction-equity-act>

- Network and out of network utilization rates
- Provider reimbursement rates to determine if MHSA and non-MHSA benefits are comparable.

Beyond new requirements around access, the proposed regulation would also update NQTL policies. In particular it would limit NQTLs for MHSA to be no more restrictive than NQTLs applied to non-MHSA benefits. Insurers would be required to do a comparative analysis to demonstrate that there is parity between the NQTLs for MHSA and non-MHSA benefits. The comparative analysis has six separate components that insurers must address for each NQTL applied to a MHSA benefit.

In addition to the proposed regulation, the Departments released a technical guidance addressing their approach to determine issuers' compliance with the proposed NQTL policy. The Departments intend to establish a safe harbor for issuers that meet certain data standards that are still being developed.

The proposed rule would add burden on insurers to collect and analyze data and make it more likely they will have to change benefits/cost-sharing to comply. The consequence of not complying with MHPAEA requirements differs depending on who regulates the plans but could include potential lawsuits by plan members and for plans overseen by state regulators could include fines or non-approval of filings.

The proposed changes could impact the composition of networks and contractual reimbursement rates between payers and providers. Given the proposed regulation could come into play as early as the 2025 plan year, Insurers should consider data elements in their current 2023 experience data which may need to be reported.

Please contact Michael Cohen at Michael.cohen@wakely.com with any questions or to follow up on any of the concepts presented here.

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