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Excerpts from Issue Briefs on Parity Compliance and Behavioral Health Network Adequacy

Published by

National Alliance of Healthcare Purchaser Coalitions, A Partner of The Path Forward for Mental Health and Substance Use

This Memo includes key excerpts from four Issue Briefs published between 2018 – 2021 by the National Alliance of Healthcare Purchaser Coalitions (National Alliance), a partner of The Path Forward for Mental Health and Substance Use. These Issue Briefs have informed and educated employer sponsored health plans and their TPAs regarding: the various regulatory requirements issued by DOL under MHPAEA; the need to take these requirements seriously; warnings that TPAs cannot be assumed to be compliant; evidence of significant disparities in access to behavioral health benefits; and the need for proactive steps in order to undertake compliance with MHPAEA's NQTL rule.

Achieving Value in Mental Health Support: A Deep Dive Powered by eValue8 . This August 2018 report identified numerous behavioral access disparities and deficiencies and provided recommendations for employers. Please see quotes below:

"Insist on same access standards for BH and medical network adequacy, and that vendor partners monitor and compare access (e.g., wait times) quarterly. Ask for evidence to support plan's criteria for adequate access. Review in- and out-of-network use and payment information for medical/surgical and BH services. (Model Data Request Form)

- Insist that plans with significant difference in network access assess root cause(s) and develop an action plan to address them
- Question typical strategies that fail to address the underlying problem of insufficient numbers of BH specialists and request this be addressed
- Equalize reimbursement rates for MH/SUD and medical clinicians for similar services
- Develop mechanism to fast-track credentialing of MH/SUD specialists
- Remove "hassle factors" such as excessive PA which may reduce MH/SUD network participation
- Engage and recruit residents and clinicians who are not in-network
- Promote greater use of tele-behavioral health services and include this feature in provider directory and clinician selection tool" (p. 7)

"Employers need to pay attention to these proposed mental health parity requirements [DOL FAQs] as many ERISA-governed plans may not have been designed or administered with an eye to this level of scrutiny. ERISA law can hold the plan sponsor accountable for any violations of these requirements." (p. 14)

"Insist that plans seek external MBHO accreditation

- Require your plan to have an independent, external audit of the NQTL part of parity by an auditor who understands in depth the parity law
- Seek external parity accreditation (when available)
- Review denial rates for medical/surgical and MH/SUD services and ask plan to address disparities (Model Data Request Form)
- Consider seeking indemnification from your vendor for certain risks associated with parity non-compliance (Model Hold-Harmless Language)" (p. 15)

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"Employer Checklist for Mental Health
Improving Access

- Insist on same access standards for behavioral health as for medical and include quarterly monitoring and compare access (e.g., wait times). Ask for evidence to support plan's criteria for plan access
- Review in- and out-of-network use and payment information as well as denial rate for behavioral health and medical/surgical services. (Model Data Request Form) and consider seeking indemnification from your vendor for certain risks associated with parity non-compliance (Model Hold-Harmless Language)
- Insist that plans/vendors with significant differences in network access for BH and medical services or have high out-of-network claims for BH services develop an action plan that addresses any barriers to network participation
  - Equalize reimbursement rates for MH/SUD specialist and medical surgical providers for similar services
  - Develop a mechanism to fast-track credentialing of MH/SUD specialists
  - Assess prior-authorization policies to mitigate access hassle factors
  - Engage residents and clinicians not in-network" (p. 18)

See also, National Alliance Action Brief: **MENTAL HEALTH - ACCELERATING ACTION FOR PARITY AND PEAK PERFORMANCE,** *August 2018* **(Exhibit 1).**

"Do not assume insurers or plan administrators are in compliance with parity. Secure an independent plan design review by a third party with expertise in mental health parity requirements. Employers may also want to seek indemnification from their vendor(s) for certain risks associated with parity noncompliance. (Model Hold-Harmless Language)"

"Review in- and out-of-network use and payment, and denial rates for behavioral health versus medical/surgical services. (Model Data Request Form)."

See also, National Alliance Action Brief: **MENTAL HEALTH PARITY REVISITED**, *April 2019 Update,* **(Exhibit 2)**:

"The Department of Labor is raising the bar by adding "sub-regulatory" guidance in the form of FAQs about "non-quantitative treatment limitations" (NQTLs) and disclosure requirements in connection with the MHPAEA. LEARN MORE: *Is Your Plan in Compliance with Mental Health, Substance Abuse Parity Requirements?"*

"The current rulings in these cases *[Wit*, and two cases in MA and PA re: network adequacy standards and requirements for pre-authorization] point toward an interpretation of the parity regulations and guidance in which the effect of the polices may matter as much as the process used to create them. The end effect on the consumer, and whether they could access

the care needed, may matter more than whether a plan can prove it complied with the guidance 'on paper.'
Consequently, plan sponsors should consider obtaining and reviewing health plan performance data such as that set forth in the Model Data Request Form. Plan sponsors should also be cognizant of the scope of their indemnification clauses in vendor contracts particularly as it relates to mental health parity (Model Hold Harmless Language).
The industry continues to be in transition to address systemic issues related to parity in behavioral health care. These steps by plan sponsors would beneficially influence the performance and practices of their vendors in this regard."

See also, National Alliance, **DOL issues additional guidance on Parity Compliance**, *April 2021*, (**Exhibit 3):**

"Several key areas are of particular concern to DOL and HHS, thus comparative analyses in these areas are especially important:
• Pre-authorization and concurrent review of inpatient and outpatient services, including denial rate disparities
• Network admission standards, including reimbursement rate disparities"

"Plan sponsors may not easily be able to perform these comparative analyses and will likely be heavily reliant on their vendors to do this on their behalf. This may be particularly burdensome if plan sponsors are relying on multiple or different vendors for behavioral health and medical services.
This burden may be mitigated if health plans have utilized qualified third parties to review and certify parity compliance with NQTLs."