Future Mental Health Parity Enforcement Efforts

April 30, 2021

As discussed in our blog post here, effective as of February 10, 2021, an employer-sponsored group health plan that imposes nonquantitative treatment limitations (***NQTLs***) on mental health or substance use disorder (***MH/SUD***) benefits must have documentation of a comparative analysis that must demonstrate the NQTLs imposed under the plan for MH/SUD benefits are not more restrictive than the NQTLs that apply to substantially all medical/surgical benefits in a particular classification. Generally, an NQTL is a limitation on the scope of benefits for treatment that is not expressed numerically (*e.g.*, a prior authorization requirement). Recent DOL FAQs state that, in the near term, the DOL expects to focus on the following NQTLs in its enforcement efforts:

1. Prior authorization requirements for in-network and out-of-network inpatient services;
2. Concurrent review for in-network and out-of-network inpatient and outpatient services;
3. Standards for provider admission to participate in a network, including reimbursement rates; and
4. Out-of-network reimbursement rates (plan methods for determining usual, customary, and reasonable charges).

The DOL may also request comparative analysis documentation regarding any NQTL that applies to any MH/SUD benefit under the plan.

According to the FAQs, general statements to the effect that the plan is in compliance and conclusory references to broadly stated processes will *not* meet the comparative analysis documentation requirements. For example, if the plan relies on experts to determine the application of NQTLs, then such documentation should, at a minimum, include an assessment of each expert's qualifications and the extent to which the plan ultimately relied upon each expert's evaluations in setting recommendations regarding both MH/SUD and medical/surgical benefits.

Employers should review their comparative analysis documentation to determine whether it is sufficiently specific to satisfy the applicable legal requirements, including those discussed in the FAQs.

The FAQs About Mental Health and Substance Use Disorder Parity Implementation and the Consolidated Appropriations Act, 2021 Part 45 is available here.

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