COLORADO

Department of Regulatory Agencies

Division of Insurance

2019 Annual Report

on

Division of Insurance Activities

in support of the

Paul Wellstone & Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and Associated State Laws

Provided to

The Colorado General Assembly

in accordance with §10-16-147, C.R.S.

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Michael Conway

Commissioner of Insurance

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To the Members of the House and Senate:

The Division of Insurance is pleased to submit this, the first Annual Report on the Division's Activities Concerning the Paul Wellston and Pete Domenici Mental Health Parity and Addiction Equity Act, also known as MHPAEA. The intent of this report to summarize the Division's enforcement of MHPAEA and associated state laws.

Submitted pursuant to §10-16-147 C.R.S., this report addresses three distinct areas: the methodology the Division uses in its review of health insurance plans to verify that the carriers are in compliance with mental health parity regulations; market conduct examinations of health insurance carriers that the Division has undertaken regarding MHPAEA; and the corrective actions taken to ensure that carriers maintain compliance.

The full mission of the Division of Insurance is to promote compliance and enforce laws to help protect consumers. With that in mind, we welcome the opportunity to provide such an analysis.

If you have any questions about this report, please contact me at the Division.

Sincerely,

Michael Conway
Commissioner of Insurance

Introduction

The Paul Wellstone and Pete Domenici Mental Health and Addiction Equity Act (MHPAEA), passed in 2008, strengthened the requirements of the federal Mental Health Parity Act of 1996, by adding substance use disorders to the list of diagnoses, that, when covered, must be similar to the medical coverage offered under the plan. MHPAEA, when originally passed, only applied to large group plans that covered mental health, substance use disorder and behavioral health. The two acts that compose the Affordable Care Act amended MHPAEA, requiring carriers to cover mental health, substance use disorder and behavioral health in the individual and small group markets.

Colorado has implemented state law provisions to comport with federal requirements as they have evolved over the years. After the adoption of the federal Mental Health Parity Act of 1996, Colorado enacted House Bill 97-1192, requiring coverage for biologically-based mental illnesses no less extensive than that for physical illness. House Bill 01-1236 added the requirement that preauthorization or utilization review mechanisms shall be the same, or no more restrictive than, preauthorization or utilization reviews for any other physical illness. House Bill 13-1266, effective January 1, 2014, aligned Colorado's mental health parity laws with the Affordable Care Act, and provided the authority to require compliance with federal law.

Requirements for Compliance

The law requires coverage of mental health, substance use disorder and behavioral health be no less restrictive than comparable coverage for medical or surgical (physical health) coverages. MHPAEA requires carriers to evaluate the payable amounts for six (6) different coverage levels, including in-network inpatient care, out-of-network inpatient care, in-network outpatient care, out-of-network outpatient care, emergency services and prescription drugs. The two categories that comprise the outpatient care can be further sub-classified for office visits and all other outpatient care.

Financial Responsibility

In each of the six (6) coverage levels, the carrier must determine the prevailing benefit, only applying the deductible, copayments and coinsurance when the projected claim amounts are greater than two thirds (⅔) of the expected claims spending for the medical or surgical coverage. If the carrier determines that the copayments or coinsurance can apply, the carrier must determine the copayment level, only using a copayment if the expected claims amount exceeds fifty percent (50%) of the expected payments. Carriers can combine several copayments or coinsurance levels to achieve the fifty percent (50%) threshold, using the lowest copayment or coinsurance of the group as the mental health, substance use disorder and behavioral health copayment or coinsurance.

The carrier must also calculate if the deductible will apply to mental health, substance use disorder and behavioral health benefits in the same manner. If the deductible will apply to greater than two thirds (⅔) of the expected claims spending for medical or surgical coverage, the carrier can apply the deductible. If the expected claims spending is less than two thirds (⅔), the carrier cannot apply the deductible to the claims.

Quantitative Treatment Limitations (QTL)

MHPAEA also specifies what limitations carriers can apply to mental health, substance use disorder and behavioral health benefits. A carrier cannot have quantitative treatment limitations on the coverage, either visit limits or dollar limits, in the small group and individual markets, as specified in the Affordable Care Act.

Non-Quantitative Treatment Limitations (NQTL)

MHPAEA requires carriers to apply non-quantitative treatment limitations (NQTL) to mental health, substance use disorder and behavioral health on the same basis as the medical / surgical NQTLs. In order to be in compliance, a carrier cannot place more restrictive prerequisites on mental health, substance use disorder and behavioral health benefits than are placed on medical/ surgical benefits. Such prerequisites include prior authorization requirements, concurrent review requirements, and step therapy processes. While the benefits do not have to be the same, the prerequisites must use the same processes, strategies, evidentiary standards, or other factors.

Methodology

The Colorado Division of Insurance (Division) reviews each plan from all of the carriers that participate in the small group and individual market segments, including the policy forms, which describe plan benefits, and the rates that have been filed for the plan. In determining compliance, the Division evaluates each of the policy forms for any language that may violate parity. For instance, a carrier may require prior authorization for inpatient mental health treatment but does not require prior authorization for inpatient medical / surgical treatment. In this case, the Division would request an update to the forms, to bring the plan into compliance.

State Guidance and Procedures

Since 2014, the Division has been developing procedures to evaluate parity compliance, including the development of data analysis tools. The Division has supplied carriers with mental health parity guidance over the past several years. The instructions, generally issued in the Spring, include specific areas the Division will be reviewing for the upcoming plan year. In most cases, the guidance involves more in-depth analysis of particular benefits submitted each year as part of the Affordable Care Act filing procedures.

The Division has also developed a methodology to evaluate mental health parity, specifically the financial requirements and quantitative treatment limitations. The first version of this

helped identify possible issues with parity compliance by comparing benefits within each of the categories to verify if a carrier was applying the deductible, coinsurance and copayments appropriately in each of the six categories. The Division is currently redesigning the methodology to be coupled with future rulemaking to allow for a more thorough and advanced compliance analysis.

Review Outcomes

In the small group and individual markets, the Division annually reviews all plans submitted for the financial requirements and quantitative treatment limitations. As part of the review of the financial requirements, the Division compares the medical / surgical benefits to the mental health, substance use disorder and behavioral health benefits. If the benefits do not match the lowest copayment on the plan, the Division requests verification of the calculations, including any claim amounts the carrier may have used to identify the benefits the carrier used for mental health, substance use disorder and behavioral health benefits. The Division, over the past three years, has verified three different instances where a carrier had multiple plans that were *not* in compliance with MHPAEA. Two carriers verified the mental health benefit was better than the physical health benefit in the calculation and in the other case, the carrier modified the benefits of several plans to make them compliant with MHPAEA.

The Division's initial analyses began simply, checking the benefits against one another. For instance, inpatient mental health / substance use disorder benefits were compared against the inpatient medical / surgical benefits. The Division reviewed to ensure that carriers were applying the deductible, copayments and coinsurance at the same rate. The Division made sure that the carriers did not have separate deductibles for mental health and substance use disorder benefits, and checked that the copayments were either equal to or better than the medical / surgical copayments. The methodology also compared the outpatient benefits to determine compliance.

Each year the Division has, in consultation with several stakeholders, increased the depth of its prospective review of policy forms for possible mental health parity violations. The Division reviews policy forms for any red flags regarding the coverage associated with mental health, substance use and behavioral health. The Division flags any provision in the plan that may allow the carrier to apply a more stringent standard to mental health, substance use and behavioral health benefits than that which are applied to medical / surgical benefits. For example, the Division reviews the process by which carriers, for some long-term inpatient stays, impose concurrent review standards requiring review at regular intervals for continued hospitalization, to ensure there is not disparity between reviews for mental health and physical health conditions.

With each annual review, the Division has also increased the sophistication with which the actual benefits are reviewed, comparing the benefits for mental health, substance use and behavioral health against those for physical health conditions. For example, the Division analyzes how carriers provide coverage for office visit benefits for medical / surgical and office visits for mental health, substance use and behavioral health benefits. If the Division

determines that the carrier is applying a copayment that does not match other copayments on the plan, the Division requests verification, including claims amounts, to help determine compliance with MHPAEA.

The Division has also expanded the scope of the benefits checked, due to continued enhancement of the review process. The Division has expanded the number of benefits reviewed to include the intermediate levels of care, such as residential day treatment, intensive outpatient treatment and partial hospitalization. This expansion has allowed the Division to better confirm if plans are in compliance with state and federal laws.

Health Insurance Enforcement and Consumer Protections Grant

The Division applied for and received a Health Insurance Enforcement and Consumer Protections Grant from the U.S. Department of Health and Human Services. As part of this grant, the Division participated in the Substance Abuse and Mental Health Services Administration (SAMHSA) Parity Policy Academies in 2017. The academy brought together several states and US territories to discuss enforcement of MHPAEA, sharing ideas on how to verify compliance.

The Division also secured contracts for two purposes: (1) Training on several provisions in the ACA, including MHPAEA; and (2) market conduct exams on the 11 carriers that operate in the ACA market in Colorado. The training on MHPAEA occurred in 2017 with a vendor, who provided materials that the Division is adapting for future analysis. The Division also contracted with a vendor to conduct the market conduct exams, which are ongoing and have an expected completion date of late summer or early fall of 2019.

In October, the Division engaged consumer stakeholder groups to review the initial methodologies. Since then, we have been incorporating best practices and higher level analytical tools to enhance our review. As we continue to develop the methodology for enhanced review, we will engage the Colorado stakeholder community to further increase the sophistication and depth of the analysis.

Future Activity

With each successive training and with each market conduct exam, the Division continues to improve the process of evaluating plan and carrier compliance with MHPAEA. As part of these improvements, the Division is incorporating information received as part of the SAMHSA Parity Policy Academies and learning from the federal government and other states how to improve our market conduct exams procedures to ensure MHPAEA compliance. As part of these efforts, the Division is developing a process that will provide the Division with the appropriate level of information from carriers to verify carrier compliance with MHPAEA, as well as provide the public with the information used to verify that compliance. In the coming months, our work with stakeholders will continue this process, as well as an associated regulation, to aid in the enforcement of MHPAEA.

Additional future activities will include the continued use of market conduct exams to verify compliance by the carrier, at the claim, customer service, and prior authorization levels. The Division will also utilize trends in customer complaints to enhance the reviews for compliance. The market conduct exams will also provide additional up-front reviews to strengthen enforcement prior to any consumers having to file complaints with the Division. Finally, the Division will coordinate with the behavioral health ombuds office to enhance the reviews conducted and to consult on mental health parity issues.

Conclusion

The Division remains committed to ensuring carrier compliance with mental health and substance abuse parity requirements, and to developing more sophisticated analysis and greater depth of review to protect Coloradans. Not only will it work on its own to make sure that the insurance carriers are held to these standards, the Division will continue to work with other states, the SAMHSA Parity Policy Academies, and the Colorado mental health stakeholder community to develop best practices. The Division of Insurance will pursue the ongoing evolution of this area to ensure Colorado citizens receive parity between physical and mental health and substance use services and coverage.