The State of Delaware

Mental Health Parity and Addiction Equity Act (MHPAEA) Overview

SEBC Health Policy & Planning Subcommittee Meeting

November 13, 2023

Disclaimer

Willis Towers Watson has prepared this information solely in our capacity as consultants under the terms of our engagement with you with knowledge and experience in the industry and not as legal advice. This information is exclusively for the State of Delaware's State Employee Benefits Committee to use in the management, oversight and administration of your state employee group health program. It may not be suitable for use in any other context or for any other purpose and we accept no responsibility for any such use.

Willis Towers Watson is not a law firm and therefore cannot provide legal or tax advice. This document was prepared for information purposes only and it should not be considered a substitute for specific professional advice. As such, we recommend that you discuss this document with your legal counsel and other relevant professional advisers before adopting or implementing its contents. This document is based on information available to Willis Towers Watson as of the date of delivery and does not account for subsequent developments after that date.

Willis Towers Watson shares available medical and pharmacy research and the views of our health management practitioners in our capacity as a benefits consultant. We do not practice medicine or provide medical, drug, or legal advice, and encourage our clients to consult with both their legal counsel and qualified health advisors as they consider implementing various health improvement and wellness initiatives.

This material was not prepared for use by any other party and may not address their needs, concerns or objectives. This document may not be reproduced, disclosed or distributed to any other party, whether in whole or in part, other than as agreed with you in writing, except as may be required by law.

We do not assume any responsibility, or accept any duty of care or liability to any other party who may obtain a copy of this material and any reliance placed by such party on it is entirely at their own risk.

Background

- Mental Health Parity and Addiction Equity Act (MHPAEA) requires health plans providing mental health / substance use disorder (MH/SUD) benefits to provide those benefits in parity with medical/surgical (M/S) benefits
  - MHPAEA was signed into law in 2008, and became effective for plan years beginning on or after October 3, 2009
  - Final Rules were published in November 2013, and became effective for plan years beginning on or after July 1, 2014 (January 1, 2015, for calendar year plans)
- The Consolidated Appropriations Act, 2021 (CAA) imposed new compliance obligations on group health plans providing MH/SUD benefits
  - Includes requirement to formally analyze and compare non-quantitative treatment limitations (NQTLs) (e.g., prior authorization, utilization review) applicable to M/S, and report data and results to applicable federal agency (DOL or HHS) upon request
- The CAA 2023 indicated that non-Federal government entities can no longer opt out

These MH/SUD compliance obligations are applicable to the non-Medicare medical plan options offered by Delaware's State Employee Health Plan but do not apply to the Medicare Supplement plan

MHPAEA rules

Overview	Requires health plans providing Mental Health/Substance Use Disorder (MH/SUD) benefits to provide those benefits in parity with Medical/Surgical (M/S) benefits.
Financial requirements/ Quantitative treatment limitations	Group health plans offering M/S benefits and MH/SUD benefits that impose **"financial requirements"** (e.g., deductibles, copayments, coinsurances, out-of-pocket maximums) or **"quantitative treatment limitations" (QTLs)** (e.g., number of visits, days of coverage, days in a waiting period) must apply these requirements/limitations to MH/SUD benefits no more restrictively than the **"predominant"** financial requirements or quantitative treatment limitations applied to **"substantially all"** M/S benefits in the same classification.
Non-quantitative treatment limitations	Group health plans may not impose **"non-quantitative treatment limitations" (NQTLs)** (e.g., prior authorization, utilization review) on MH/SUD benefits unless, under the terms of the plan as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in a classification are comparable to, and are applied no more stringently than, those used in applying the limitation with respect to M/S benefits in the same classification.

MHPAEA supplements prior provisions under the Mental Health Parity Act of 1996 (MHPA) which required parity with respect to aggregate lifetime and annual dollar limits for mental health benefits.

Financial requirements and quantitative treatment limitations

- The test must be applied on a classification-by-classification basis
- There are six classifications of benefits (and a couple of sub-classifications):

1	2	3	4	5	6
Inpatient in-network	**Inpatient out-of-network**	**Outpatient in-network**	**Outpatient out-of-network**	**Emergency**	**Prescription drug**
		• Office visits • All other services	• Office visits • All other services		

- Other classifications and sub-classifications are not allowed
- Intermediate levels of care in MH/SUD must be classified correctly (e.g., Residential Treatment Center [RTC] as inpatient if Skilled Nursing Facility [SNF] is considered inpatient on M/S side)

Clinical and legal/regulatory compliance support is required for this review, with data extracts from the vendor or claims administrator.

Quantitative requirements and treatment limitations

Compliance steps

1

Determine if a particular type of financial requirement or quantitative treatment limitation applies to substantially all (two-thirds) M/S benefits in the relevant classification of benefits

Two-thirds calculation is based on the dollar amount of plan payments expected to be paid for the plan year (any reasonable method can be used).

2

Determine the predominant level (more than 50%) of that requirement or treatment limitation that applies to M/S benefits in the classification being tested

The predominant level of this requirement or limitation applicable to M/S benefits within that classification is the most restrictive that can be imposed on MH/SUD benefits within that same classification.

Initial testing required, but not annually, unless the plan design or demographics change significantly.

Must use plan-specific data when credible. If plan-specific data is not credible, then request testing results from claims administrator's book of business for similar plan designs with similar demographics.

Non-quantitative treatment limitations

Precertification, exclusions and limitations

- No NQTL on an MH/SUD benefit in any classification (or sub-classification) unless:
  - Any processes, strategies, evidentiary standards or other factors used are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards or other factors used in applying the limitation to M/S benefits in the same classification

- No requirement to use the same NQTLs for both MH/SUD and M/S benefits, but processes, strategies, evidentiary standards, and other factors must be comparable
- Disparate results alone do not mean that the NQTLs do not comply with MHPAEA
  - Identify non-compliant additional NQTLs
    - For example, requiring access to MH/SUD care through the Employee Assistance Program (EAP) (not permissible)
    - For example, requiring failure of outpatient SUD before approving admission to 24/7 facility

Clinical and legal/regulatory compliance support is required for this review, with data extracts from the vendor or claims administrator.

Next steps

- SBO is working with the GHIP health plan TPAs and the Delaware Department of Justice/SEBC Deputy Attorney General to determine next steps on clinical and legal/regulatory compliance support
- As more information is available, the SEBC will update the Health Policy & Planning Subcommittee and the SEBC