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Enable Effective Enforcement of the Mental Health Parity and Addiction Equity Act

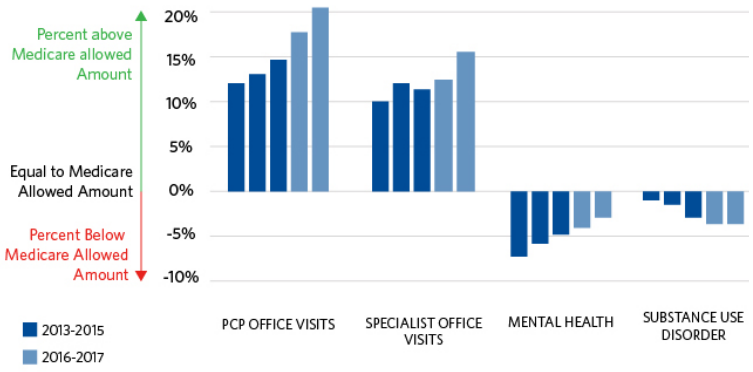
In the absence of consequences, health insurers and plans are failing to comply with crucial insurance parity requirements.

Enactment of the Mental Health Parity and Addiction Equity Act (MHPAEA) in 2008 promised to end insurance discrimination against individuals with mental health and substance use disorders by prohibiting health plans from setting more restrictive limits on mental health and substance use disorder coverage than are applied to medical/surgical care. Unfortunately, more than a decade later, insurers are continuing to discriminate against individuals in need of mental health and substance use treatment. Congress must act to stop this practice by giving the Department of Labor (DOL) the authority to assess penalties for violations of the parity law, and by supporting state regulators in their enforcement work.

BACKGROUND

Health insurance plans make an array of decisions that affect enrollees' access to care. These include which health care providers to contract with, how much to pay those providers for specific services, and what preauthorization requirements patients and providers need to go through before care is paid for, among others. These practices—referred to as "nonquantitative treatment limits" or "NQTLs" in the MHPAEA—are frequently used by health plans to restrict beneficiaries' access to behavioral health services. A 2019 analysis by the consulting firm Milliman compared private insurance plans' reimbursement rates with Medicare reimbursement rates and found private plans paid providers substantially more than Medicare for general medical services while paying less for behavioral health visits. Low reimbursement rates are a strong disincentive for mental health specialists to participate on a plan's provider network, ultimately forcing enrollees to either pay more for out-of-network care or forgo treatment all together.

Office Visits: In-Network Reimbursement Compared to Medicare Allowed Amounts, Separate for Mental Health and Substance Use Disorders



SOURCE: Melek, S. P., Perlman, D., & Davenport, S. (2017). Addiction and mental health vs. physical health: Analyzing disparities in network use and provider reimbursement rates. *Seattle, Milliman.*

Recognizing that the 2008 MHPAEA still wasn't achieving its desired effect, Congress included a provision in the Consolidated Appropriations Act of 2021 (CAA) stipulating that health plans must "perform and document comparative analyses of the design and application" of the NQTLs they place on the coverage they provide to make sure they are not inappropriately targeting mental health and substance use care. The CAA also required plans to make these analyses available upon request to enforcement authorities.

DOL is the primary enforcement authority of MHPAEA, charged with oversight of approximately 2 million health plans—covering more than 136 million Americans—regulated under the Employee Retirement Income Security Act (ERISA). In 2022 the MHPAEA Enforcement Report was released and described health plans do not appear to be conducting the analyses of their coverage policies required by law. In fact, none of the analyses reviewed and completed by DOL so far showed compliance with the law.[i]

MHPAEA's prohibition against placing tighter restrictions on coverage of mental health and substance use disorder services than on other types of care, including through the use of NQTLs, has been in place for more than a decade. The 2022 MHPAEA Enforcement Report describes a valiant effort on the part of DOL to enforce the law but makes it clear that the existing enforcement framework isn't working and stronger tools are needed.

Solution

Congress should take two steps to strengthen enforcement of MHPAEA:

1. **Enact legislation—such as that approved by the House of Representatives in November 2021 as part of The Build Back Better Act—to grant DOL the ability to assess civil monetary penalties against health plans, health insurance issuers, and third-party administrators for MHPAEA violations.**

   Until DOL is granted this authority, employers, insurers, and health plan administrators will continue to face no penalties for violating the law besides having to reprocess claims and pay for the treatment that should have been covered originally. Without any meaningful financial consequences for failing to comply with the law, health plans and administrators will likely continue to prioritize profits over patients by discouraging enrollees' use of mental health and substance use disorder services. DOL has similar authority for enforcing other laws relating to group health insurance.

   In 2017, President Donald Trump's Commission on Combating Drug Addiction and the Opioid Crisis recommended that Congress provide DOL increased authority to levy monetary penalties on insurers and funders.[ii] Before that, the 2016 report from President Barack Obama's Mental Health and Substance Use Disorder Parity Task Force also recommended that Congress give DOL the authority to assess penalties.[iii]

2. **Enact The Parity Implementation Assistance Act (H.R. 3753/S. 1962) to provide grants to state enforcement agencies for requesting and reviewing health plans' comparative analyses related to use of NQTLs on mental health and substance use disorder benefits.**

   State agencies have primary authority for enforcing MHPAEA for individual and fully-insured group health plans, but face a daunting task in effectively evaluating NQTLs on mental health and substance use care, and often lack the resources needed to do this effectively. The bipartisan, bicameral Parity Implementation Assistance Act would support states in making use of the new comparative analyses authority established under the CAA of 2021.

The need for mental health and substance use disorder treatment has increased significantly as a result of the COVID-19 pandemic. Data show a surge in suicide attempts, drug overdoses, and emergency department visits attributable to mental health crises.[iv] Giving DOL and state insurance regulators the tools and assistance they need to effectively enforce MHPAEA would help make sure that Americans with mental health and substance use disorders get the care they need.

References

i. In January 2022, DOL issued a Report to Congress on MHPAEA enforcement, the first since the CAA requirements took effect. https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf

ii. Commission members. (2017). *Final report of The President's Commission on Combating Drug Addiction and the Opioid Crisis.* https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-15-2017.pdf

iii. Muñez, C. and Perez, T. E. (2016, October 27). Our Report to the President on Mental Health and Substance Use Disorder Parity. *The White House. https://obamawhitehouse.archives.gov/blog/2016/10/27/our-report-president-mental-health-and-substance-use-disorder-parity*

iv. Holland, K. M., Jones, C., Vivolo-Kantor, A. M., et al. (2021). Trends in US Emergency Department Visits for Mental Health, Overdose, and Violence Outcomes Before and During the COVID-19 Pandemic. *JAMA Psychiatry, 78*(4), 372–379. doi:10.1001/jamapsychiatry.2020.4402