

MENTAL HEALTH PARITY:

- **Overview of Market Regulation and MHPAEA**
- **Market Conduct Examinations**
- **Warning Signs and Red Flags**

INSURANCE IS IMPORTANT IN NEBRASKA

- Nebraska's domestic insurers rank:
 - Third nationally in assets (\$611,408,913,512 of oversight responsibility for Nebraska DOI), second only to Iowa and New York.
 - Second nationally in surplus, second only to Illinois.
 - Twelfth nationally in premiums written.
- Industry concentration for employment is high. Nebraska has 84% more jobs in the insurance industry than would be expected in a state of its size.
 - This is the second highest job concentration among any state.

INSURANCE MARKET REGULATION

- Review of policies and rates
- Consumer assistance
- Market conduct examinations
- Financial solvency
- Consumer alerts, brochures, and newsletters

HEALTH INSURANCE MARKET DISTRIBUTION 2014

	NE	NE	US	US
Individual Market (includes pre-ACA plans allowed to continue)	141,412	7.7%	13,024,369	4.2%
Employer-Sponsored Small Group	112,270	6.1%	17,012,181	5.4%
Employer-Sponsored Large Group (Fully Insured)	227,116	12.4%	34,414,807	11.0%
Employer-Sponsored Large Group (Self Insured)	604,512	32.9%	91,601,272	29.3%
Medicaid/CHIP	190,827	10.4%	48,597,331	15.5%
Medicare (over age 65)	271,624	14.8%	44,507,600	14.2%
Other Private Insurance	35,895	2.0%	5,579,654	1.8%
Other Government Program (VA, TriCare, Medicare Disabled)	78,637	4.3%	17,004,390	5.4%
Uninsured	176,167	9.6%	41,223,695	13.2%
TOTAL	1,838,460		312,965,299	

MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008 (MHPAEA)

Federal law that generally prevents group health plans and health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than on medical/surgical benefits.

- MHPAEA originally applied to group health plans and group health insurance and was amended by the ACA to also apply to individual health insurance coverage.

Different Enforcement Agencies for Different Types of Plans

- State Departments of Insurance have jurisdiction over private insurance plans, including insurance purchased for a group health plan or in the individual market.
- Federal Department of Labor has jurisdiction over group health plans in the private sector, when those plans provide coverage directly without purchasing health insurance from an insurer.
- Federal HHS has jurisdiction over non-federal governmental plans.

MHPAEA DOES NOT REQUIRE COVERAGE

(BUT THE ACA REQUIRES COVERAGE FOR INDIVIDUAL AND SMALL GROUP)

- The law states that IF a large group health plan or health insurance issuer chooses to include Mental Health and Substance Use Disorder benefits in the benefit package, there must be general equivalence in the way MH/SUD and medical/surgical benefits are treated with respect to annual and lifetime limits, financial requirements and treatment limitations.

HOWEVER:

- The ACA builds on MHPAEA and requires coverage of mental health and substance use disorder benefits as one of the ten EHB categories in non-grandfathered individual and small group plans.
- The effect is that the ACA requires coverage, then because the plans include that coverage, MHPAEA's parity requirements also apply.

MHPAEA DOES NOT APPLY TO:

- **Small self-insured non-federal government plans** (50 or fewer employees).
- **Small self-insured small private employers** (50 or fewer employees).
- **Large, self-funded non-federal governmental employers** that opt out of MHPAEA's requirements (these employers must provide notice of the opt-out to enrollees at the time of enrollment and on an annual basis, and file an opt-out notification with CMS).

PARITY DEFINED

- PARITY means that financial requirements (copayments, deductibles, coinsurance, out-of-pocket maximums) and treatment limitations used by health plans must be comparable for physical health vs. mental health and substance use disorder (MH/SUD).
- There are a set of rules for parity for financial requirements and for treatment limits that you can count (such as number of visits).
- Another set of rules addresses parity in how treatment is accessed and under what conditions (such as obtaining permission from your health plan before going for MH/SUD treatment).

FINANCIAL REQUIREMENTS AND “QUANTITATIVE TREATMENT LIMITATIONS”

- A plan or issuer may not apply any financial requirement or quantitative treatment limitation to MH/SUD benefits in any classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification.
- Plans are screened for compliance with this rule when they are filed and approved by the Department of Insurance.

“NONQUANTITATIVE TREATMENT LIMITATIONS” (NQTLs)

- A plan may not impose an NQTL on MH/SUD benefits in any classification UNLESS any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in the classification are **comparable to, and applied no more stringently than**, the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to medical/surgical benefits in the classification.

EXAMPLES OF NQTLs

- Medical management standards that limit or exclude benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative
- Formulary design for prescription drugs
- Standards for provider admission to participate in a network
- Plan methods for determining usual, customary, and reasonable charges
- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective
- Exclusions based on failure to complete a course of treatment
- Coverage restrictions based on geographical location, facility type and provider specialty, and other criteria that limit the scope or duration of benefits for services

(This is not an exhaustive list.)

MHPAEA IN THE NAIC MARKET CONDUCT HANDBOOK

- In February 2018, Illinois' Director Jennifer Hammer made a formal request for the Market Conduct Examination Standards Working Group to develop MHPAEA standards.
- Two documents developed by SMEs as a result:
 1. **General guidance document** addressing mental health parity review, which includes a series of questions to be posed to health carriers by examiners and
 2. **Data collection tool** for mental health parity analysis.
- Input from:
 - Theresa Morfe (MD); Association for Behavioral Health and Wellness; NAIC Consumer Representatives, America's Health Insurance Plans (AHIP); American Psychiatric Association (APA); Mary Nugent (Center for Consumer Information and Insurance Oversight—CCIO).
- To date, these are the only MHPAEA enforcement tools that are the result of the NAIC collaborative process.

FEDERAL RESOURCES

- In creating the NAIC Market Regulation Handbook guidance for MHPAEA, the subject matter experts identified the following as reliable and helpful resources that are already available.
- CMS MHPAEA web page
 - https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html
- DOL MHPAEA web page
 - <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity>
- DOL Self-Compliance Tool
 - <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-a-mhpaea.pdf>
- DOL Warning Signs for NQTL
 - <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-rules-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf>

NQTL EXAMPLES IN HANDBOOK

- a) **Medical management standards** limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;
- b) **Prior authorization** and ongoing authorization requirements;
- c) **Concurrent review** standards;
- d) **Formulary design** for prescription drugs;
- e) For plans with multiple network tiers (such as preferred providers and participating providers), **network tier design**;
- f) Standards for **provider admission** to participate in a network, including reimbursement rates;
- g) Plan or insurer's methods for determining **usual, customary and reasonable charges**;
- h) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as **“fail-first” policies or “step therapy” protocols**);
- i) Restrictions on applicable **provider billing codes**;
- j) Standards for providing **access to out-of-network providers**;
- k) Exclusions based on **failure to complete a course of treatment**;
- l) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan; and
- m) **Any other non-numerical limitation on MH/SUD benefits.**

DATA COLLECTION FOR NQTLs

- Topics include:
 - Definition of medical necessity.
 - Prior authorization review process, including step therapy or fail-first requirements (answered for each classification)
 - Concurrent review process, including step therapy or fail-first requirements (answered for each classification)
 - Retrospective review process, including timeline and penalties (answered for each classification)
 - Emergency services

MORE DATA COLLECTION FOR NQTLs

- Topics, continued
 - Pharmacy services, including any step therapy or fail-first requirements (separated by tier)
 - Prescription drug formulary decisions, cost-control measures, therapeutic substitution, step therapy, disciplines involved in development of the formulary
 - Case management services available and required
 - Process for assessment of new technology
 - Standards for provider credentialing and contracting
 - Exclusions for failure to complete a course of treatment
 - Restrictions that limit duration or scope of services by geographic location or type of facilities
 - Restrictions for provider specialty

WHAT EXAMINERS DO WITH NQTL DATA

- Review for any differences between M/S and MH/SUD, flag those differences.
- Look at the basis for the NQTL – is it a nationally accepted standard or a standard the insurer created?
 - Are there economic factors, such as high cost growth, or other factors such as the incidence of fraud with respect to services, that the issuer considered in developing and applying the NQTL?
 - This is permissible. See ACA FAQ Part 39, page 3, available online at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-39-final.pdf>
- Also look at claim denial rates that are higher for MH/SUD, then identify the corresponding NQTLs for analysis of potential noncompliance.

MAKING THE MOST OF YOUR MH/SUD BENEFITS

If a mental health or substance use disorder claim is being denied:

- Request the reason for any denial of payment for services for mental health or substance use disorder benefits.
- The plan or insurer must provide an adverse benefit determination containing the specific reason for the denial, reference to the specific plan rules used to make the determination, and a description of the plan's appeal procedures.
- Follow the procedures to file an internal appeal, and if necessary, an external appeal.
- Inform the Department of Insurance if you believe the denial is not justified.

MEDICAL NECESSITY DETERMINATIONS

If a treatment or service is denied for lack of medical necessity, you can request medical necessity criteria for the MH/SUD treatment, including:

- If a plan claims that its medical necessity criteria are based primarily on a specific established treatment guideline.
- Whether the plan departed from the guidelines used to develop the medical necessity criteria.
- Whether the plan uses similar information and processes to develop information on whether treatment guidelines generally are used to determine medical necessity for medical/surgical care, and which guidelines it uses.
- The criteria the plan uses to decide when to depart from the medical/surgical guidelines.

INFORMATION TO IDENTIFY POSSIBLE PARITY VIOLATIONS

If a mental health or substance use disorder claim is being denied, you have the right to request all documents, records, and other information relevant to your claim for mental health or substance use disorder benefits, including:

- Information about the underlying factors considered by the plan in determining the application of this treatment limitation to this benefit;
- Comparable information related to the application of this treatment limitation to medical/surgical benefits;
- The plan's analysis in applying the requirement or limitation and all documents used to develop the analysis for this requirement or limitation;
- Any self-analysis the plan has performed to verify whether the plan complies with MHPAEA.

HOW YOU CAN HELP

- Scenarios where review of insurers' documents will not catch parity violations:
 - Procedures are compliant on paper, but not in practice.
 - Insurer uses new internal guidance without providing copies to regulators.
- We find out about these practices by looking at claim denials and consumer complaints.
 - Make sure a claim is made, and ask the insurer to put the denial in writing.
 - Tell consumers about their rights to obtain information from the insurer.
- For denials, encourage patients to appeal.
 - A patient can appoint a provider as authorized representative.
 - Patient appeals give patients the right to external review.

QUESTIONS?

CONTACT INFORMATION AND RESOURCES

- Martin.Swanson@Nebraska.gov, 402-471-4648
- Laura.Arp@Nebraska.gov, 402-471-4635
- Department of Insurance web site: <https://doi.nebraska.gov/>
- Consumer Affairs Hotline 402-471-0888 or (in-state only) 877-564-7323
- Online complaint form: <https://doi.nebraska.gov/consumer/consumer-assistance>
- External review request form:
<https://doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/Chapter87ExternalReviewForms.pdf>
- Remember that federal website: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-and-substance-use-disorder-parity>
 - Lots of valuable information!!