FEHB Program Carrier Letter
All Carriers

U.S. Office of Personnel Management
Healthcare and Insurance

Letter Number 2021-16

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Fee-for-service [14] Experience-rated HMO [14] Community-rated HMO [14]

Subject: Strengthening Parity in Mental Health and Substance Use Disorder Benefits

Introduction

OPM requires FEHB Carriers to comply with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The Consolidated Appropriations Act, 2021 (CAA) amended MHPAEA to provide important new protections related to non-quantitative treatment limitations (NQTLs) on mental health or substance use disorder (MH/SUD) benefits. The Departments of Labor, Health and Human Services, and the Treasury (collectively, "the Departments") prepared Frequently Asked Questions (FAQs) to help stakeholders understand these amendments.

The purpose of this Carrier Letter is to confirm that FEHB Carriers must comply with the CAA's amendments to MHPAEA and to inform Carriers that they should use the Departments' FAQs as a compliance resource. Accordingly, FEHB Carriers that impose NQTLs on MH/SUD benefits must perform and document their comparative analyses of the design and application of NQTLs. FEHB Carriers must make their comparative analyses available upon OPM's direction.

Strengthening Parity in Mental Health and Substance Use Disorder Benefits

MHPAEA generally provides that financial requirements (such as coinsurance and copays) and treatment limitations (such as visit limits) imposed on MH/SUD benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical/surgical benefits in a classification. In addition, MHPAEA prohibits separate treatment limitations that apply only to MH/SUD benefits. MHPAEA

also imposes several important disclosure requirements on group health plans and health insurance issuers.

NQTLs, addressed under the Departments' MHPAEA regulations, are the limits that group health plans and health insurance issuers place on benefits that are not tied to specific monetary or visit limits. Some examples of NQTLs include requirements for preauthorization of services, concurrent review, utilization review, discharge planning, and provider-credentialing requirements to be admitted to a plan's network, and the use of "step therapy" or "fail-first" requirements.

FEHB Implementation

While OPM has previously requested that FEHB Carriers submit information in their plan proposals related to NQTLs, the CAA codified further requirements related to NQTLs. OPM will require FEHB Carriers to submit their comparative analyses of the design and application of NQTLs, consistent with the Departments' FAQs.

For an analysis to be treated as sufficient under MHPAEA, it must contain a detailed, written, and reasoned explanation of the specific plan terms and practices at issue and include the basis for the FEHB Carrier's conclusion that the NQTLs comply with MHPAEA. At a minimum, sufficient analyses must include a robust discussion of all of the elements listed below:

1. A clear description of the specific NQTL, plan terms, and policies at issue.

2. Identification of the specific MH/SUD and medical/surgical benefits to which the NQTL applies within each benefit classification, and a clear statement as to which benefits identified are treated as MH/SUD and which are treated as medical/surgical.

3. Identification of any factors, evidentiary standards or sources, or strategies or processes considered in the design or application of the NQTL and in determining which benefits, including both MH/SUD benefits and medical/surgical benefits, are subject to the NQTL. Analyses should explain whether any factors were given more weight than others and the reason(s) for doing so, including an evaluation of any specific data used in the determination.

4. To the extent the FEHB Carrier defines any of the factors, evidentiary standards, strategies, or processes in a quantitative manner, it must include the precise definitions used and any supporting sources.

5. The analyses, as documented, should explain whether there is any variation in the application of a guideline or standard used by the FEHB Carrier between MH/SUD and medical/surgical benefits and, if so, describe the process and factors used for establishing that variation.

6. If the application of the NQTL turns on specific decisions in administration of the benefits, the FEHB Carrier should identify the nature of the decisions, the decision maker(s), the timing of the decisions, and the qualifications of the decision maker(s).

7. If the FEHB Carrier's analyses rely upon any experts, the analyses, as documented, should include an assessment of each expert's qualifications and the extent to which the FEHB Carrier ultimately relied upon each expert's evaluations in setting recommendations regarding both MH/SUD and medical/surgical benefits.

8. A reasoned discussion of the FEHB Carrier's findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, factors, and sources identified above within each affected classification, and their relative stringency, both as applied and as written. This discussion should include citations to any specific evidence considered and any results of analyses indicating that the FEHB Carrier is or is not in compliance with MHPAEA.

9. The date of the analyses and the name, title, and position of the person or persons who performed or participated in the comparative analyses.

In addition to the Departments' FAQs, the Department of Labor (DOL) also maintains a MHPAEA Self-Compliance Tool on its website that is intended to help various stakeholders determine whether a group health plan is compliant with parity. The Compliance Tool is updated every two years and was most recently updated in 2020 by the DOL (in coordination with the Department of the Treasury and HHS). The Self-Compliance tool can reached here.

Operational Impacts

Should an FEHB Carrier be directed to submit its comparative analysis to OPM, and OPM concludes that the information submitted is not sufficient, OPM will specify the information that must be submitted in the Carrier's comparative analysis so that it includes all of the requested elements. If OPM determines that an FEHB Carrier is not in compliance with parity, the FEHB Carrier must enter a 45-day corrective action period during which the FEHB Carrier must correct all its parity violations. If after the 45-day corrective action period OPM determines that an FEHB Carrier is still not in compliance, then OPM will direct the FEHB Carrier to notify its enrollees within 7 days that the FEHB Carrier is not in compliance and how it intends to gain compliance.

If you have questions, please contact your Health Insurance Specialist (Contracts).

Sincerely,

Laurie Bodenheimer
Associate Director
Healthcare and Insurance