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DAILY

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Health Care Reform

Mental Health Parity Unaffected By Benefit Limit Waivers, Attorney Says

A company that receives a waiver from health care reform law rules that limit the ability of employers to set annual benefit caps is not off the hook for complying with rules for spending parity under the 2008 Mental Health Parity and Addiction Equity Act, a benefits practitioner said April 14 during a webcast sponsored by the American Law Institute-American Bar Association.

Waivers under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) generally do not apply to mental health parity limits, Cynthia A. Van Bogaert, a partner at Boardman Suhr Curry & Field in Madison, Wis., said during the webcast. "Health care reform did not void or eliminate mental health parity," she said.

Although both laws apply to medical/surgical benefit plans, PPACA contains fewer exemptions than the mental health parity law, Van Bogaert said. For example, an employer can request a one-year exemption from compliance with the mental health parity law if it can prove that compliance would increase its health care claims costs by 2 percent in the first year and 1 percent in subsequent years. Similarly, a small employer can claim an exemption from the parity requirements if it employs an average of 50 or fewer employees during a year. PPACA contains no comparable exemptions, she said.

Essential Health Benefits. Similarities and differences between the two laws are less clear with respect to essential health benefits, Van Bogaert said. Without PPACA regulations to flesh out the meaning of "essential health benefits," employers must rely on a good faith, reasonable interpretation of the statute, she said. "Right now, all we have is a laundry list," which does include mental health and substance use disorder services, she said.

PPACA's substance use disorder services include behavioral health treatments, but the terminology "substance use disorder" is slightly different from the "substance abuse disorder" language of the mental health parity act, Van Bogaert said.

Regulations under the mental health parity act require reliance on generally recognized independent standards of current medical practice contained in the *Diagnostic and Statistical Manual of Mental Disorders* and the *International Classification of Diseases* or state guidelines, if there are any, Van Bogaert said.

Self-insured plans can rely on those published standards for determining what is or is not a mental health benefit under the mental health parity regulations, Van Bogaert said. In the absence of regulations on essential health benefits under PPACA, it would be reasonable to adopt similar or perhaps even the same definitions, she said.

FAQs Posted. Employers are still waiting for regulatory guidance on how to apply for the cost exemption under the mental health parity law, Van Bogaert said. In the meantime, the Labor Department's Employee Benefits Security Administration offered some informal guidance on the cost exemption when it updated its website in December 2010 with answers to 15 frequently asked questions about PPACA, the mental health parity law (Pub. L. No. 110-343), and the Health Insurance Portability and Accountability Act (Pub. L. No. 104-191) (245 PBD, 12/27/10; 37 BPR 2774, 12/28/10).

Most self-funded plans have had to hire professionals to perform the calculations necessary for compliance with the mental health parity regulations, said Howard Bye, of counsel at Stoen Rives in Seattle, who also spoke during the webcast. The regulations require parity between medical/surgical benefits and services for mental health and substance abuse disorders.

Parity Requirements. Bye said the types of payments that generally must satisfy parity requirements under the mental health parity law include deductibles, coinsurance, copayments, out-of-pocket limits, and annual and lifetime limits. “For the most part, lifetime limits and annual limits are gone for health plans under health care reform,” he said.

The parity rules also apply to quantitative treatment limits, including the number of outpatient office visits and number of hospital days, Bye said.

Group health plans have medical management rules that also must satisfy parity requirements, Bye said. In that category are preauthorizations, determinations of medical necessity, and concurrent reviews of benefits. “These rules cannot be applied more stringently to mental and substance abuse benefits than to medical/surgical benefits,” he said.

BY FLORENCE OLSEN