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Fact Sheet

Mental Health Parity for Medicaid & CHIP Populations

The AMCHP Role

AMCHP supports state maternal and child health (MCH) programs and provides national leadership on issues affecting women and children*. We work with partners at the national, state and local levels to promote women's health; provide and promote family-centered, community-based, coordinated care for women and children; and facilitate the development of community-based systems of services for women, children and their families.*

The AMCHP National Center for Health Reform Implementation *provides state MCH leaders and their partners with the information, tools and resources to optimize the opportunities presented by the Patient Protection and Affordable Care Act (ACA) for improving services, systems and health outcomes for MCH populations.*

Introduction

The Centers for Medicare & Medicaid Services (CMS) recently published final regulations outlining how the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the parity law) applies to Medicaid and the Children's Health Insurance Program (CHIP). The parity law requires that health insurance plans provide mental health and substance abuse treatment benefits that are comparable in scope to the plan's benefits for medical and surgical care. The new regulations, which align Medicaid and CHIP with consumer protections already required of private health plans, apply to most Medicaid service delivery models, including Medicaid managed care organizations (MCOs), Medicaid alternative benefit plans and all CHIP coverage (regardless of delivery model). The regulations do not apply to fee-for-service Medicaid. In total, the new regulations extend parity protections to more than 23 million children and adults covered by these programs.

Background

In 2008, with bipartisan Congressional support, President George W. Bush signed the federal parity law, a landmark effort to equalize coverage of mental health and substance use (MH/SU) disorders with other medical conditions. The parity law prohibits differences in treatment limits, cost sharing, and in- and out-of-network coverage. The law applies to large group health plans, both fully insured and self-insured. It also applies to plans offered though Medicare Advantage; federal, state and local governments; and Medicaid and CHIP. It is important to note, however, that the parity law does not mandate MH/SU coverage, but if treatment for these conditions is included as a benefit, plans must provide it under the same terms and conditions as other medical services.

The parity law has extended its reach through the Affordable Care Act (ACA), which applies MH/SU parity requirements to all individual and small group insurance plans sold both inside and outside of the Health Insurance Marketplace. The ACA also mandates coverage of MH/SU treatment by including it in the essential health benefits package. As a result, a record number of Americans now has access to MH/SU coverage.

The parity law has achieved significant progress in eliminating discrepancies in insurance coverage. Most insurance carriers have dropped annual limits on outpatient therapy visits. Higher copayments and separate deductibles for MH/SU services have become less common. Access to out-of-network MH/SU providers has increased, as health plans must now give their enrollees this option if they offer out-of-network coverage for medical and surgical care.

In 2013, CMS published the final regulations for most private and employer health plans. Regarding parity requirements for Medicaid and CHIP plans, CMS provided general guidance to states in a 2013 letter, but final rules were not published until March 2016, eight years after passage of the parity law.

Components of the Medicaid/CHIP Final Regulations

According to CMS, the goal of the long-awaited Medicaid/CHIP parity regulations is to create consistency between public and private health insurance markets, as well as parity between MH/SU and medical/surgical services. Similar to the regulations for private plans, the Medicaid/CHIP regulations prohibit health insurance plans from applying financial requirements or treatment limitations to MH/SU benefits that are more restrictive than those imposed on medical/surgical benefits. The regulations apply to the four major benefit classifications: inpatient, outpatient, emergency care, and prescription drugs.

Once an individual is enrolled in a Medicaid/CHIP MCO, his or her entire benefit package is subject to parity requirements, including benefits offered through MCO carve-out plans. The regulations strengthen Early and Periodic Screening, Diagnostic and Treatment (EPSDT) coverage of MH/SU services for children and adolescents in Medicaid and CHIP, by promoting greater benefit consistency across plans. Medicaid and CHIP state plans that offer full EPSDT services are deemed to be in compliance with the parity rule. When CHIP programs do not provide full EPSDT, the state must conduct a benefit and cost-sharing analysis of the CHIP state plan, to ensure that no MH/SU disorders under EPSDT are excluded from the plan.

The regulations require parity language to be included in all MCO contracts. There are no exemptions from parity requirements due to increased costs associated with improving the scope of MH/SU services in Medicaid/CHIP; however, MCOs are permitted to include the cost of these services when contracting with state Medicaid programs. Plans must disclose information on benefits provided for MH/SU disorders upon request, including the criteria for determinations of medical necessity. Likewise, plans must disclose the reason for any payment denial for MH/SU services. States are required to be in compliance with the new parity regulations by October 2, 2017.

Challenges of the Medicaid/CHIP Final Regulations

While the final regulations strengthen access to MH/SU services for millions of adults and children covered by Medicaid and CHIP, full implementation of the parity law involves significant challenges.

Non-Quantitative Treatment Limitations
Comparing quantitative treatment limitations—such as copayments, outpatient visits, or inpatient days—between MH/SU and other health care services is relatively straightforward. Comparisons of non-quantitative treatment limitations (NQTLs)—such as medical necessity reviews, pre-authorization requirements, and “fail first” policies—are often more difficult to achieve. Consumer advocates have claimed that, despite the parity law, health plans often apply NQTLs disproportionately for MH/SU services, compared to other benefits.

Medical necessity reviews, which insurers use to determine whether a patient requires a certain treatment and at what frequency, are often perceived as more common with MH/SU diagnoses, and are more likely to result in denial of services. Advocates also claim that despite the passage of the parity law, access to MH/SU services often comes with greater preauthorization requirements, compared to medical/surgical

benefits. In addition, many insurers have implemented "fail first" policies for MH/SU services, whereby a patient must "fail" a less expensive treatment before securing approval for a more expensive level of care. There is on-going concern that insurers are focused primarily on crisis and stabilization, and failing to acknowledge the long-term nature of many MH/SU disorders and the need for ongoing care. Vague, potentially discriminatory NQTLs frequently require families to spend more out-of-pocket for MH/SU services than they are required to spend out-of-pocket on other types of health care services.

Enforcement

Since passage of the parity law in 2008, enforcement of parity requirements for private and employer-sponsored plans has been uneven, with only a handful of states initiating investigations into insurance industry practices.[1] Similarly, the federal government has taken few public enforcement actions, although advocates continue to push for more aggressive oversight. Coinciding with the release of the Medicaid/CHIP parity rule—and amidst the national focus on the prescription drug and heroin epidemic —President Obama announced the formation of a new task force on mental health parity (Mental Health and Substance Use Disorder Task Force). This task force aims to address discriminatory insurance industry practices in the delivery of MH/SU services. Its mission is to develop tools and guidelines for states and advocates to ensure industry compliance with the parity law.

Workforce Shortages

Perhaps the most significant barrier to full parity is the MH/SU workforce shortage. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), the nation's health care workforce shortage is most acute in the area of MH/SU services. Ninety-one million Americans now live in federally designated mental-health professional shortage areas and 55 percent of U.S. counties have no practicing psychiatrists, psychologists or social workers.[2] Medicaid MCOs seeking to build their in-network MH/SU provider panels face increasing competition for a limited number of psychiatrists and other mental health providers who accept Medicaid. Compounding this problem is the growing demand for MH/SU services fueled by the ACA's Medicaid expansion. In the absence of large-scale efforts to increase the supply of providers, access to timely, in-network MH/SU services for Medicaid and CHIP populations will remain a challenge.

Implications for State Title V Programs

State Title V programs serve populations who have a substantial need for MH/SU services, including children and adolescents with behavioral diagnoses, and pregnant women struggling with addiction and mental health disorders. As such, maternal and child health (MCH) professionals are well positioned to promote improved access to MH/SU services for these populations and to encourage parity in Medicaid and CHIP service delivery within their states. Specific actions may include:

- Advancing parity through implementation of the Title V National Performance Measures (NPMs).
- Working with state health officials to ensure that Medicaid MCOs deliver appropriate MH/SU services to MCH populations, and supporting access to MH/SU diagnosis and treatment in primary care are two potential strategies to implement the NPMs for annual preventive medical visits for women and adolescents (NPMs #1 and #10, respectively).
- Making Title V staff available for MH/SU state work groups and task forces, particularly those focused on recruitment and retention of MH/SU providers.

[1] "Health Policy Brief: Enforcing Mental Health Parity." *Health Affairs.* November 9, 2015.

[2] U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. *Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues.* January 24, 2013.

- Bringing state attention to the unique needs of pregnant women with opioid addiction and other maternal mental health disorders, and emphasizing the value of parity in meeting these needs.
- Learning to recognize the signs of parity violation, and developing awareness of state strategies for parity enforcement within MCO contracts.
- Amplifying the message that MH/SU disorders can have morbidity and mortality rates for women and children comparable to, or higher than, physical disorders.

The new Medicaid/CHIP parity regulations offer substantial protections for pregnant women and children in need of mental health and substance use services. Ensuring that beneficiaries have equitable access to the MH/SU services they are entitled to will require collective action on the part of providers, consumer advocates and state health agencies, including Title V.

Resources

- **Community Catalyst:** Guidance for Advocates: Identifying Parity Violations & Taking Action
- **Community Catalyst:** Mental Health Parity: The Basics
- **Parity Implementation Coalition:** Parity Resource Guide for Addiction & Mental Health Consumers, Providers and Advocates
- **Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health & Human Services:** Know Your Rights: Parity for Mental Health and Substance Use Disorder Benefits
- **U.S. Department of Labor:** Mental Health and Substance Use Disorder Parity

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AMCHP Contact Info

This fact sheet is part of an AMCHP series of tools, documents and resources on implementation of the ACA and its impact on maternal and child health populations. For more information, please visit the National Center for Health Reform Implementation. All AMCHP staff can be reached by phone at (202) 775-0436.