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Protect Mental Wellness; Parity Updates

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AGENDA

- What is Mental Health Parity and Addiction Equity Act? (MHPAEA)? Background
- Understanding Non-Qualitative treatment limits (NQTL's)
- Final Rule Updates
- Resources

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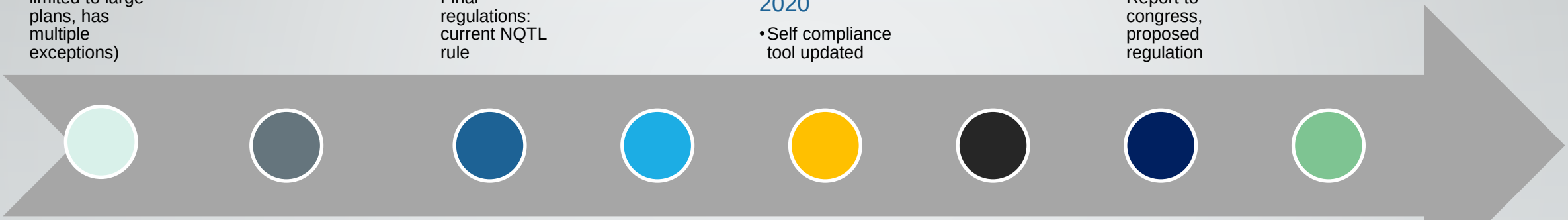
PARITY = Equal status and pay

Insurers may not impose greater restrictions to Mental Health (MH) or Substance Use Disorder (SUD) services Medical/Surgical (M/S) services

History



2008

- Mental Health Parity and Addiction Equity Act (still limited to large plans, has multiple exceptions)

2010

- Affordable Care Act (ACA) extends parity to include MH/SUD as “Essential health benefits” guaranteeing coverage (extended to small group and individual plans)

2013

- Final regulations: current NQTL rule

2018

- Millman report: patients pay 40-100% more for BH, lack of access, providers paid 22% less than M/S
- Self-compliance tool 1st issued

2020

- Self compliance tool updated

2021

- Consolidated appropriations act is passed, strengthening state and federal powers to ensure compliance.

2023

- Report to congress, proposed regulation

2024

- Final regulation?
- Compliance guidance mandated by 2021ACA

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What is MHPAE? (Mental Health Parity and Addiction Equity Act – 2008)

3 Types of benefit restrictions

Financial

- higher/separate deductibles, co-pays, co-insurances, OON benefit limits

Qualitative treatment limits (QTL's)

- Limits to the scope and duration of benefits (frequency, days covered etc.)

Nonquantitative treatment limits (NQTL's)

- limits not defined numerically: Limits based on "medical necessity/appropriateness" or 'investigative/experimental" Network tier design "preferred/participating' providers

Applicable to:

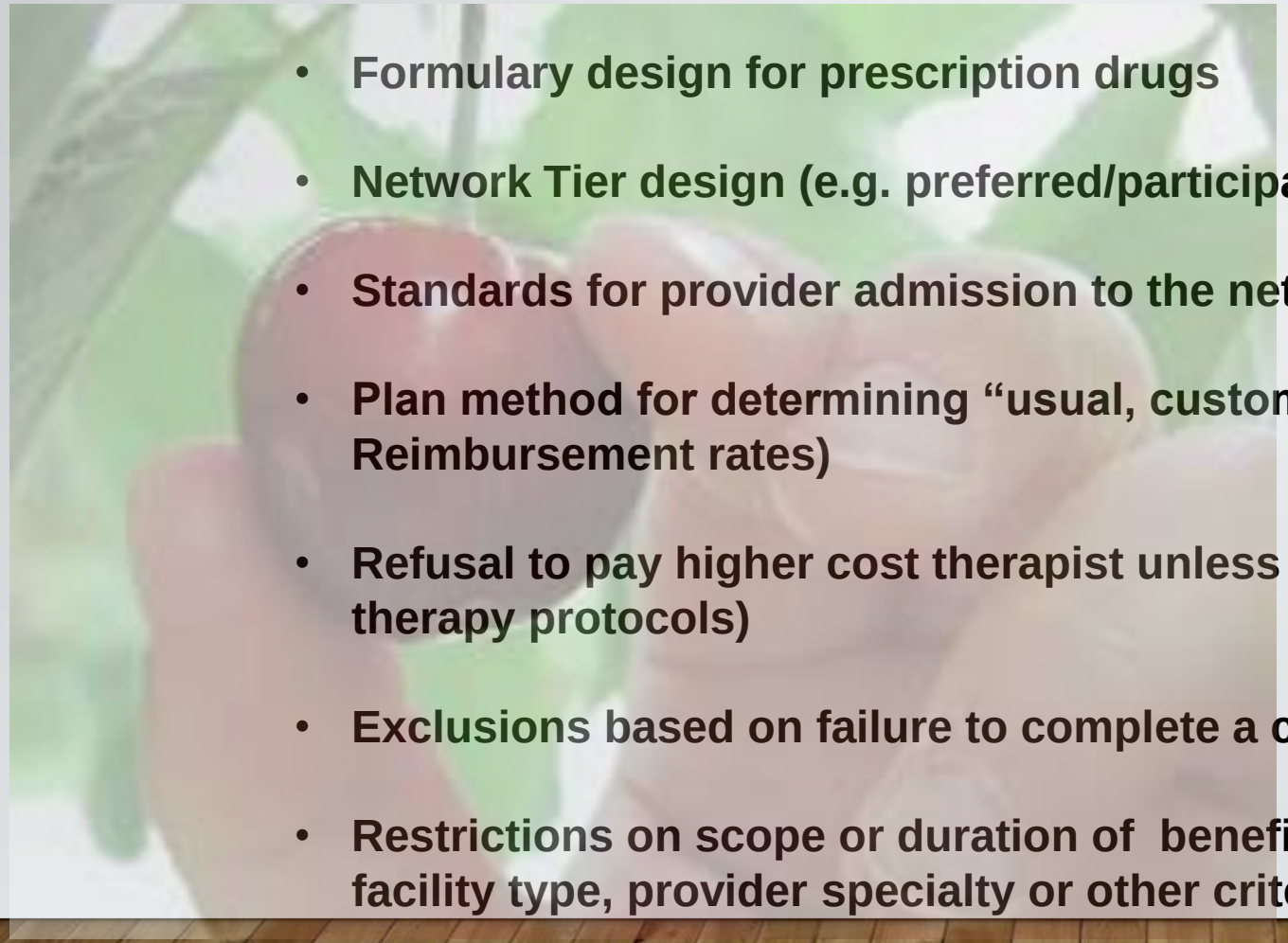
- Plans sponsored by private and public sector employers with more than 50 employees (both self-insured or fully)
- Health insurance companies that sell coverage to employers with more than 50 employees
- Grandfathered and non-grandfathered, unless exempt

PARITY EXEMPTIONS

- Retiree-only group plans who opt out
- Individual & Group plans offering only excepted benefits
- Self insured, non-federal/governmental employer plans who receive the exemption:
  "opt out"
  - costs (2% increase for 1st yr., 1% increase any year after = parity exemption)
  - Small Employer (2-49 employees) [still must provide Essential Health Benefits (EHB's) under ACA, however which, under final rule, requires they meet MHPAEA standards)]
  - HIPAA Opt-out
- Medicare
- Veterans Administration (VA)

Final rule focuses on None Qualitative Treatment Limits (NQTL's)

- **Standards limiting/excluding benefits based on 'medical necessity/appropriateness" or whether a treatment is 'experimental/investigative**



- **Formulary design for prescription drugs**
- **Network Tier design (e.g. preferred/participating providers)**
- **Standards for provider admission to the network (e.g. 2 years post license)**
- **Plan method for determining "usual, customary and reasonable charges" (e.g. Reimbursement rates)**
- **Refusal to pay higher cost therapist unless lower cost therapies are not effective (e.g. step therapy protocols)**
- **Exclusions based on failure to complete a course of treatment**
- **Restrictions on scope or duration of benefits that are based on geographic location, facility type, provider specialty or other criteria.**

Examples from litigation

- E.W & I.W. v. Health Net Live Insurance Company:
  - The plans internal scale used to determine "medical necessity" for a clients in-patient eating disorder treatment was "more stringent" than scales for M/S services because it required the client to exhibit "acute symptoms" to qualify for "subacute" level of care, when compared to a skilled nursing facility, inpatient hospice and rehabilitative facilities. NONE of which excluded based on medical necessity)

- KD. v. Anthem Blue Cross/Blue Shield (2023)
  - The plan's written process and application of discharge criteria for inpatient mental health treatment was more restrictive than those used form/S (skilled nursing, comparable), in that it allows for discharge immediately upon admission, rather than "only in the last 3 states of treatment following the development of a treatment plan."

- Midthun-Henson v. Grp. Health Coop of S. Cent Wisc. (2023)
  - Plan disallowed coverage for speech therapy for Autism Spectrum disorder, though it did allow for chiropracty. Found NO MHPAEA violation, as there was no disparity between processes/sources used to create the criteria (ie: medical journals, etc.)

- US Department of Labor, HHS, Treasury
  - Plan included exclusions of coverage for MH/SUD telehealth services with no similar exclusion for medical surgical (M/S) benefits.
  - Plan proved more restrictive in it's 'access' policy and application, as it required members to call the plan for an approval prior to accessing Employee Assistance Plan (EAP) or MH/SUD services. This restriction was not present for M/S comparable services

New Rules

Strengthens compliance requirements for plans under MHPAEA, specifically related to NQTL's

Meaningful Benefit Requirement

Final Rule

- Plan MUST provide "meaningful benefits" in all 6 classifications in which "meaningful "M/S benefits are provided:
  - Emergency services
  - In-network inpatient
  - Out – of – Network inpatient
  - In-network outpatient
  - Out of network outpatient
  - Prescription drugs

Impact

- Ex: A plan that provides coverage for M/S "core treatments" for Opioid use disorder (OUD) in the outpatient/in-network and prescription drug classifications, it must also provide coverage MH/SUD outpatient/in-network (counseling & behavioral therapies) and prescription drug classification.

Prohibition of discriminatory factors & evidentiary standards

Final Rule

- Plan may not use discriminatory information, evidence, sources or standards that systemically disfavors MH/SUD

Impact

- Plans may not use outdated sources/evidence that discriminate against MH/SUD to inform policy & practice
- Plans may not ‘cherry pick” data over other, that supports their NQTL policy or it’s delivery.

Modify definitions of "key terms"

Final Rule

- M/S benefits, MH benefits and SUD benefits no longer incorporate state guidelines, but instead point plans to follow the most current version of the *International Statistical Classification of Diseases and Related Health Problems* (ICD) or the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).
- Redefined key terms used in performing comparative analysis:
  - Evidentiary standards
  - Factors (ex: processes & strategies)
  - Processes
  - Strategies

Impact

- Plans must use current diagnostic criteria, not state law, to determine definitions of MH/SUD and M/S diagnosis
  - Ex. If state law defines serious mental illness as "unable to care for oneself" but DMS/ICD defines it as "serious implications in life domains, including minimum of 3 out of the 5"…plan must use the latter.
  - Ex: Idaho Title 67, Chpt 57, section 61AL BH parity law

Monitoring for material differences in access

Final Rule

- Plans must collect and evaluate data to assess the impact of NQTL's on access to MH/SUD services & take reasonable action when they know or should know an NQTL may be causing 'material difference in access" to MH/SUD services, as compared to M/S benefits

Impact

- Relevant data may include:
  - # and % of claims denials
  - Network composition
  - Utilization rates (INN & OON)
  - Network adequacy metrics
  - Provider reimbursement rates
- If "material differences" exists, plans must take reasonable action. Example Re "improve network composition":
  - Strengthening efforts to recruit providers
  - Expand telehealth availability
  - Provide assistance to members to find providers
  - Ensure provider directors are accurate.

Comparative Analysis requirement

Final Rule

- Plans must conduct regular comparative analysis of the design and application of NQTL's, that includes details on the following 6 required elements:
  - A description of the NQTL with a listing of the benefits subject to it.
  - ID of factors and evidentiary standards used to design or apply NQTL
  - A description of how the factors are used
  - Demonstration of comparability and stringency, as written
  - Demonstration of comparability and stringency, in operation (including required data, evaluation of data, explanation of material differences in access and description of reasonable actions taken to address differences
  - Findings and conclusions
- **make copies available to plan participants (or relevant state or federal authorities, upon request)

Impact

- The processes, strategies, evidentiary standards and other factors used in designing & applying NQTL's to MH/SUD benefits in a class are comparable to and applied no more stringently than those used in designing and applying NQTL's for M/S benefits with the same class.

Enforcement

- Includes a fast-paced comparative analysis request and review process plans must utilize to ensure compliance
- Plans must be prepared to provide copies of the analysis to both the Department of Labor (DOL) and plan participants. DOL may request a copy and plans must furnish within 10 days.
- If plan continues to be out of compliance and additional 45 calendar days are provided for the plan to issue corrections and provide revised analysis.
- If still out of compliance, DOL may issue a final determination of non-compliance
  - DOL may direct plan to cease use of non-qualitative treatment limit (NQTL)
  - Plan must distribute this notice with 7 days to all beneficiaries and participants.
- Plan participants & Beneficiaries may request a copy of the plans analysis after receiving an adverse benefit determination relating to MH/SUD benefits or at any time under Employee Retirement Income Security Act (ERISA).
- Any applicable state authority may request a copy of the analysis.

Dates, dates dates

- Final Rule goes into effect 1/1/25. EXCEPT:

  Prohibition of discriminatory factors – delayed to 1/1/26 to allow plans more time to comply

Kennedy Forum – on Parity rights

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Resources

- To find out if your health plan is subject to MHPEA you can contact your employers plan administrator
- Department of Labor
  - askebsa.dol.gov or 1-866-444-3272
- The Kennedy Forum: the kennedyforum.org
- Paritytrack.org
- Idaho Parity Resources
- American Psychiatric Association
- US Department of Labor, employee benefits, security administration

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