

LAW & POLICY GROUP | [GRIST](#)

2019 OUTLOOK FOR BEHAVIORAL HEALTH BENEFITS

By Mercer's Kaye Pestaina and Catherine Stamm

Feb. 6, 2019

Mental health parity compliance and access to treatments for substance use disorders will remain on employers' health benefit agendas in 2019.

PARITY COMPLIANCE

Look for agencies to finalize last year's wide-ranging [draft FAQs](#) on nonquantitative treatment limitations (NQTLs) under the Mental Health Parity and Addiction Equity Act (MHPAEA). The FAQs address how the NQTL rules apply to network adequacy, autism benefits, coverage of out-of-network residential treatment centers and other compliance topics. Both the FAQs and a draft [participant disclosure form](#) generated a number of [comments](#). Some stakeholders asked for more examples of compliant NQTLs and information on assessing parity for NQTLs that rely on clinical discretion and individualized coverage decisions.

Staying on top of parity compliance can help reduce litigation risks. Employers and carriers face increasing lawsuits over denial of behavioral health benefits or alleged violations of the parity or ERISA fiduciary rules. Many cases concern exclusions and treatment limits for services like applied behavioral analysis therapy for autism, residential substance use disorder treatment and wilderness therapy. Some challenges have been dismissed, while others are at their early stages. Court opinions clarifying how the parity law applies to these services can guide employers' compliance going forward. However, the impact of any parity rulings could differ from state to state, depending on which federal circuit issues a particular opinion.

OPIATE CRISIS

Congress last year passed the SUPPORT for Patients and Communities Act ([PL 115-271](#)), a broad law designed to combat the opiate crisis. While the law has no direct impact on employer-sponsored plans, the large investment in broadening access to care will add more substance use disorder providers over time. For example, the law expands the numbers and types of providers that can give medication-assisted treatment for opiate addiction. This change is likely to improve network adequacy for employer plans.

The SUPPORT Act also allows Medicare and Medicaid programs to reimburse opiate treatment provided through telemedicine. If providers respond by adopting telemedicine, this could spill over to the private sector since providers could extend those services to patients covered by employer-sponsored plans.

ACTION STEPS

Although agencies have issued a fair amount of MHPAEA guidance in recent years, many questions about current legal risks under the parity law remain unanswered. Employers need to monitor the medical efficacy of new and existing treatments before deciding what to cover, whether and how to limit existing

treatments, and how to communicate these limits to participants. If agency guidance does not answer specific parity questions, tracking litigation may help employers make design and compliance decisions.

While coverage and parity determinations are tough decisions for plan sponsors, carriers and third-party administrators, documentation of the decision-making process is a critical element that agencies examine in parity audits. Employers should review the Department of Labor's updated [assessment tool](#) for analyzing whether an NQTL on mental health or substance use treatment violates the parity rules. This tool sets out a four-step framework that agency auditors will want to confirm employers have completed to ensure parity compliance. Employers may want to engage in this four-step review with clinical and legal experts. This analysis may also help employers figure out how to respond to requests for NQTL disclosures.

As the opiate crisis continues, employers should make sure current plan communications (plan documents, summary plan descriptions and other materials) inform participants how they can access substance use disorder treatments and what limits apply to the covered treatments. For employers, this is just one part of a broader strategy for addressing opiate use and its impact in the workplace.

RELATED RESOURCES

Non-Mercer Resources

- [PL 115-271, SUPPORT for Patients and Communities Act](#) (Congress, Oct. 24, 2018)
- [Self-Assessment for the Mental Health Parity and Addiction Equity Act](#) (DOL, April 25, 2018)
- [Proposed FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act](#) (DOL/HHS/IRS, April 23, 2018)
- [Draft MHPAEA Disclosure Template](#) (CMS/DOL, April 23, 2018)

Related Mercer Content

- [Opioids Claim More Lives than Car Crashes: What Employers Can Do](#) (Jan. 16, 2019)
- [Opioid Bill Heads to President; Includes Rx Reporting Requirement](#) (Oct. 4, 2018)
- [Mental Health and Opioids in Health Policy Spotlight](#) (April 26, 2018)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.