

## American Psychiatric Association Post-Final Rule Talking Points

### Detailed Messages

**On Friday, Nov. 8, the Obama Administration issued the final rules for the Mental Health Parity and Addiction Equity Act of 2008.**

- The Final Rule, issued jointly by the Departments of Treasury, Labor and Health and Human Services, clarifies key issues and areas of the Interim Final Rule of the Parity Law.
- The Parity Law mandates that employer-based health plans that provide coverage for mental and substance use disorders must provide benefits similar to those provided for medical/surgical conditions. It does not require employers to cover mental or substance use disorders; it only requires those that do to provide benefits on par with medical/surgical benefits.
- The Affordable Care Act builds on this legislation and, in 2014, will require all new plans, including individual and small group plans, as well as those offered on the Health Insurance Marketplace, to offer coverage for mental health and substance use disorders at parity as a core benefit.
- The Final Rule takes effect for plan years beginning on or after July 1, 2014. In practice, the bulk of plan years end on December 31. Therefore, the effective date for most insured will be January 1, 2015.
- The Final Rule applies to the individual market for both grandfathered and non-grandfathered plans for the plan year beginning on or after July 1, 2014. Local and state self-funded plans may continue to apply to CMS for an exemption from MHPAEA's requirements.

**Since the Interim Final Rule was established in 2009, APA has focused on four core areas in which some insurance providers have acted improperly.**

1. Scope of services: The rule clarifies that intermediate care was never intended to be excluded. Plans or issuers that include intermediate levels of services for medical/surgical conditions should provide mental health and substance use intermediate services at the same level.
2. Non-quantitative treatment limits (NQTL): The Final Rule confirms that provider reimbursement rates are a form of NQTL. Methodologies used to determine rates must be comparable between medical/surgical and mental health/substance use disorders. Limiting factors cannot be more stringently applied to mental health professionals.
3. Disclosure and transparency: The criteria for medical necessity determinations and the reason for denials of coverage or reimbursement must be made available upon request. The Department of Labor has asked for guidance on how to ensure compliance with the Parity Law Through health plan transparency, including information about what other disclosure requirements would provide more transparency to participants, beneficiaries, enrollees, and providers.
4. Parity in Medicaid Managed Care, CHIP and Alternative Benefit Plans: The Parity Law does not apply to Medicaid plans, but HHS has promised to issue guidance in the near future. The Parity Implementation Coalition, on APA's behalf, will be requesting that this additional Medicaid guidance be issued within 180 days.

### **1. Scope of Service**

The Final Rule clarified the scope of service issue by stating:

1. The six-classifications of benefit schemes (inpatient in and out-of-network, outpatient in and out-of-network, emergency care, and prescription drugs) were never intended to exclude intermediate levels of care (intensive outpatient, partial hospitalization, residential care).
2. Although neither the Interim Final Rule (IFR) nor Final Rule mandate specific services required to be offered by plans under the six-classification scheme, the Final Rule clarifies that plans

must assign intermediate services in the mental health/substance use area to the same classification as plans or issuers assigned intermediate levels of services for medical/surgical conditions.

## **2. Non-Quantitative Treatment Limitations (NQTs)**

- The Final Rule confirms that provider reimbursement rates are a form of NQTL. The preamble clarifies that plans and issuers can look at an array of factors in determining provider payment rates such as service type, geographic market, demand for services, supply of providers, provider practice size, Medicare rates, training, experience, and licensure of providers. The Final Rule reconfirms that these factors must be applied comparably and no more stringently on mental health/substance use disorders providers.
- The Final Rule strikes the provision included in the IFR that permitted plans to apply discriminatory limits on mental health/substance use disorders (MH/SUD) treatment if there was a “clinically recognized standard of care that permitted a difference.”
- Under the Final Rule, parity requirements for NQTs are expanded to include restrictions on geographic location, facility type, provider specialty and other criteria that limit the scope or duration of benefits for services (including access to intermediate levels of care). The net effect of this is that plans will no longer be able to require a patient to go to an MH/SUD facility in their own state if the plan allows plan members to go out of state for other medical services.
- The Final Rule does not include a new quantitative floor or formula on how plans may apply NQTs to MH/SUD.
- The improvement in the Final Rule is that plan participants or those acting on their behalf will now be able to request a copy of all relevant documents used by the health plan to determine whether a claim is paid (see disclosure section for more detail on what documents may be requested. Current or potential enrollees may request this information and plans are required to provide it within 30 days).

## **3. Disclosure and Transparency**

- The Parity Law requires that the criteria for medical necessity determinations be made available to any current or potential enrollee or contracting provider upon request. The Parity Law also requires that the reason for the denial of coverage or reimbursement must be made available upon request. New disclosure requirements in the Final Rule will require plans to provide written documentation within 30 days of how their processes, strategies, evidentiary standards, and other factors used to apply an NQTL were imposed on both medical/surgical and MH/SUD benefits.
- Under the Final Rule, regulations under the ACA and FAQs issued by the Department of Labor, plans and issuers must provide the claimant, free of charge, during the appeals process, with any new additional evidence considered, relied upon or generated by the plan or issuers in connection with a claim.
- In the FAQs released with the Final Rule, the Department of Labor requested comments on “what additional steps, consistent with the statute, should be taken to ensure compliance with the Parity Law through health plan transparency, including what other disclosure requirements would provide more transparency to participants, beneficiaries, enrollees, and providers, especially with respect to individual market insurance, non-Federal governmental plans, and church plans.” Comments are due by January 8, 2014 to [E-OHPSCA-FAQ.ebsa@dol.gov](mailto:E-OHPSCA-FAQ.ebsa@dol.gov).

## **4. Medicaid Managed Care, CHIP and Alternative Benefit Plans**

- Even though the Final Rule states that the Parity Law applies to Medicaid Managed Care Organizations, Children’s Health Insurance Program (CHIP) or Alternative Benefit Plans (i.e. Medicaid Expansion Plans under the ACA), the Final Rule itself does not apply.

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- The January 2013 CMS State Health Official Letter will continue to govern implementation of Medicaid managed care parity. The Final Rule notes that more guidance on this will be forthcoming. The Parity Implementation Coalition, on APA's behalf, will be requesting that this additional Medicaid guidance be issued within 180 days.

**The Final Rule is a critical first step toward eliminating barriers to care that people with mental and substance use disorders have typically faced. APA will continue to analyze the Final Rule to fully understand its complexities.**

- In the coming weeks, APA will be convening the mental health community to coalesce under a common agenda and goal.

**Only with vigorous enforcement of the law and oversight of insurance providers' practices will the promise of mental health parity be fully realized. APA will remain vigilant and continue working toward full equity for people with mental illness.**

- The Final Rule clarifies that states have a significant role to play in the enforcement of parity. As such, states will be the primary entities enforcing implementation of the Parity Law.
  - o Self-funded plans– Department of Labor
  - o Insured plans including exchange plans– primary jurisdiction is state, if state does not act or does not have authority to act Centers for Medicare and Medicaid Services can step in.
  - o Non-federal governmental plans – Centers for Medicare and Medicaid Services
- APA encourages and will help states to become familiar with the Parity Law.