CMS Releases Proposed Rule on Mental Health Parity for Medicaid and CHIP

On April 6, 2015, the Center for Medicare and Medicaid Services (CMS) released a proposed rule to implement the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) for Medicaid managed care, Children’s Health Insurance Program (CHIP), and Medicaid alternative benefit plans (ABP). This complements the 2013 final rule which provided guidance on implementing MHPAEA for commercial health insurance plans.

The MHPAEA of 2008 requires group health plans to ensure that financial requirements (e.g., copays, deductibles), and treatment limitations (e.g., visit limits), that are applied to mental health and substance use disorder benefits are not more restrictive than those for medical or surgical benefits. The Affordable Care Act (ACA) amended the MHPAEA to also apply to individual health plans in 2010. This proposed rule would apply these same requirements to Medicaid managed care plans, Medicaid alternative benefit plans, and CHIP plans, ensuring that mental health services are provided to everyone at parity with medical and surgical services, regardless of whether they obtain insurance through the private market or via a public plan. Medicaid fee-for-service (FFS) plans are not included in the proposed rule, but the rule encourages states to apply mental health parity requirements in their FFS programs.

States would be required to make their methods of complying with this mental health parity rule public within 18 months of a final rule being published.

Medicaid Managed Care Organizations

In some states Medicaid services provided through a managed care organization (MCO) carve out mental health services and provide them through other arrangements such as a prepaid inpatient health plan (PIHP) or a prepaid ambulatory health plan (PAHP). In these instances, states would be required to provide mental health and substance use disorder services in a manner which would put them in compliance with MHPAEA. MCO contracts can be modified by the state to ensure MHPAEA requirements are met or the MCO can perform a parity analysis.

The proposed rule would also require that plans make criteria for medical necessity determinations in regard to mental health and substance use disorder benefits available to the public upon request. Enrollees would be made aware of the reason for any denial of payment for services.

Medicaid Alternate Benefit Plans (ABPs)

Generally, Medicaid ABPs mainly apply to adults in the Medicaid expansion population. Under the proposed rule, Medicaid ABPs would be required to apply parity with the same requirements as Medicaid MCOs. States that deliver ABP services through a non-Medicaid managed care organization would be required to comply with the same requirements as if such services were delivered through a Medicaid MCO.

Medicaid ABPs would also have to make criteria for medical necessity determinations available to the public and make enrollees aware of any reason for denial of benefits.

Children’s Health Insurance Program

Under the proposed rule, all CHIP programs, both managed care and FFS, are required to comply with parity standards. A state CHIP program that provides benefits through an expansion of Medicaid and offers full coverage of Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services would be considered to be in compliance with the requirements in
the proposed rule. In instances where a state does not provide full EPSDT coverage, the proposed rule applies in the same way MHPAEA applies to private individual and group plans.

The requirements of making medical necessity determinations and reasons for denial of benefits that apply to Medicaid MCOs and ABPs would not apply to CHIP plans, as CHIP enrollees currently have an opportunity for external review of denials.

Chapter Guidance

Currently 1 in 5 children suffer from a diagnosable mental health disorder, but only 21% of these children actually receive necessary treatment. Research also shows that half of all lifetime cases of mental illness begin before age 14. It is vitally important that children in CHIP and Medicaid have access to mental health services so that they can be healthy and productive adults.

The proposed rule is currently open for comments until June 9, 2015. Once the rule is finalized, states will have 18 months to bring their Medicaid MCO, ABP, and CHIP plans in compliance with the MHPAEA.

AAP chapters are encouraged to work with their state Medicaid programs to monitor efforts to ensure that Medicaid MCOs and CHIP plans are in compliance with MHPAEA so children have access to the mental health services they require. The Division of State Government Affairs will continue to assess this issue and keep chapters informed.

There are specific issues related to mental health and substance use disorder parity that chapters may want to monitor. These include ensuring there is an adequate network of pediatricians and other nonphysician clinicians who are able to provide needed mental health services as well as guaranteeing that children who may churn between health plans have continuity of care and are receiving necessary services and medication.

Those with questions or seeking targeted consultation on this or any other state ACA implementation issue are encouraged to contact Wendy Chill at 847-434-7797 or wchill@aap.org or Dan Walter at 847-434-4086 or dwalter@aap.org.

The Division of State Government Affairs sends this update to the AAP Executive Committee, District Chairpersons, District Vice Chairpersons, Chapter Presidents, Chapter Vice Presidents, Executive Directors, State Government Affairs Contacts, and other key AAP leaders, members, and staff.