Enforcement of Mental Health Parity Laws

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Importance of MH Parity

- Clinical Need
  - U.S. incidence of any DSM mental illness is 18%
  - NY: only 40% of population with mental illness receive treatment
  - NY: 11% of population has SUD; only 11% of that group gets treatment (compare to 70% of diabetes/ hypertension population getting treatment)
  - 60% of Americans who do not receive MH treatment cite insurance and cost
  - Consequences: lost wages, medical expenses, death

Need for Enforcement in NY

- Hundreds of consumer complaints regarding lack of coverage of MH/SUD treatment filed over last several years with Health Care Helpline of NY AG's office
- Little enforcement of parity laws at state and federal levels pre-2013
- Limitations faced by individuals
  - ERISA (only contract damages, preemption)
  - Difficulties in conducting parity analysis without access to data

Federal Parity Act (2008)

- If large plan covers MH/SUD, may not be more restrictive than medical/surgical with respect to:
  - Financial requirements (*e.g.*, co-pays)
  - Treatment limitations (*e.g.*, visit limits, limits on scope)
  - Medical necessity review ("NQTLs")
- Affordable Care Act impact:
  - EHB regulations mandate coverage of BH by most small group and individual plans (2014)
  - Parity applies to most small & individual plans (2014)
  - Continue coverage pending outcome of internal appeals
- Final Rule 2013 (largely same as IFR but splash)

Timothy's Law (NY, 2006)

- Requires group health plans to provide "broad-based" coverage for mental illness "at least equal to" that provided for medical/surgical conditions (including co-pays and UR)
- Works in concert with Federal Parity Act: Timothy's Law mandates coverage of mental health treatment, while federal law requires parity if plan covers mental health/substance abuse
- Not preempted by Federal Parity Act

Enforcement of Parity Laws

- Federal Parity Act
  - ERISA private enforcement mechanism
  - USDOL/EBSA: employee benefit plans
  - HHS: non-federal governmental plans
  - States: primary enforcement authority over health insurance issuers (Public Health Service Act, 42 U.S.C. § 300gg-22)
- Timothy's Law
  - Powers of NY AG under N.Y. Exec. Law § 63(12)
  - Private right of action?

Parity Issues

1. **Utilization review**
2. **Exclusions/Limitations**
3. **Unequal co-payments**

1. Utilization Review

- Short window of opportunity for patients
- More frequent, stringent review for BH
- Very high denial rates for more intensive BH care (50% for SUD rehab vs. >20% for IP medical/surgical)
- "Fail first"
- Algorithms/thresholds for intensive review of outpatient lack basis
- BH adverse determination decisions/letters lack specificity regarding clinical rationale for denial, facts of case, criteria used

1. Utilization Review

- Criteria applied incorrectly (*e.g.*, detox criteria for rehab, dangerousness standard for residential)
- Lack of full and fair review: no consultation with treating physician, consideration of medical evidence
- Lack of clarity regarding some definitions (*e.g.*, "custodial")

2. Exclusions/Limitations

- Residential treatment (network adequacy)
- Visit/day limits (intensive UR has supplanted)
- Experimental exclusions (*e.g.*, TMS, neurofeedback): how much evidence is needed?
- Diagnoses (*e.g.*, gender identity disorders)

3. Cost-Sharing

- State law may require equal copays, can't just define BH as "specialist care" when it's primary for BH treatment.
- Federal Parity Act formula limitations -- shifts costs to consumer for less-expensive care
- Reduced reimbursement for non-M.D. BH visits not consistent with UCR/FAIR Health

NY Enforcement of Parity Laws

- Settlements with:
  - Cigna (nutritional counseling)
  - MVP Health Care (broad)
  - EmblemHealth (broad)
- Reforms:
  1. Utilization review
  2. Exclusions/limitations
  3. Unequal co-payments