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General Comment

See attached file(s)

Attachments

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The National Behavioral Consortium Response to IFR for Federal Parity

April 14, 2010

The National Behavioral Consortium (NBC) is a 501 (c) (6) trade association which is comprised of MBHO and EAP Member organizations.

NBC was established in 1998. Collectively, the NBC Member companies provide services to approximately 37 million enrollees and have approximately 30,000 providers in their combined EAP / MBHO networks.

Diminished role of medical management in behavioral health

While the federal legislation and Interim Final Regulations (IFR) support continued medical management for mental health and substance use disorders (MHSUD), the inclusion of non-quantitative limitations for establishing parity clearly diminishes the effectiveness of medical management for MHSUD.

On page 5425 of the IFR it states: "Similarly, the Departments expect medical management and managed care techniques will help control any major cost impact resulting from MHPAEA and these regulations. As discussed earlier in this preamble, these regulations provide that medical management can be applied to mental health and substance use disorder benefits by plans as long as any processes, strategies, evidentiary standards, or other factors used in applying medical management are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying medical management to medical/surgical benefits."

Rather than encourage medical management and managed care techniques for medical/surgical benefits, NBC is concerned that the IFR will discourage the use of medical management and managed care techniques for mental health/substance use disorder benefits.

MHSUD services are not directly comparable to medical services. Unlike medical conditions, which have clear symptoms and protocols for treatment, MHSUD conditions vary considerably from individual to individual and over time within an individual and the treatment approaches must of necessity vary considerably. Evidenced based medicine for MHSUD remains controversial. Many MHSUD providers resist "diagnostic labeling" and "standard treatment protocols" and will advocate for treatment interventions based upon their training (e.g., psychoanalytic versus cognitive behavioral). The "no more stringent" language will legally challenge behavioral health management companies. Consumers and providers will advocate for comparison with the least restricted medical management processes.

Historically, MHSUD medical management has used a step approach to authorization advocating that a member try the least restrictive approach first. The IFR specifically prohibits "step therapy protocols." The concern is that consumers and providers will advocate for the most expensive treatment (residential care) even when evidence does not support this treatment as being more effective.

MHSUD levels of care do not fall into the distinct categories of Outpatient, Inpatient, Emergency Room, and Prescription Coverage. Most MHSUD programs also include Intensive Outpatient, Day Treatment, and Residential Treatment Coverage. Without clear classifications for parity coverage, consumers and providers will challenge any exclusion of these levels of care and also advocate for additional levels of care, such as community-based programs historically not covered by insurance.

NBC has concerns that the diminished role of medical management for MHSUD will result in increased costs related to

- Legal challenges related to “no more stringent”
- Inability to appropriately manage outpatient care, which is typically not managed under the medical benefit
- Inability to start with the least restrictive level of care
- Consumer expectations of “unlimited coverage”

Standards for Provider Admission to Network, Including Reimbursement Rate

A single MBHO may contract with multiple health plans. Typically the MBHO will establish a fee structure for its network based upon licensure and region. Regardless of the health plan, the IFR appears to require the MBHO network provider rate schedule to be the same across license types and regions.

There is a substantial administrative and financial burden imposed by the IFR when requiring that the MHSUD provider rate schedules are comparable in design to the medical providers. In order to be compliant, the MBHO would have to evaluate all of their health plan reimbursement designs and then choose the “least restrictive” design for their network. The other option would be to have multiple rate schedules for each health plan, which requires contract revisions and technology updates.

Impact of Quantitative Limitations

The quantitative limitation requiring a single group health plan impacts carve-out independent managed behavioral health organizations. As noted in the IFR MBHO’s have established expertise in MHSUD and this expertise has resulted in cost savings.

Large employer groups have accessed this expertise by offering a mental health benefit separate from the medical/surgical benefit. The burden for employers to determine “substantially all” and “predominant” for a “single group plan” may result in elimination of the carve-out MBHO.

MBHOs using good faith judgment interpreted the initial legislation as allowing separate but equal deductibles. As a result, they did not address the cost implications of a single deductible during the initial comment period. The costs related to transition to a single deductible are significantly underestimated in the IFR. Even if the cost of $.60 per member were correct, for a small MBHO with 100,000 members, the cost is $60,000, the equivalent to one FTE. Additionally MBHOs typically work with multiple health plans, each plan offering multiple benefit types and in some cases, multiple claims adjudication systems. Establishing the technology for efficient data exchanges will require time and resources. The July 1, 2010 compliance date is not realistic and consideration should be given to waiving requirement until final regulations are published.

NBC appreciates the opportunity to respond to the IFR.