



Center for Medicaid and State Operations

SHO 09-014
CHIPRA #9

November 4, 2009

Dear State Health Official:

The purpose of this letter is to provide general guidance on implementation of section 502 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, which imposes mental health and substance use disorder parity requirements on all Children's Health Insurance Program (CHIP) State plans under title XXI of the Social Security Act (the Act). This letter also provides preliminary guidance to the extent that mental health and substance use disorder parity requirements apply to State Medicaid programs under title XIX of the Act.

Statutory Basis for CHIPRA Parity Requirement

Section 502 of CHIPRA amended section 2103(c) of the Act to incorporate, by reference, provisions added to section 2705 of the Public Health Service (PHS) Act by the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), Public Law 110-343. Prior to MHPAEA, the PHS Act required parity in annual or lifetime dollar limits between mental health and medical/surgical benefits (as a result of the Mental Health Parity Act of 1996). MHPAEA expanded the application of the existing mental health parity requirements in section 2705 to substance use disorder benefits, and added new requirements such as:

- Financial requirements (e.g., co-payments) that are applied to mental health or substance use disorder benefits must be no more restrictive than the predominant financial requirements that are applied to substantially all medical/surgical benefits.
- Treatment limitations (e.g., numbers of visits or days of coverage) that are applied to mental health or substance use disorder benefits must be no more restrictive than the predominant treatment limitations that are applied to substantially all medical/surgical benefits.
- No separate financial requirements or treatment limitations can apply only to mental health or substance use disorder benefits.
- When out-of-network coverage is available for medical/surgical benefits, it also must be available for mental health or substance use disorder benefits.

The MHPAEA was enacted on October 3, 2008, and will be effective for group health plans for plan years beginning after October 3, 2009. The Departments of Health and Human Services (HHS), Labor and the Treasury will jointly publish regulations on the application of MHPAEA to group health plans.

Application to Medicaid

The MHPAEA requirements apply to Medicaid only insofar as a State's Medicaid agency contracts with one or more managed care organizations (MCOs) or Prepaid Inpatient Health Plans (PIHPs), to provide medical/surgical benefits as well as mental health or substance use disorder benefits. In this case, those MCOs or PIHPs must meet the parity requirements of MHPAEA, as incorporated by reference in title XIX of the Act, for contract years beginning after October 3, 2009. MHPAEA parity requirements do not apply to the Medicaid State plan if a State does not use MCOs or PIHPs to provide these benefits.

Application to CHIP

The application of MHPAEA to CHIP is somewhat broader. Section 2103(c)(6) of the Act applies the MHPAEA requirements to the entire "State child health plan" including, but not limited to, any MCOs that contract with the State CHIP program. Specifically, section 502 of CHIPRA requires that State child health plans comply with the requirements of section 2705(a) of the PHS Act "in the same manner" as such requirements apply to a group health plan. Therefore, if a CHIP State plan provides both medical/surgical benefits and mental health or substance use disorder benefits, any treatment limitations, lifetime or annual dollar limits or out-of-pocket costs for both types of benefits must comply with the provisions added to the PHS Act by MHPAEA. Section 502 of CHIPRA also specifies that State CHIP plans are deemed to satisfy the mental health and substance use disorder parity requirements if they provide coverage of Early and Periodic, Screening, Diagnostic and Treatment (EPSDT) benefits (as defined under title XIX of the Act). This requirement was effective as of April 1, 2009.

Implementation of MHPAEA Requirements

States will need to begin to assess their own compliance with the MHPAEA parity requirements prior to the issuance of MHPAEA regulations. For States that use MCOs or PIHPs to provide Medicaid benefits, a review of current contract language with the plans should occur before the next contract year begins to ensure that MHPAEA parity requirements are in place.

Similarly, each State will need to review its CHIP plan to determine if the CHIP State plan imposes more restrictive requirements on mental health or substance use disorder benefits than on medical/surgical benefits. As noted above, any State that either operates its CHIP program as an expansion of its Medicaid program, or which provides coverage of EPSDT benefits as defined under title XIX of the Act in its separate or combination CHIP program, already will be in compliance with these mental health and substance use disorder parity requirements.

Until the MHPAEA regulations are issued or other guidance is provided, States will not have detailed information regarding how specific provisions in MHPAEA will be interpreted. However, section 3(d)(2) of CHIPRA provides that Federal financial participation in both CHIP and Medicaid shall not be denied if States make a good faith effort to comply with the requirements prior to the issuance of any regulations or guidance implementing the provisions in question. Examples of what might be considered a good faith effort could include States providing an assurance in their CHIP State plan that there is no significant difference in cost

sharing, lifetime or annual dollar limits, or treatment limits (e.g. the number of inpatient days) between mental health/substance use disorder benefits and medical/surgical benefits.

In addition, section 3(b) of CHIPRA addresses the situation in which States need to pass legislation in order to bring their CHIP plans into compliance. In that case, a State will not be found to be in violation of the statutory requirements before its next legislative session, as long as it notifies the Secretary of HHS, and she concurs that legislation is needed. If your State requires such legislation, please submit a letter to the Center for Medicaid and State Operations to that effect as soon as possible. The letter should include the provision in question, the reason that State legislation is required for compliance, and the date the State will begin implementing the provision. For States with annual legislative sessions, this date must be no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after February 4, 2009 (the date CHIPRA was enacted). For States that have a 2-year legislative session, each year of the session is considered a separate regular session for this purpose.

Additional policy guidance will be provided on this issue after the MHPAEA regulation is published. However, in the meantime, we encourage all States to begin a dialogue with their Centers for Medicare & Medicaid Services regional office concerning their timeline for complying with these parity requirements.

If you have any questions on the information provided in this letter, please send an email to CMSOCHIPRAQuestions@cms.hhs.gov or contact Ms. Maria Reed, Deputy Director, Family and Children's Health Programs Group, at 410-786-5647.

Sincerely,

/s/

Cindy Mann
Director

cc:

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