



October 17, 2023

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653, U.S. Department of Labor
200 Constitution Avenue NW,
Washington, DC 20210

Attention: 1210-AC11

Requirements Related to the Mental Health Parity and Addiction Equity Act

The American Academy of PAs (AAPA), on behalf of more than 168,300 PAs (physician assistants/associates) throughout the United States, appreciated the opportunity to provide comments on the requirements related to the Mental Health Parity and Addiction Equality Act (MHPAEA) proposed rules.

AAPA applauds the Departments of Labor, Treasury, and Health and Human Services efforts to strengthen existing mental health parity laws in an effort to ensure equal access and the ability to appropriately utilize mental health and substance use disorder benefits as compared to medical and surgical benefits. The rapidly growing demand for mental health and substance use disorder treatment has been met by a myriad of challenges and barriers to timely access to care. PAs are playing an integral role in addressing these challenges by increasing patient access to these services, particularly in rural and underserved communities. While great strides have been made in recent years eliminating barriers to PA practice with regard to medical and surgical services, that success has not been translated to mental health and substance use disorder despite existing parity laws. As PAs play an increasingly vital role in the health care system, the removal of unnecessary restrictions and barriers to practice is of the utmost importance in addressing the mental health and substance use disorder crisis. It is within this context that we draw your attention to our comments.

Material Difference Standard

AAPA supports the proposed rules to require that plans and issuers address material differences in access to mental health and substance use disorder benefits as compared to medical/surgical benefits through the collection and evaluation of outcomes data. As the Departments note in the proposed rules, payers must ensure that the design and implementation of nonquantitative treatment limitations (NQTLS) applied to mental health and substance use disorder benefits do not place a greater burden to access as compared to medical/surgical benefits. These NQTLS include, but are not limited to, network composition standards, prior authorization and medical management standards, and factors used to determine out-of-network reimbursement rates. As each of these standards represent unique challenges to the goal of mental health parity, AAPA offers comments on each NQTL.

Network Composition Standards

To achieve the level of parity for mental health and substance use disorder benefits as is required by the MHPAEA, payers must demonstrate that their networks contain an adequate number of mental health and substance use disorder providers such that individuals can access and utilize these benefits in a way that is no more restrictive than

their access and ability to utilize medical/surgical benefits. This barrier presents a particularly difficult obstacle to overcome with the Medicare Payment and Advisory Committee's (MedPAC) June 2023 report on behavioral health services indicating that of the 29,000 total providers that have actively opted out of Medicare as of October 2022, behavioral health providers accounted for over 40 percent of that figure. The same report cites a study that shows behavioral health providers were among the least likely to be included in any Medicare Advantage network (Meyers et al. 2022). This lack of provider participation in behavioral health networks further exacerbates the existing provider shortage crisis the country currently faces.

As the demand for mental health and substance use disorder services has increased in recent years, PAs (and NPs) have seen a substantial increase in the number of these services provided. Despite their demonstrated ability and willingness to help address the rise in demand for these services, PAs are limited in their ability to provide mental health services in many instances due to payer policies that exclude coverage for mental health and substance use disorders when provided by PAs. These restrictions include payer requirements for behavioral health specialty designations, additional certifications, and the exclusion of PAs as qualified or covered providers within the policies of some payers. All of these restrictions create unnecessary burdens on the ability of PAs to deliver mental health services to the full extent of their license, education, and training. These unnecessary restrictions often result in PAs being unable to be credentialed by payers resulting in exclusion from participation in a payer's mental health network.

To reach the level of robust provider networks that meet the MHPAEA's parity requirements, AAPA urges the Departments to include in their proposed rules language that prevents payers from imposing these provider-specific restrictions that limit the ability of PAs to provide these needed services.

Prior Authorization and Medical Management Standards

The Departments' proposed rules include requirements that prior authorization and medical management standards for mental health and substance use disorder benefits be no more restrictive or burdensome than those for medical/surgical benefits. The use of overly restrictive prior authorization requirements and burdensome medical management standards for mental health and substance use disorder benefits as compared to those for medical/surgical benefits prevent individuals from accessing and utilizing mental health services in a timely manner.

PAs are currently able to initiate prior authorization requests, develop and implement treatment plans, modify treatment plans as necessary, and provide documentation supporting the need for ongoing care in medical/surgical settings, consistent with state law and their scope of practice.

AAPA supports the Departments efforts to ensure that prior authorization requirements and medical management standards for mental health and substance use disorder benefits not create an undue burden for patients to access needed services.

Reimbursement Rates

The proposed rules include requirements for data collection and analysis of provider reimbursement rates to identify any material differences in the way that rates are determined for mental health and substance use disorder benefits as compared to medical/surgical benefits. The departments cite reports that indicate reduced reimbursement rates for mental health and substance use disorder benefits lead to more mental health providers opting for out-of-network status. In particular, the proposed rules include examples in which providers, such as PAs and NPs, may receive reduced reimbursement rates for mental health and substance use disorder services which is not the case for medical/surgical services.

AAPA supports the Departments' proposed rules requiring payers to demonstrate through the collection and analysis of claims and payment data that the methodologies for determining reimbursement rates for mental health and substance use disorder benefits be no more restrictive or applied in a non-comparable manner than those for medical/surgical benefits. Specifically, AAPA supports provisions that prohibits payers from reducing reimbursement rates for mental health and substance use disorder based on a particular provider type.

Provider Shortages and Permitted Exemptions

The ongoing provider shortage in the United States presents a number of challenges to accessing health care services both within and outside of the context of these proposed rules. The consequences of the provider shortage are perhaps most deeply felt in rural and underserved communities with the shortage of mental health and substance use providers being of particular concern. The Departments acknowledge this reality and the challenges payers may face in attempting to meet the network adequacy standards laid out in the proposed rules. As such, the Departments seek comment on when and in what manner to allow payers any exemptions as a result of the lack of available providers in a geographic area.

To meet increased demand for behavioral and mental health services, qualified health professionals must be authorized to practice to the top of their license and training. As qualified providers of behavioral and mental health services, PAs can play an even more important role in increasing beneficiary access to needed care. PAs are trained and qualified to treat mental and behavioral health conditions through their medical education, including extensive didactic instruction and supervised clinical practice experience in psychiatry and other medical specialties. PAs are authorized to prescribe controlled and non-controlled medications. The data and research demonstrate that PAs deliver high-quality, evidence-based care and improve access to needed behavioral health services. Unfortunately, PAs are often unable to adequately practice to the top of their license and training in this specialty due to archaic payer policies that include unnecessary practice restrictions.

AAPA encourages the Departments and payers to recognize the role that PAs can play in mitigating the mental health provider shortage in areas that may otherwise qualify for exemptions from the proposed rules. AAPA suggests that payers be required to remove provider-specific restrictions to coverage from their policies as to allow more PAs to provide mental health and substance use disorder services, as allowed by state laws and regulations. Removing outdated language that may act as barriers to behavioral and mental healthcare will allow for greater utilization of the PAs that currently practice in behavioral health, as well as encourage a greater number of PAs to choose to practice in psychiatry and related specialties. The federal Medicare program provides an excellent regulatory coverage model that maximizes the utilization of PAs in mental health and substance use disorder treatment and has promulgated policies that fully authorize PA practice.

Commercial payers and state Medicaid programs should authorize payment for all mental health and substance use disorder services provided by PAs that are performed in compliance with state law. AAPA also suggests that payers be required to demonstrate their good faith attempt to include PAs in their mental health and substance use disorder networks prior to being granted any exceptions from the network adequacy requirements in the proposed rules.

Request for Information on Ways to Improve the Coverage of Mental Health and Substance use Disorder Benefits Through Other Consumer Protection Laws

According to the Public Health Service Act Section 2706(a), "A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or

certification under applicable State law.” Despite the clear intent of this language and multiple Congressional letters calling for a strong rule on this, the departments have not yet acted.

This provision is critical to patient access, choice, and competition within the healthcare marketplace and without an enforceable rule many PAs continue to face undue barriers to providing care based on discriminatory policies from payers. This is particularly true for patients in rural and underserved areas, where there is a significant need for mental health and substance use disorder services. As detailed previously, many payers maintain restrictive policies that do not recognize or reimburse PAs providing these services, further limiting access in those areas of the country most affected by the ongoing provider shortage.

AAPA strongly urges the Departments to adopt a strong, enforceable, provider nondiscrimination rule as directed by Congress that further protects and ensures patient access to medically necessary care.

Thank you for the opportunity to provide comments regarding increasing access to and ensuring parity for mental health and substance use disorder benefits. AAPA welcomes further discussion with the Departments regarding this important issue. For any questions you may have please do not hesitate to contact me at michael@aapa.org.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Powe". The signature is written in a cursive style and is centered within a light gray rectangular box.

Michael L. Powe, Vice President
Reimbursement and Professional Advocacy