Ongoing Challenges in Parity Implementation

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Parity Overview

- Timothy's Law – New York's mental health mandate
- New York Insurance Law – mandate regarding coverage of substance use disorder benefits
- Federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)

Timothy's Law

- Went into effect in 2007
- Applies only to group (not individual) health plans
- All employers must provide coverage for 30 inpatient days and 20 outpatient days for essentially all mental health diagnoses
- Large employers **only** (50+ employees) must also provide FULL coverage for biologically based illnesses --schizophrenia, psychotic disorders, major depression, bipolar disorder, delusional disorder, panic disorder, obsessive compulsive disorder and bulimia/anorexia

New York Insurance Law § 4303(k) and (l)

- Group health plans must provide a minimum of 60 days of outpatient visits for chemical abuse and chemical dependence
- No inpatient mandate

MHPAEA

- Applies to all new plan years on or after July 1, 2010
- Financial requirements and treatment limitations imposed on mental health and substance use disorder (MH/SUD) benefits must be no more restrictive than financial requirements and treatment limitations imposed on medical and surgical benefits.
  - Financial requirements – copayments, coinsurance, deductibles, out-of-pocket maximums. Separate deductibles for MH/SUD benefits are prohibited, even if the amount of the deductible is the same.
  - Quantitative Treatment Limitations (QTLs) – limits on number of inpatient days or outpatient visits
  - Nonquantitative Treatment Limitations (NQTLs)

NQTLs

- All other types of limits on the scope or duration of treatment
  - Network adequacy
  - Medical necessity criteria
  - Preauthorization requirements
  - Standards for provider admission to participate in-network
  - Provider reimbursement rates
  - Determination of usual and customary rates
- Special test for NQTLs – NQTLs imposed upon MH/SUD benefits must be comparable to and applied no more stringently than NQTLs imposed upon all other benefits
- One exception: plans may apply NQTLs for MH/SUD differently if recognized clinically appropriate standards of care permit a difference in coverage

Who must comply with MHPAEA?

- Insurance offered in connection with a large group health plan
  - 50+ employees
  - e.g., employer hires a carrier to administer its employee health plan and make benefit determinations and the carrier makes the benefit payments
- Self-insured large employer plans
  - 50+ employees
  - e.g., IBM hires a carrier to administer its employee health plan and make benefit determinations, but IBM makes the benefit payments itself
- ACA exchange plans
- Individual plans
- Medicaid managed care plans and Children's Health Insurance Program plans – effective May 29, 2016

Intersection of Federal Law and New York Law

- When combined with Timothy's Law and Insurance Law § 4303(k) and (l), the federal law creates full parity in New York State
  - Timothy's Law 30/20 minimum (which applies to virtually all MH diagnoses) expanded into full coverage, commensurate with med/surg coverage
  - NYS 60 day outpatient benefit expanded into a full outpatient **and** inpatient benefit, with no visit or day limits
    - How? If a plan offers inpatient benefits on med/surg side, must also provide inpatient benefits on MH/SUD side

What does this mean practically?

- If plan covers unlimited visits to a primary care provider, must cover unlimited visits to mental health practitioner
- If plan covers a certain number of inpatient days for med/surg, must offer same number of covered inpatient days for MH/SUD
- Disparate copays or coinsurance amounts for MH/SUD will be eliminated
- No separate deductibles for MH/SUD, even if deductibles are of equal amount

NYSPA et al vs. United Healthcare

- A few years ago, NYSPA joined a class action suit to raise parity law claims on behalf of our members and their patients
- UHC filed a motion to dismiss which was granted, even though the judge acknowledged that NYSPA had made a colorable parity law claim
- We appealed to the Second Circuit Court of Appeals and won
  - NYSPA does have associational standing to bring claims on behalf of its members and patients
  - United was the proper defendant in the case because, as claims administrator, it exercises total discretion and control over claims for benefits
- Looking now to pursue additional claims against United and other carriers using foundation laid by the Second Circuit decision

Ongoing Challenges

- Parity in utilization review
- Parity in reimbursement
- Parity in network adequacy

Utilization Review

- Hot button issue: Medical Necessity
- Medicare LCD for Psychiatry and Psychology Services

Medicare LCD: Standard for Medical Necessity

- “The treatment must, at a minimum, be designed to reduce or control the patient's psychiatric symptoms so as to prevent relapse or hospitalization, and improve or maintain the patient's level of functioning.”
- “For many other psychiatric patients, particularly those with long-term, chronic conditions, control of symptoms and maintenance of a functional level to avoid further deterioration or hospitalization is an acceptable expectation of improvement.
- “’Improvement’ in this context is measured by comparing the effect of continuing treatment versus discontinuing it. Where there is a reasonable expectation that if treatment services were withdrawn the patient's condition would deteriorate, relapse further, or require hospitalization, this criterion would be met.”

Reimbursement: A Comparability Analysis

- Every CPT® code in the CPT book has been assigned a Relative Value Unit (RVU)
- RVUs are a method for calculating the volume of work or effort expended by a health care provider in treating patients
- RVUs are multiplied by a certain conversion factor and a geographical adjustment, which establishes the fee for a particular service

2015 MEDICARE RELATIVE VALUE UNITS FOR THE NEW PSYCHIATRIC SERVICES CPT CODES & RELATED E/M CODES

Codes	Descriptions	2015 RVUs
90791	Psychiatric Diagnostic Interview	3.67
90792	Psychiatric Diagnostic Interview with medical services	4.12
90832	Individual Psychotherapy (30 minutes)	1.79
+90833	Individual Psychotherapy Add-On (30 minutes)	1.84
99212+90833	Level 2 E/M plus 30 minutes psychotherapy	3.07
99213+90833	Level 3 E/M plus 30 minutes psychotherapy	3.88
90834	Individual Psychotherapy (45 minutes)	2.37
+90836	Individual Psychotherapy Add-On (45 minutes)	2.33
99212+90836	Level 2 E/M plus 45 minutes psychotherapy	3.56
99213+90836	Level 3 E/M plus 45 minutes psychotherapy	4.37
90837	Individual Psychotherapy (60 minutes)	3.56
+90838	Individual Psychotherapy Add-On (60 minutes)	3.08
99212+90838	Level 2 E/M plus 60 minutes psychotherapy	4.31
99213+90838	Level 3 E/M plus 60 minutes psychotherapy	5.12
99212	Level 2 Established Patient E/M (10 minutes)	1.23
99213	Level 3 Establish Patient E/M (15 minutes)	2.04
99214	Level 4 Established Patient E/M (25 minutes)	3.03
99215	Level 5 Established Patient E/M (40 minutes)	4.09
99204	Level 4 New Patient E/M (45 minutes)	4.64
99205	Level 5 New Patient E/M (60 minutes)	5.83
90845	Psycho[illegible]	2.55

New Combination Psychotherapy Codes

- Let's start with a 45-minute psychotherapy session with medical evaluation and management
- Evaluation and management (E/M) code plus psychotherapy add-on code
  - E.g. 99213+90836
  - 99213 is the E/M code most commonly used by psychiatrists
- Under the pre-2013 framework, the RVU for CPT code 90807 was 2.9
- Under the current system, the total RVU for 99213+90836 is as follows:

99213	=	RVU of 2.04
+ 90836	=	RVU of 2.33
TOTAL RVUs		**4.37**

Reimbursement Disparity Example # 1

- The average reimbursement for code 99213 is $75.00
- Using the underlying RVUs as a basis for calculation….
  - If 99213 is reimbursed at $75.00 (RVU 2.04), then 90836 (RVU 2.33), should be reimbursed at $85.66
  - If your patient has a plan where 90836 is reimbursed at less than that target amount, you might have a parity violation

Reimbursement Disparity Example # 2

- Similarly, if a 99213 submitted by an internist is reimbursed at $100, but a 99213 submitted by a psychiatrist is reimbursed at $75, then you also might have a parity violation

Reimbursement Disparity Example # 3

- Using the RVU method of calculating reimbursement levels, if the old 90807 had an RVU of **2.9** and was reimbursed at $100, then wouldn't it follow that a 99213+90836 (with a combined RVU of **4.37**) should be reimbursed at $150?
- One carve-out doing business here in NY has completely ignored the RVU framework. They simply started with the 90807 fee and then subtracted their very low E/M fee and whatever was leftover simply "became" the fee for the psychotherapy add-on code.
- An artificial way of setting fees that completely disregards the underlying work values assigned to each code.

45-Minute Psychotherapy Session

- The RVU for 90806 was 2.34
- The RVU for 90834 is 2.37
- These numbers are fairly comparable, but the key issue is whether the fee or the OON reimbursement levels are commensurate with those RVUs

Meaningful Access to Care

- In-Network
  - Low in-network behavioral health fees that do not represent reasonable compensation for the time spent or expertise and services provided
  - As a result, many providers will not want to accept the plan's fee schedule as payment in full
  - Providers refuse to join networks or drop out of networks
- Out-of-Network
  - How much money is the patient getting reimbursed?
  - If patients can't afford treatment without reimbursement, adequate and non-discriminatory OON reimbursement is essential
- Ongoing payment discrimination is a key factor in access to psychiatric care and treatment

Network Adequacy

- Mental Health Association of Maryland did a study of access to psychiatrists during the period June-November 2014
- Only 43% of psychiatrists listed could be reached
- 19% listed as psychiatrists were not actually psychiatrists
- Less than 40% accepted the insurance they were listed as accepting
- Less than 18% listed as accepting new patients
- 1 out of 7 accepted new patients and could provide appointment in less than 45 days

What else is APA/NYSPA Working On?

- California law suit: Fradenburg v. United Healthcare
- Working with our lobbyist to bring about a state Parity Cabinet – a part of the executive branch devoted solely to parity enforcement
- Informal work group on parity and reimbursement issues – members include representatives from organized psychiatry, organized psychology and organized social work
- Supporting enforcement of Attorney General parity settlements

How can we continue to fight this?

- Advocacy with state and federal regulators
- Litigation
- Solicit EOBs from providers and patients, collate data that demonstrates the differential between what psychiatrists are being paid and what other physicians are being paid
- The OON reimbursement issue seems a more direct opportunity for victory
- We are looking for NYSPA members and/or their patients to join our lawsuit as named plaintiffs

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