Segal

Richard Ward, FSA, FCA, MAAA
West Region Market Director, Public Sector
T 956.818.6714
M 619.710.9952
RWard@Segalco.com

500 North Brand Boulevard
Suite 1400
Glendale, CA 91203-3338
segalco.com

Memorandum

To: Celestena Glover, Executive Officer
Nevada Public Employees' Benefits Program (PEBP)

From: Richard Ward, FSA, FCA, MAAA

Amy Dunn, JD, MHA

Date: January 19, 2024

Re: Executive Summary and Recommendations for Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)

Executive Summary

Segal was retained to review the Nevada Public Employees' Benefits Program's (PEBP) benefits under the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). We have prepared this memorandum to assist PEBP in reviewing possible Plan Document language revisions that may be considered for purposes of consistency with the MHPAEA and related regulations.

For purposes of this memo, we reviewed the Nonquantitative Treatment Limitations (NQTLs) in the Plan Documents downloaded from PEBP's website June 2, 2023 for the July 1, 2023 – June 30, 2024 Plan Year for the Consumer Driven Health Plan (CDHP), Low Deductible PPO Plan (LD PPO) and the Exclusive Provider Organization Plan (EPO).

Throughout this memo, we use the acronyms "Med/Surg" to refer to medical and surgical, and MH/SUD to refer to mental health and substance use disorder benefits.

Key Findings

In addition to the plan design changes approved in December 2023 to the LD PPO and EPO plans, our recommendations generally include the following actions:

- Modify or remove certain exclusions/limitations
- Clarify certain day limits or visit limits
- Clarify certain benefit descriptions
- Reassign certain benefit classifications
- Other considerations

The following provisions, as written in the Plan Document(s), merit reconsideration for compliance with MHPAEA:

Modify or remove certain exclusions/limitations

Exclusion for Attention Deficit Disorder

The Plan Documents exclude benefits for “attention deficit disorders (with or without hyperactivity, except when the services are for diagnosis, the prescription of medication as prescribed by a physician or other health care practitioner, or when accompanied by a treatment plan as submitted to the Plan or its designee) or the treatment is related to the management of ADD/ ADHD without prescription drugs and is approved by the Plan”. This may present issues under MHPAEA as there appear to be restrictions on care for this specific diagnosis that are not applied to any medical diagnosis. Also, if a plan provides MH or SUD benefits in any one classification, it must provide treatment in all classifications in which Med/Surg benefits are provided. As PEBP is covering prescription medications for treatment of attention deficit disorder, it must provide coverage for all six benefit classifications that are prescribed under the regulations.

Recommendation

Remove exclusion for attention deficit disorders.

Exclusion for Hypnosis and Hypnotherapy

The Plan Documents include an exclusion for hypnosis and hypnotherapy. This exclusion appears only under the behavioral health exclusions and there is not a similar exclusion under medical.

Recommendation

Move this exclusion under the general exclusions; so it is clear it applies equally to MH/SUD and Med/Surg if that is consistent with administrative operation.

Exclusion for Marriage, Couples and/or Sex Counseling

The Plan Documents include an exclusion for marriage, couples and/or sex counseling. While marriage, couples and/or sex counseling is not required to be covered, many plans have added a clarification to similar exclusions noting that the exclusion will not limit mental health treatment for an otherwise covered mental health condition for each family member (such as a spouse receiving individual covered mental health services from a marriage counselor for a diagnosis of depression). We also note that an exclusion for “sex counseling” could be interpreted as an exclusion aimed at gender dysphoria and PEBP should clarify the intent.

Recommendation

Clarify that the exclusion for marriage/couples counseling will not limit individual mental health counseling for an otherwise covered mental health condition.

As sex counseling could be interpreted as an exclusion aimed at gender dysphoria, PEBP may want to clarify intent for exclusion for “sex counseling” or remove the exclusion.

Exclusion for Cognitive Therapy

The Plan Documents exclude coverage for cognitive therapy unless it is related to “short-term services necessitated by a catastrophic neurological event to restore functioning for activities of daily living”.

Cognitive therapy is a common form of therapy for MH/SUD. It is unclear how this exclusion may be applied and whether it excludes benefits for otherwise covered MH conditions.

Recommendation

Revise the Plan Documents to add an exception to this exclusion for medically necessary treatment of a MH/SUD condition.

Exclusion for Sleep Disorders

The Plan Documents cover medical treatment for sleep disorders. However, there is an exclusion for “cognitive behavior therapy for sleep disorders“. Allowing medical treatment of sleep disorders while excluding cognitive therapy raises compliance concerns under MHPAEA because cognitive therapy is a form of therapy for MH/SUD.

Recommendation

Add an exception for medically necessary treatment of a MH/SUD condition.

Exclusion for Milieu Therapy

The Plan Documents include an exclusion for milieu therapy. This could exclude treatment for an otherwise covered MH/SUD condition and raise compliance concerns under MHPAEA. Although milieu therapy may also be done on an outpatient basis, it is treatment for behavioral health and is not used for medical indications.

Recommendation

Confirm if this exclusion is intended to deny benefits for residential treatment that is otherwise covered throughout the Plan Document. If consistent with administrative practice, add a clarification to the exclusion “unless the care is otherwise medically necessary”.

Exclusion for Food Addictions

The Plan Documents include an exclusion for food addictions. PEBP should review how this exclusion is applied in operation. Plans are permitted under MHPAEA to have a complete exclusion of all benefits that treat a particular MH/SUD condition. However, Federal enforcement generally tends to raise questions about plan provisions that may exclude medically necessary treatment for eating disorders.

Recommendation

PEBP should consider removing the exclusion for food addictions as it may run afoul of MHPAEA which considers an eating disorder to be a mental health diagnosis and subject to MHPAEA. If the exclusion is maintained, PEBP will need to confirm that it is excluded in all six benefit classifications in the regulations (including prescription drugs).

Exclusion for weight management

The Plan Documents include an exclusion for weight management as follows:

> Expenses for medical or surgical treatment of severe underweight, including (but not limited to) high calorie and/or high protein food supplements or other food or nutritional supplements, except in conjunction with medically necessary treatment of anorexia, bulimia, or acute starvation. Severe underweight means a weight more than 25 percent under normal body weight for the patient's age, sex, height, and body frame based on weight tables generally used by physicians to determine normal body weight.

There is no requirement under MHPAEA to provide coverage for specific diagnoses (such as severe underweight) as long as it is being excluded in all six categories. However, MHPAEA considers eating disorders to be a mental health diagnosis and therefore, subject to MHPAEA. The Plan Documents do include an exception for anorexia, bulimia, or acute starvation.

Recommendation

PEBP may want to remove the list of specific diagnoses (as it is not all-inclusive) and reference "medically necessary treatment of an eating disorder".

Speech Therapy

The CDHP Schedule of Medical Benefits includes benefits for speech therapy for an injury, or sickness that is other than a learning or mental disorder. Limiting speech therapy for a mental health diagnosis may present problems under MHPAEA as speech therapy is commonly used for the treatment of MH conditions, notably autism. As the limitation is only present in the CDHP Plan and not the LD PPO or EPO, it is possible it was inadvertently maintained.

Recommendation

Remove the limitation for speech therapy for a mental disorder.

Alternative/Complimentary Health Care Exclusions

The Plan Documents exclude coverage for chelation therapy except as may be medically necessary for treatment of acute arsenic, gold, mercury, or lead poisoning and for diseases due to clearly demonstrated excess of copper or iron. While it would be appropriate to exclude chelation therapy for all conditions, it raises MHPAEA compliance concerns to allow it only for certain medical diagnoses as it can be prescribed for the diagnosis of autism and ADHD.

Recommendation

Add an exception for medically necessary treatment of a mental health diagnosis.

Exclusion for Vitamin B-12 injections

The Plan Documents exclude vitamin B-12 injections "except for pernicious anemia, other specified megaloblastic anemias not elsewhere classified, anemias due to disorders of glutathione metabolism, post-surgery care or other b-complex deficiencies), antihemophilic factors including tissue plasminogen activator (TPA), acne preparations, and laxatives (unless otherwise specified in the Schedule of Medical Benefits". Allowing B12-injections for certain medical diagnoses while not allowing for any mental health diagnoses (such as anxiety and depression) could present issues under MHPAEA.

Recommendation

Revise the exclusion to make an exception for a MH/SUD condition.

Clarify certain day limits or visit limits

Speech, occupational, and physical therapy visits

The EPO and LD PPO Plans limit coverage for Rehabilitation and Habilitation Facilities to 60 days per Plan year (for physical, occupational and speech therapies). Since visit limits and day limits do not appear to apply to substantially all Med/Surg benefits, it would not be permissible for a visit limit to be imposed with respect to any services provided in this classification for the treatment of a MH/SUD condition.

The Plans require precertification for habilitative and rehabilitative therapy visits (physical, speech, occupational) exceeding 90 combined visits per Plan Year.

The CDHP Plan, LD PPO Plan and the EPO Plan further outline available habilitative and rehabilitative benefits. However, the CDHP Plan and the LD PPO Plan describe the requirement for prior authorization for visits exceeding the combined therapy maximum and specifically state "(limit not applied to therapy treating a behavioral health condition)."

Recommendation

We recommend adding an exception to the EPO and LD PPO Plans in the Rehabilitation and Habilitation Facilities row to clarify that the 60 days per Plan year (for physical, occupational and speech therapies) does not apply to treatment of mental health or substance use disorder.

PEBP may also want to consider adding a consistent exception throughout all three of the documents (wherever habilitative and rehabilitative benefits are described with a limit) to state "Visit limits will not apply to Medically Necessary treatment of mental health or substance use disorder".

Clarify certain benefit descriptions

Case Management

The Plan Documents describe a case management program. We note that this is a voluntary program. However, the plan language does not clearly indicate that case management is available for MH/SUD conditions though it also does not state that it is excluded.

Recommendation

Revise the plan language to make clear that a disability resulting from a mental health or substance use diagnosis will be covered under the case management program.

Rehabilitation Therapy (Inpatient or Outpatient)

The Plan Documents exclude coverage for speech therapy for "conditions of psychoneurotic origin". The language is unclear if this excludes treatment for autism or other MH conditions.

Recommendation

If “conditions of psychoneurotic origin” includes autism or other MH conditions, it should be removed.

Exclusion for Sexual Dysfunction

The Plan Documents include the following located within the exclusion section: “Except as otherwise provided in the Summary of Medical Benefits and Schedule of Medical Benefits, drugs, medicines, procedures, services, and supplies to correct or enhance erectile function, enhance sensitivity or for sexual dysfunction (organic or inorganic), inadequacy, or enhancement, including penile implants and prosthetics, injections, and durable medical equipment”. However, under the family planning benefits in the Schedule of Benefits for the CDHP plan, it states “procedures related to sexual dysfunction may be covered”. Additionally, under the LD PPO and EPO plans, the Plan Documents state “Medical or surgical treatment for sexual dysfunction: There are some limits on sexual dysfunction drugs such as Viagra or Muse and are subject to the Plan Year Deductible.”

If a plan provides MH or SUD benefits in any one classification, it must provide treatment in all classifications in which Med/Surg benefits are provided. This means that if the plan is covering procedures related to sexual dysfunction, it may be required to provide coverage for all six benefit classifications that are prescribed under the regulations (including prescription drugs).

Recommendation

PEBP should clarify coverage and plan language for services and drugs related to sexual dysfunction within the CDHP, LD PPO and EPO plans consistent with MHPAEA.

Enteral Formulas and Special Food Products

The Plan Documents allow enteral formulas and special food products for a person with inherited metabolic disease up to a maximum benefit of $2,500 per Plan Year. There is no similar coverage available for a mental health condition, such as an eating disorder. Allowing coverage for special food products with respect to medical condition, but not if needed with respect to otherwise covered MH condition, such as an eating disorder raises MHPAEA compliance concerns.

Recommendation

Allow enteral feedings for a MH diagnosis without the $2,500 annual maximum per plan year (as plans are not able to impose a dollar limit on a MH/SUD diagnosis).

Reassign certain benefit classifications

Partial Hospitalization

The Plan Documents specifically list partial hospitalization as an “inpatient” benefit under the preauthorization requirements of the plan. The comparative analysis also assigns outpatient partial hospitalization as an inpatient benefit.

Recommendation

Partial hospitalization should be reassigned as an outpatient benefit and referenced accordingly throughout the Plan Document and the comparative analysis received from Sierra Healthcare Options (SHO).

Other Considerations

Treatment plan required for treatment of autism

The Plan Documents state that any treatment of autism spectrum disorders must be identified in a treatment plan. In addition, the CDHP Plan states that "treatment must have a physician's order, include a treatment, and discharge plan". The plan terms are written as required under state law.

Requiring a treatment plan (in addition to a physician's order and discharge plan on the CDHP Plan) for behavioral health services when there is no similar requirement for medical services raises MHPAEA compliance concerns. The DOL Warning Signs on mental health parity specifically mentions this as problematic when no similar handling is required for Med/Surg treatment.

Recommendation

The Plan should coordinate with the administrator and State regulators and/or the Department of Health and Human Services (HHS) regarding questions related to appropriate coordination of related but distinct State/Federal requirements related to autism, a MH benefit subject to MHPAEA.

ABA Therapy

The comparative analysis from SHO addressing prior authorization shows ABA therapy as a medical benefit.

Recommendation

Restrictions related to treatment of autism are being reviewed by the Federal Departments under MHPAEA and raising heightened scrutiny in the Federal audit context. The comparative analysis received from SHO states "NOTE: Applied Behavioral Analysis (ABA) is a medical benefit per Nevada statute." As a federal auditor may not agree with this approach, SHO will need to have a comparative analysis available that assigns ABA therapy as a MH benefit.

As with all our work involving the analysis of a law and its application to specific facts, the State should rely on Legal Counsel for authoritative advice.

Conclusion

The adoption of these recommendations is expected to have a negligible impact on plan expenses in aggregate.

If additional discussion would be helpful to clarify our comments and recommendations, or if we can be assistance in seeking any clarifications regarding plan administration, please let us know and we would be glad to meet, discuss and assist as needed.