Warehouse Employees Union Local No. 730 Health &Welfare Trust Fund:

The Mental Health Parity Addiction and Equity Act (MHPAEA) Requirements

Presented on March 13, 2024

Discussion Deck, Not for Public Distribution

Segal

MHPAEA Requirements

Overview of MHPAEA

- MHPAEA does not require health plans to provide mental health and/or substance use disorder benefits, or to provide treatment for any specific disorder.

- However, if a plan covers benefits for mental health/substance use disorder (MH or SUD), specific rules under the regulations require that these benefits be provided comparably and without more stringent restrictions as compared to how Med/Surg benefits are provided. This is referred to as "parity.

- MHPAEA has specific rules for parity in financial requirements (such as copayments or coinsurance) and quantitative treatment limitations (such as day or visit limits). Specifically, the financial requirements and treatment limitations that a group health plan imposes on MH/SUD benefits cannot be more restrictive than the predominant financial requirements or quantitative treatment limitations that apply to substantially all medical/surgical benefits (this is referred to as the "substantially all/predominant test").

- MHPAEA also has specific rules for non-quantitative treatment limitations (NQTLs). Specifically, under the MHPAEA regulations, a plan or issuer may not impose an NQTL on MH/SUD benefits unless any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefits in a classification are comparable to, and are applied no more stringently than, those used in applying the limitation with respect to medical/surgical (Med/Surg) **benefits in the same classification**.

Overview of MHPAEA (continued)

- **Benefit Classifications-** MHPAEA regulations define six classifications of benefits:
  1. **Inpatient-in-network**
  2. **Inpatient-out-of-network**
  3. **Outpatient- in-network**
  4. **Outpatient- out-of-network**
  5. **Emergency care**
  6. **Prescription drugs**

Overview of MHPAEA (continued)

- **Examples of NQTLs**
  - Prior authorization or ongoing authorization requirements
  - Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative (including standards for concurrent review)
  - Formulary design for prescription drugs
  - Network tier design
  - Fail-first policies or step therapy protocols
  - Exclusions based on failure to complete a course of treatment
  - Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage

Changes to MHPAEA Requirements

Consolidated Appropriations Act, 2021

- Requires group health plans and health insurance issuers that offer both Med/Surg benefits and MH/SUD benefits and impose NQTLs on MH/SUD benefits to perform and document comparative analyses of the design and application of their NQTLs.
- Plans and issuers are required to make their comparative analyses available to the Departments or applicable State authorities, upon request.
- The comparative analysis requirements became effective on February 10, 2021

Changes to MHPAEA Requirements (Continued)

The Proposed MHPAEA rules issued on July 25, 2023

- **Application of the predominant/substantially-all test to NQTLs.**
- **Data collection requirements:** The proposed rule would require plans to collect and evaluate outcomes data and take action to address material differences in access to MH/SUD benefits as compared to Med/Surg benefits, with a specific focus on ensuring that there are not any material differences in access as a result of the application of network composition standards.
- ***Meaningful benefit requirement*:** The proposed rules would specify that if a plan provides any benefits for a mental health condition or substance use disorder in any classification of benefits, the plan must provide meaningful benefits for treatment for that condition or disorder in each classification, as determined in comparison to the benefits provided for medical/surgical conditions in such classification
- ***Prohibition on discriminatory standards*:** The rules add a provision expressly prohibiting a plan from relying upon any factor or evidentiary standard if the information, evidence, sources, or standards on which it is based discriminates against MH/SUD as compared to Med/Surg.
- **Prohibition on separate NQTLs for MH/SUD:** The proposed rules now expressly prohibit plans from applying any NQTL that is only applicable with respect to MH/SUD benefits and does not apply to Med/Surg benefits in the same benefit classification.

Changes to MHPAEA Requirements (Continued)

The MHPAEA Proposed Rules, 2023

- **New and expanded examples:** New and expanded examples are included, addressing more restrictive prior authorization and other medical management techniques for MH/SUD benefits; standards related to provider network admission for MH/SUD benefits; employee assistance plan (EAP) exhaustion requirements; and residential treatment exclusions

- ***Documented comparative analysis content, timing and findings of noncompliance*:** The proposed rule sets forth requirements related to NQTL documented comparative analysis, including some elements previously referenced in DOL's Self-Compliance Tool, along with new requirements such as inclusion of the results of the substantially-all/predominant testing and certification of the completed analysis by a named fiduciary.

NQTL Preliminary Report

- The Fund retained Segal to assist in the collection of information concerning the NQTLs under MHPAEA.
- The NQTL Preliminary Report is based on Segal's review of the Fund's Plan documents (the December 2022 SPD and the 2022 Summary of Benefits and Coverage (SBC) as relevant to MHPAEA compliance as written.
- In addition, the NQTL Preliminary Report acknowledges and overviews the Cigna's Initial and Updated Comparative Analysis responses collected from Cigna by Segal on behalf of the of the Fund.
- The NQTL preliminary report does not address the Fund's compliance with the proposed rule published by the Departments on August 03, 2023.

NQTL Preliminary Report-Summary

Medical Plan:

- **Segal reviewed the Fund's Plan Documents and Collected Comparative Analysis from Cigna regarding the following NQTLs in the applicable classifications, as follows:**
  - **Prior Authorization (Inpatient and Outpatient, In and Out-of-Network)**
  - Medical Necessity (all Classifications)
  - Experimental and Investigative Treatment (all Classifications)
  - Concurrent Review (Inpatient and Outpatient, In and Out-of-Network)
  - Retrospective Review (Inpatient and Outpatient, In and Out-of-Network)
  - Emergency Services (all classifications)
  - Provider Credentialing and Network Admission (Inpatient and Outpatient, In and Out-of-Network and emergency services)
  - Network Adequacy (Inpatient and Outpatient, In and Out-of-Network and emergency services, including provider directory access)
  - Provider Reimbursement (Inpatient and Outpatient, In and Out-of-Network and emergency services)

NQTL Preliminary Report-Summary

Prescription Drug Plan

- **Segal reviewed the Plan Documents and collected Comparative Analysis from Cigna regarding the following Pharmacy Benefit NQTLs:**
  - Formulary design/drug tiering generally
  - Prior Authorization
  - Step-Therapy
  - Quantity Limits

NQTL Preliminary Report-Summary

- **Plan document review:** Segal did not identify plan terms that appear to raise MHPAEA compliance concerns, as written.
- **Segal identified that the following NQTLs do not appear to be operational:**
  - **Case management** (NQTLs do not appear operational in the context of the delivery of case management)
  - **Geographic or facility type restrictions** (Inpatient and Outpatient, In and Out-of-Network and emergency services)
  - **Failure to Complete a Course of Treatment** (Inpatient and Outpatient, In and Out-of-Network)
  - **Express treatment requirements** (Inpatient and Outpatient, In and Out-of-Network

NQTL Preliminary Report-Summary

- **Results of Comparative Analysis Collection**
  - Segal has collected and provided Fund counsel with the file of collected comparative analysis received from Cigna, including analysis Cigna updated as recently as November 2023.
  - Cigna provided analysis for all the relevant NQTLs for which information was requested.

Summary and Next Steps

- Segal identified two discrepancies between the plan terms and comparative analysis received from Cigna regarding operational activities. At the direction of the Trustees and in consultation with counsel, Segal can assist in further inquiry and resolution of these issues.
- With respect to the pharmacy benefit, the December 2022 SPD does provide information about prior authorization, step therapy and quantity limits. However, Cigna's Comparative Analysis appears to apply prior authorization, step therapy and quantity limits NQTLs to certain prescription drugs . The Fund may consider working to add information about these NQTLs in the SPD to the extent applicable or adding information that would direct participants enrolled in the Plan to information regarding the pharmacy benefits available through Cigna.
- Cigna did not provide the underlying supporting materials for their comparative analysis that we know Cigna would normally provide to the Department of Labor in the context of a Federal audit. The Fund in consultation with counsel should consider pursuing delivery of these supporting materials, even absent a Federal inquiry. Segal at the direction of the Fund and in consultation with counsel can assist in any follow-up with Cigna

Summary and Next Steps

- As noted in the conclusion of Segal's report, the Trustees may consider whether either now or upon the issuance of final regulatory guidance, development of an operating policy regarding the Fund's approach to ongoing MHPAEA compliance oversight may be appropriate.
- The Fund in consultation with counsel should consider collecting updated comparative information on an annual basis to remain current as any plan benefits or administrative processes may change.
- Watch for future guidance. Final regulations should further clarify necessary compliance measures and further steps will be clearer once that Federal guidance has been issued.

Questions