



OFFICE OF PUBLIC INSURANCE COUNSEL

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July 10, 2020

Via Electronic Mail

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Texas Department of Insurance
333 Guadalupe Street
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**Re: Informal Draft Rules on Mental Health and Substance Use Disorder Parity
28 TAC §§ 21.2401 – 21.2443**

The Office of Public Insurance Counsel (OPIC) appreciates the opportunity to comment on the Texas Department of Insurance's (TDI's) informal draft rules on mental health and substance abuse disorder parity requirements. OPIC submits the following comments for TDI's consideration.

Exemptions from aggregate lifetime or annual dollar limits and parity for financial requirements and treatment limitations could permit certain health plans to limit benefits.

Proposed § 21.2047(1)(A) requires that a health benefit plan that provides both medical/surgical benefits and mental health or substance use disorder benefits must comply with paragraph (2), (3), or (5) of § 21.2047. Paragraphs (2), (3), and (5) restrict the aggregate lifetime or annual dollar limits that certain plans can impose on mental health or substance use disorder benefits. Proposed § 21.2047(1)(B) excepts certain health benefit plans from the general parity requirement in § 21.2407(1)(A), so the exemption could permit certain health plans to limit mental health or substance use disorder benefits. The requirements for the exemption are in proposed § 21.2412 (Increased Cost Exemption).

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Similarly, proposed § 21.2410 exempts health benefit plans that satisfy the requirements in proposed § 21.2412 from the requirements in proposed §§ 21.2408 (Parity Requirements with Respect to Financial Requirements and Treatment Limitations) and 21.2409 (Nonquantitative Treatment Limitations). The exemption allows health plans to impose more restrictive financial requirements and treatment limitations on mental health or substance use disorder benefits than on all medical/surgical benefits in the same classification.

Proposed § 21.2412 allows the issuer of a health benefit plan to claim an increased cost exemption if the application of §§ 21.2407, 21.2408, and 21.2409 result in an increase for the plan year's actual total cost of coverage for medical/surgical benefits and mental health/substance use disorder benefits by a percentage that exceeds the total plan costs.

Exemptions that allow benefit limitations need close, regular oversight.

Because the consumer protections for mental health parity in proposed §§ 21.2407, 21.2408, and 21.2409 are significant for ensuring that consumers are able to access care for mental health and substance use disorders without being subject to lower annual or lifetime limits or limitations on treatments, exceptions allowing insurers to circumvent those protections must be adequately monitored by TDI.

Therefore, the absence of an independent audit provision in proposed § 21.2412 proves problematic. The absence of an independent audit has the potential to allow insurers to claim those exemptions without enough oversight to ensure their continued validity. This lack of adequate oversight could ultimately result in harm to Texas consumers whose benefits are being restricted because of the exemptions granted under the rule. The federal rule in 45 CFR § 146.136(g)(6)(iv) specifically addresses independent audits for these exemptions:

(iv) Audits. The Secretary may audit the books and records of a group health plan or a health insurance issuer relating to an exemption, including any actuarial reports, during the 6 year period following notification of such exemption under paragraph (g)(6) of this section. A State agency receiving a notification under paragraph (g)(6) of this section may also conduct such an audit with respect to an exemption covered by such notification.¹

OPIC understands that, instead of adopting an independent audit provision, as the federal rule allows, TDI plans to audit the high-cost exemptions through its existing market conduct examination authority. If this is the case, TDI should specify its intention in the proposed rule, and

¹ 45 CFR § 146.136(g)(6)(iv)

should also consider setting the audits to occur at regular intervals, such as annually or every three years.

Regular audits of the high-cost exemptions are important to Texas consumers. As the informal rules are drafted, health plans with exemptions would not be required to analyze their plans' quantitative limitations or nonquantitative limitations to assess whether their plans comply with parity requirements. Since health plans have almost complete autonomy once granted an exception, adequate and regular oversight by an objective party is vital to ensure the exceptions continue to be valid and to ensure exceptions are rescinded when necessary.

OPIC recommends specific parameters for monitoring exemptions.

Accordingly, OPIC suggests that the draft rules be amended to include an independent audit provision as contemplated in 45 CFR § 146.136(g)(6)(iv), or alternatively, to include specific parameters for market conduct examinations to monitor these health plans' exemptions. Thank you for your attention to our comments. OPIC appreciates your time and consideration.

Please feel free to contact my office if you have any questions, or need further information.

Sincerely,



Melissa R. Hamilton
Public Counsel

cc: Chief Clerk, Texas Department of Insurance