MENTAL HEALTH NETWORK ADEQUACY

Discrimination and Deceptive Practices

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NETWORK ADEQUACY - WHY IT MATTERS

• Provider network = group of health care that have contracted with a health plan to provide care to its enrollees at negotiated rates
  – Results in lower costs to the health plan and in theory providing access to care for patients.

• “Adequate” = sufficient to provide the right care, at the right time, without having to travel unreasonably far.
  – Most states standard is “self policing” -i.e. plan must represent they have an adequate network to be licensed to sell insurance in the state
HEALTH INSURANCE FILINGS

• Insurers must demonstrate network adequacy and attest to the adequacy of the network.
• The plan’s “network” becomes its provider directory.
• Use physician from “in the network” = Patients pays only standard deductible, co-payment or co-insurance

• Can’t find a physician in network? Two options:
  – Did you purchase an out of network benefit (more expensive plan)
    • Yes - go out of network and pay difference in market rate and what insurance company is willing to pay (market rate normally 2-3 X more than insurance reimburses)
      – Over course of disease could be tens of thousands of dollars more to go out of network
• Did not purchase OON benefit? - pay full market rate or don’t get care.

• Consequently, size and scope of network is very important to purchasing decision when buying health insurance.

• Inadequate network = hidden cost to consumer and disproportionately impacts patients with mental and substance use disorders in violation of MHPAEA.

• Increases reliance upon state funded program

• Increase incarceration of people with MH/SUD disorders
NETWORK INADEQUACY

Both:

1. Deceptive and unfair trade practice under consumer protection laws and
2. Discrimination issue under the parity protections of the Mental Health Parity and Addictions Equity Act (MHPAEA)

TWO SIDES OF THE SAME COIN
KEY FACTS

Health plan provider networks for MH/SUD → INADEQUACY

• D.C. study
• Maryland study
• State investigations
• Out-of-network claims for MH/SUD services
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UNLAWFUL TRADE PRACTICE TO

- Represent that a person has an affiliation or connection they do not have (i.e., physician is in network and available for patients)
- Misrepresent a material fact that has a tendency to mislead (have X number of psychiatrists available to you)
- Advertise or offer services without the intent to sell them (medically necessary mental health care is “covered” but there are no providers to give it)
- Advertise services without supplying reasonably expected public demand, unless the advertisement or offer discloses a limitation of quantity or other qualifying condition which has no tendency to mislead (86% of “supply” is unavailable)
POTENTIAL PARITY LAW VIOLATION

- Non-quantitative treatment limitations (NQTLs) are prohibited under MHPAEA when:
  - Not comparable to the medical benefit; and
  - Applied in a more stringent manner
- Network adequacy is an NQTL
- Plan provider network must pass the regulatory test
- Contributing factors are also NQTLs regardless of network adequacy
IS IT INTENTIONAL?

• Carriers know which psychiatrists are seeing patients and how many patients they see - data analytics to monitor claims submission
• Psychiatrists submit withdrawal notices and carriers do not remove names from directory
• Carriers engage in conduct to encourage psychiatrists to limit the number of patients they will take from that plan
  • Lower rates than other physicians for same service
  • Greater rates of care denial, audits and claw-backs
  • Unreasonable contract terms (but none designed to encourage increasing patient volume)
IS IT INTENTIONAL/DISCRIMINATORY?

- Excessive audits of higher intensity treatment
  - Makes it difficult to treat serious mental illness
- Excessive medical necessity denials
  - More rigorous and frequent utilization review for mental health
  - More frequent denials
  - In network, no payment for denied care, clawbacks on review
  - Improper disclosure as to how decisions are made, no explanation for denials
WHAT WILL AN INVESTIGATION SHOW?

• Plans know that directories are not accurate and that consumers rely upon them in selecting an insurance plan.
• Plans do not correct inaccuracies because if they had to accurately show their network, they could not sell insurance.
• Plans intentionally discourage participation by psychiatrists because mental illness is chronic and patients rarely complain.
  • Intentionally price services to discourage participation so patients cannot access care, and plan does not have to pay.
  • Audit more frequently.
  • Deny mental health claims more frequently.
• Plans selling a product they don’t intend to deliver.
• Patients are injured.
MH/SUD PATIENT’S INABILITY TO ACCESS CARE

• Widespread and consistent problem in all states

• Actionable under consumer protection for selling product company knows it cannot deliver -(irrelevant what happens on med/surg side)

• Actionable under parity law - med/surg side is relevant

• Needs your investigation