HBCHI
Houston Business Coalition on Health

The ACA and Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA): Implications for Smoking Cessation Therapies

Agenda

10:00 – 10:15	**Introduction & Preventive Survey Results**
10:15 – 10:35	**Union of ACA & MHPAEA**
10:40 – 10:50	**ACA & MHPAEA / Smoking Cessation**
10:50 – 11:00	**Questions & Answers**
Today-Please!	**Post Webinar Assessment – Survey Monkey**

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Speakers

- **Chris Skisak, PhD**
  Executive Director, HBCH
- **Steve Melek, FSA, MAAA**
  Principal & Consulting Actuary, Milliman
- **E. Rena Jenkins, JD, LLM**
  Assist. VP, Compliance Counsel South Central Region, Arthur J. Gallagher

HBCHI
Houston Business Coalition on Health

Mission Statement

“The leading resource for Houston employers dedicated to improving the health and wellness of their employees by bringing together all stakeholders to lower cost and improve quality, contributing to the economic vitality of the Houston community”.

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Remaining 2015 Programs

- **May 20** — **Employer Best Practices to Demonstrate Wellness ROI**
- **June 24** — **Employer & Employee Transparency Tools**
- **Sept 22** — **Houston's Healthcare Delivery System**
- **October** — **NBGH / TW Employer Survey on Purchasing Value in Healthcare**
- **November** — **Successful Strategies to Manage Specialty Pharmaceuticals**
- **December** — **Holiday Social**

Preventive Care Survey
Purpose and Objectives Statement

- The primary purpose of this survey is to educate fund members of HBCH on the safe harbor example of compliance with the ACA mandate on tobacco cessation coverage and to assess their plans for benefit design if changes are needed for compliance with the mandate in 2015 and 2016.
- In addition, HBCH elected to assess additional member information regarding coverage of preventive services and communication strategies to implement changes in benefit designs.

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Preventive Care Survey
15 Adult Preventative Services

Abdominal aortic aneurysm one-time screening for men of specific ages who have ever smoked	Diet counseling for adults at higher risk for chronic disease
Alcohol misuse screening and counseling	HIV screening for everyone ages 15-65 and other ages at increased risk
Aspirin use to prevent cardiovascular disease for men and women of certain ages	Immunization vaccines for adults-doses, recommended ages and populations vary
Blood pressure screening for all adults	Obesity screening and counseling for all adults
Cholesterol screening for adults of certain ages or at higher risk	Sexually transmitted infection (STI) prevention counseling for adults at higher risk
Colorectal cancer screening for adults over 50	Syphilis screening for all adults at higher risk
Depression screening for adult	Tobacco use screening for all adults and cessation interventions for tobacco users
Diabetes (type 2) screening for adults with HBP	

Health Plan Currently Covers - 63%

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Preventive Care Survey / Smoking Cessation

- 15.9% Smoking prevalence
- 100% Aware of ACA requirements
- 100% Use self-report to detect prevalence
- 75% Aware of USPSTF, DOL, HHS recommendations
- 66% Offer a tobacco cessation program
- 100% No cost sharing in 2016

Contact Info

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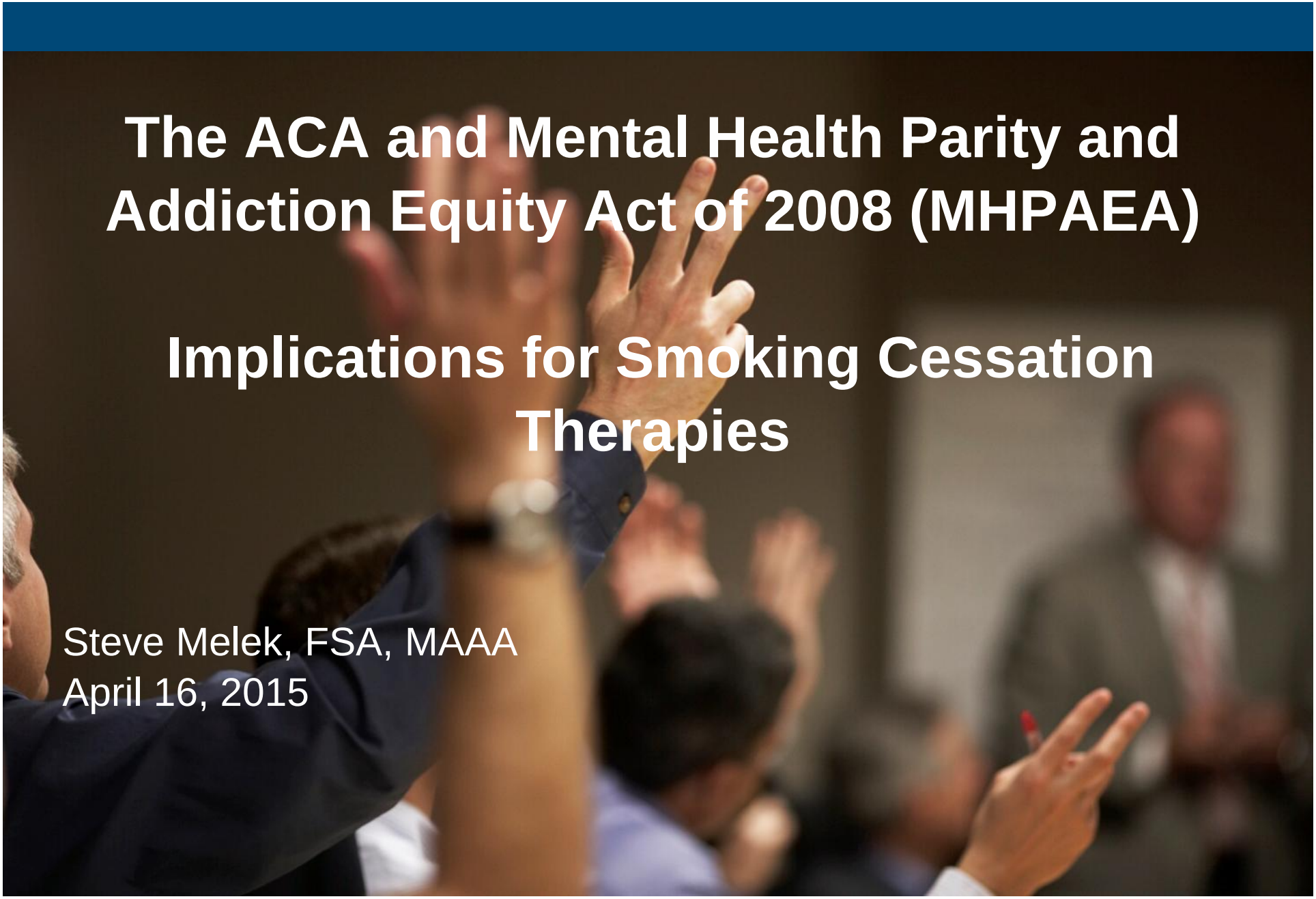

The ACA and Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)

Implications for Smoking Cessation Therapies

Steve Melek, FSA, MAAA
April 16, 2015

Milliman

Presentation Outline

- Background
- ACA Evidence-Based Preventive Services
- The Union of ACA and MHPAEA
- Federal Benefits leading by example
- ROI
- Conclusions

Background

- Health insurance carriers need to be in the business of providing smoking cessation coverage according to current healthcare policy

- Specifically, when you consider the Affordable Care Act (ACA) and Mental Health Parity and Addiction Equity Act (MHPAEA) together, plans actually have to offer pharmacotherapy as well as counseling

  http://www.ofr.gov/OFRUpload/OFRData/2013-02420_PI.pdf

  http://www.uspreventiveservicestaskforce.org/uspstf/grades.htm
  http://aspe.hhs.gov/health/reports/2013/mental/rb_mental.cfm
  http://www.gpo.gov/fdsys/pkg/FR-2010-02-02/pdf/2010-2167.pdf

- Enforcement is key to ensuring that health plans offer comprehensive smoking cessation treatment and there is already legal precedent

  http://behavioralhealthtoday.com/2013/05/05/first-mhpaea-lawsuit-a-win-for-those-with-mental-health-substance-abuse-disorders

ACA Evidence-Based Preventive Services

- ACA requires group and individual coverage to include “evidence-based items or services that have a rating of ‘A’ or ‘B’ in the USPSTF (US Prevention Services Task Force) recommendations”
- An ‘A’ grade means that is it a recommended service, and that there is high certainty of substantial benefit from implementing the service
- Tobacco cessation has an ‘A’ rating and includes both counseling and pharmacotherapy
- However it should be noted that ACA language does not clearly state that both counseling and pharmacotherapy are mandated
- Yet despite this lack of clarity, when the ACA and MHPAEA are viewed together, it is clear that both must be offered

http://www.ofr.gov/OFRUpload/OFRData/2013-02420_PI.pdf

http://www.uspreventiveservicestaskforce.org/uspstf/grades.htm

http://aspe.hhs.gov/health/reports/2013/mental/rb_mental.cfm

http://www.gpo.gov/fdsys/pkg/FR-2010-02-02/pdf/2010-2167.pd

Essential Health Benefits (EHBs)

- Beginning in 2014, all non-grandfathered plans in both the individual and small group markets, Medicaid benchmark and benchmark-equivalent plans, and Basic health plans are required to cover EHBs, both for products on and off Health Benefit Exchanges.
- 1 of the 10 EHB categories is “mental health and substance use disorder services, including behavioral treatment”.
- ACA requires that EHB be equal in scope to benefits offered by a “typical employer plan”.
- Ten different state-specific benchmark plan options exist, chosen by either the state or the federal government (if state defers selection).
- To comply with EHB requirements for drugs, a plan must cover at least the greater of (1) 1 drug in every category of the USP Model Guidelines; and (2) the same number of drugs in each category and class as the chosen EHB-benchmark plan.

ACA, Section 1302.

https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-04084.pdf

http://cciio.cms.gov/resources/files/issuer-letter-3-1-2013.pdf

The Union of ACA and MHPAEA

- The Final Rules for MHPAEA require a health plan that covers a Mental Health/Substance Abuse disorder in 1 of 6 defined benefit classifications to also provide coverage in all 6 of them where medical/surgical benefits exist.
- The 6 classifications are 1) in-network inpatient, 2) in-network outpatient, 3) out-of-network inpatient, 4) out-of-network outpatient, 5) emergency care, and 6) prescription drugs.
- So, even if only tobacco cessation counseling is covered (which may be the case given current lack of clarity in ACA language which references “tobacco cessation intervention”), plans still must provide coverage for tobacco cessation in all 6 classes, including pharmacotherapy

http://www.gpo.gov/fdsys/pkg/FR-2010-02-02/pdf/2010-2167.pdf

The FAQ on Tobacco Use

Q5: The USPSTF recommends that clinicians ask all adults about tobacco use and provide tobacco cessation interventions for those who use tobacco products. What are plans and issuers expected to provide as preventive coverage for tobacco cessation interventions?

Plans may use reasonable medical management techniques to determine the frequency, method, treatment, or setting for a recommended preventive service, to the extent not specified in the recommendation or guideline regarding that preventive service. Evidence-based clinical practice guidelines can provide useful guidance for plans and issuers.[13] The Departments will consider a group health plan or health insurance issuer to be in compliance with the requirement to cover tobacco use counseling and interventions, if, for example, the plan or issuer covers without cost-sharing:

- Screening for tobacco use; and,
- For those who use tobacco products, at least two tobacco cessation attempts per year. For this purpose, covering a cessation attempt includes coverage for:
  - Four tobacco cessation counseling sessions of at least 10 minutes each (including telephone counseling, group counseling and individual counseling) without prior authorization; and
- All Food and Drug Administration (FDA)-approved tobacco cessation medications (including both prescription and over-the-counter medications) for a 90-day treatment regimen when prescribed by a health care provider without prior authorization.

Enforcement of MHPAEA Rules

- In early May 2013, the United States District Court for the District of Vermont became the first court in the country to interpret MHPAEA, and that decision was favorable to insured members that need mental health and substance use services.
- The court found that health plan administrators bear the burden of establishing why mental health and substance use disorder benefits would be treated differently from medical benefits based on divergent clinical standards.
- There have also been additional lawsuits filed in two federal courts regarding MHPAEA noncompliance – one in New York against United Health Group and one in Connecticut against Anthem/Wellpoint.

http://behavioralhealthtoday.com/2013/05/05/first-mhpaea-lawsuit-a-win-for-those-with-mental-health-substance-abuse-disorders

*www.psychiatry.org/.../Advocacy%20and%20**New**sroom/.../13-50-APA*

Leading by Example – Federal Benefits

- Two letters were sent to FEHBP carriers in 2010 which defined the Office of Personnel Management's expectations regarding smoking cessation benefits and programs.
- The letters stated that carriers must offer comprehensive smoking cessation programs without any limits or member cost-sharing.
- Kathleen Sebelius and Howard Koh (DHHS) co-authored an article that included "since tobacco dependence and obesity represent substantial health threats, the ACA addresses these challenges in a number of ways".
- Grandfathered plans do not have to conform to the preventive requirements of ACA, yet do have to comply with MHPAEA.

http://www.cdc.gov/features/quitsmoking/
http://www.nejm.org/doi/full/10.1056/NEJMp1008560

Return on Investment

- Milliman was commissioned by the American Legacy Foundation to develop a case for employers for covering smoking cessation as a health benefit
- The PMPM costs ranged from a low of $0.02 for the Quitline only, with an estimate of 3% of smokers starting the program, to $0.45 per member per month for a comprehensive benefit design
- The report also included projections of short term medical cost savings to a health plan of $213 in year 1, up to $1,096 in year 5 due to an arithmetic increase in savings for several years. This suggests that the program costs can be recovered in savings in 2-3 years.
- A study of health plan and employer smoking cessation efforts conducted by American Health Insurance Plans (AHIP) and the Kaiser Permanente Center for Health Research found that health plans investing $35-$410 per participant in a one-year program generated a positive ROI within 3 years

Conclusions

- When the ACA and MHPAEA are considered together, coverage for tobacco dependence must be comprehensive in order to comply with both pieces of legislation – some, or all, of which must be provided at no member cost sharing
- Benefit plan designs should be carefully reviewed to make sure that parity requirements are being met for tobacco cessation benefits
- Essential health benefits should be reviewed to ensure proper coverage of mental health and substance use disorder services, including behavioral treatment, for products sold both on and off Health Benefit Exchanges

What To Do

- Review your benefit plan designs and identify the specifications for tobacco use coverage, including quantitative and nonquantitative details
- Remove any quantitative limits that are non-compliant with MHPAEA (e.g. quit attempt limits, counseling limits)
- Determine if your Rx coverage for tobacco use is at least as good as your state benchmark plan; if not, the formulary needs to be changed
- Remove any nonquantitative treatment limits that may be non-compliant with MHPAEA (e.g. step therapies for Rx, concurrent counseling requirements)
- Talk to your lawyers and consultants about any non-compliant issues

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The ACA and Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA): Implications for Smoking Cessation Therapies

Legal Issues

By E. Rena Jenkins, JD, LLM

ACA Preventive Services Mandate

- ACA created significant changes for employer-sponsored health coverage
- Non-grandfathered health plans must cover certain preventive services without cost-sharing
  - A plan cannot charge a copayment, coinsurance, or a deductible for such services
  - In other words, certain services must be provided to covered individuals free of charge!

ACA Preventive Services Mandate

- Applies to fully-insured and self-funded health plans
- One type of service that must be covered includes counseling on tobacco cessation
- ACA does not specify a frequency, method, or setting for tobacco cessation counseling

ACA Preventive Services Mandate

- What services must employers provide as preventive coverage for tobacco cessation?
  - Non-grandfathered plans must cover tobacco cessation prescriptions and counseling as dictated by the USPTF
  - FAQ guidance indicates that employers may use reasonable medical management techniques
- Plans would be compliant with tobacco cessation mandate if at least the following are covered at no cost or prior authorization
  - Screening for tobacco use
  - At least two tobacco cessation attempts per year

ACA Preventive Services Mandate

- Two tobacco cessation attempts per year
  - Four tobacco cessation counseling sessions of at least 10 minutes each
    - Includes telephone, group, and individual counseling
  - All FDA-approved tobacco cessation medications for a 90-day treatment regimen when prescribed by a health care provider
    - Prescription and over-the-counter medications

Be careful! Limitations on tobacco cessation medications or other services may trigger issues under the Mental Health Parity and Equity Addiction Act ("MHPAEA.")

MHPAEA's Impact on Tobacco Cessation Programs

- Mental Health Parity and Equity Act ("MHPAEA") does not require plans to provide mental health or substance use disorder benefits
- If a plan provides these benefits, then the financial requirements and treatment limitations for those benefits can't be more restrictive than medical/surgical benefits (the parity rule)
- Nicotine addiction is considered a substance use disorder
  - Therefore, benefits provided for the treatment of nicotine addiction is subject to the parity rule under MHPAEA

MHPAEA's Impact on Tobacco Cessation Programs

- Plans providing tobacco cessation programs are prohibited from
  - Including higher or separate deductibles for mental health/substance use disorder treatments (within the same classification)
  - Assigning **all** drugs used to treat nicotine addiction to a higher copay tier than what is required for prescriptions to treat medical or surgical conditions
  - Requiring programs that cover the cost of prescription drugs for nicotine addiction to be more restrictive than those covering the cost of prescription drugs for medical or surgical conditions (within the same classification)
  - Imposing visit limits on Tobacco cessation programs if it does not have visit limits on medical or surgical benefits (within the same classification)
- GHPs providing preventive mental health and substance use disorder benefits solely to comply with the preventive services mandate not required to provide additional mental health and substance use disorder benefits

MHPAEA's Impact on Tobacco Cessation Programs

- What about HIPAA wellness programs?
- ACA and HIPAA regulations permit differences in required contributions for smokers and non-smokers
  - Must be part of a compliant wellness program
- Wellness programs have different Tobacco cessation programs
  - Educational materials
  - Tobacco cessations classes (Reasonable Alternative Standard)
  - Covering the cost of prescription drugs to help stop Tobacco

MHPAEA's Impact on Tobacco Cessation Programs

- Wellness programs that provide medical care, including the cost of prescription drug coverage, are subject to MHPAEA
- HIPAA and ACA regulations have not addressed how MHPAEA applies to wellness programs
  - Unclear how much wellness programs could restrict covering prescription drugs (without creating a problem)
  - Employers should seek legal counsel when imposing limitations on Tobacco cessation drugs or counseling!

Enforcement

- No specific penalty or enforcement rule for MHPAEA violations under ERISA
- However, participants, beneficiaries, and the DOL may potentially file an ERISA §502 claim in court for fiduciary breach
  - Damages for unpaid benefits, interest, and attorney's fees
- IRS may impose excise taxes of $100 per day for each affected individual for failure to comply
  - Persons liable for an excise tax must file IRS Form 8928

Enforcement

- State insurance regulations
- HHS may enforce
  - Against issuers if the state fails to enforce MHPAEA
  - Against non-federal governmental plans

Upcoming webinars:

- Cadillac Tax
- Supreme Court Decisions
  - Same Sex Marriage
  - King v. Burwell

Thank you!

The intent of this presentation is to provide you with general information regarding the status of, and/or potential concerns related to, your current employee benefits issue. It does not necessarily fully address all your specific issues. It should not be construed as, nor is it intended to provide, legal or tax advice. Questions regarding specific issues should be addressed by the your organization's general counsel, tax advisor, or an attorney who specializes in this practice area.