Current Issues in Health Insurance: The Regulator's Perspective

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Overview

- Snapshot of Pennsylvania Health Insurance market.
- Our online resources.
- How are we responding to the opioid crisis in Pennsylvania?
- What is going on in Washington, D.C. (and how are we responding)?
  - Open Enrollment 2018.
  - Association Health Plans.
  - Short-term Limited Duration Insurance.
- Focus On: Mental Health Parity.

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PA's Insurance Market

- 5th largest insurance market in the U.S.
- 14th largest insurance market in the world.
- Our uninsured rate is 5.6% based on our latest data (2016).
- 3/4 of Pennsylvanians are covered by self-funded employer-based plans or government programs (Medicare, Medicaid, CHIP), which PID does not regulate.

… So what do we regulate?

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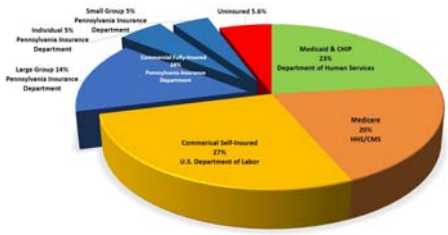
Our Slice of the Pie



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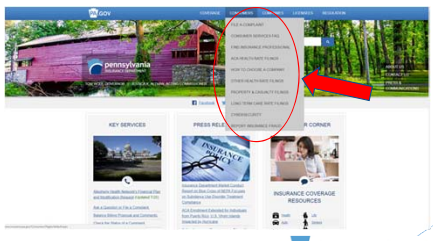

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Combating the Opioid Crisis

- Governor Wolf declared the heroin and opioid epidemic a Statewide Disaster Emergency on January 10, 2018.
  - Suspension of enforcement rules.
  - Availability of resources.

See 35 Pa. C.S.A. § 7301(f)

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Combating the Opioid Crisis

- Most laws subject to the emergency declaration are enforced by the Department of Health or the Department of Drug and Alcohol Programs (DDAP).
- How has the Insurance Department been involved?
  - Education.
  - Coordination.
  - Communication.

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Combating the Opioid Crisis

- Additional PID Actions
  - Working with insurance companies to address overprescribing and "doctor shopping" in relation to opioids.
  - Addressing the availability of prescription coverage for overdose reversal agents like naloxone and Narcan.
- Grant programs are also available.

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Combating the Opioid Crisis

- Consumer Red Flag (highlighted by Governor Wolf):
  - Recruiters pushing addicts to seek treatment in out-of-state recovery homes and to bill insurance.
    - Is the recruiter being paid to send the addict to the treatment center?
    - Is the treatment center offering to pay the addict's travel costs and/or insurance premium?
    - Is the recruiter asking for personal information like a social security number or insurance policy number?
    - Have there been exorbitant service charges or charges for services that were not delivered?

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Combating the Opioid Crisis

- Responses:
  - Consult insurance company to confirm legitimacy and services covered.
  - Contact PID at 1-877-881-6388 (hotline); or 717-783-2153 (Bureau of Consumer Services).
  - If you suspect fraud, contact the National Insurance Crime Bureau at 1-800-835-6422.

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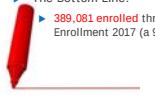
What is going on in Washington, D.C.?

And how are we responding?

- Open Enrollment 2018:
  - The enrollment period was from November 1 – December 15, 2017 (half the length of the last open enrollment period).
  - Outreach budget cut by 90%; Navigator budget cut by 41%.
- How we responded:
  - PA allocated $100,000 for a comprehensive outreach campaign including TV/radio, internet, and paid social media advertising.
  - Consumers' Checkbook (https://pa.checkbookhealth.org).
- The Bottom Line:
  - 389,081 enrolled through the Federal Marketplace, down from 426,059 during Open Enrollment 2017 (a 9% reduction).



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What is going on in Washington, D.C.?

And how are we responding?

- Cost-Sharing Reduction Payments (CSRs)
  - Federal government stopped scheduled payment to insurers.
  - Payment would help insurers cover the cost-sharing that low-income enrollees do not have to pay under the Affordable Care Act (ACA).
- How we responded:
  - Collaborated with the five Marketplace health insurers to mitigate premium increases resulting from Federal refusal to pay CSRs.
    - Premium increases resulting from unpaid CSRs were loaded into Marketplace Silver plans.
    - Available Federal tax credit amount is tied to Silver plan premium amount.
    - Tax credits increased to offset premium increase.
    - Marketplace Gold plans became more affordable and offered better coverage.

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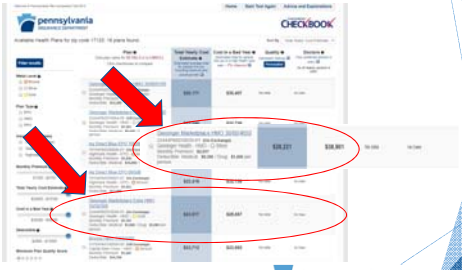
How We Responded: An Example

A Family of 4 making $100k per year.



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How We Responded: Another Example

An individual making $48,241.

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What is going on in Washington, D.C.?
And how are we responding?

- Association Health Plans (proposed rule published January 5, 2018)
  - Would expand availability of AHPs.
  - The National Association of Insurance Commissioners (NAIC) compiled input from state insurance departments across the country and submitted a joint response, with suggestions for clarification and improvement of the proposed rule.
  - PID submitted a formal response that highlighted issues specific to the Pennsylvania market to help shape the final rule to benefit Pennsylvania consumers.

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What is going on in Washington, D.C.?
And how are we responding?

- Short Term Limited Duration Insurance (proposed rule published February 20, 2018)
  - The rule would allow policies to be as long as 364 days.
  - The rule would allow policies to be renewable but with underwriting.
  - The rule would require revised consumer disclosures.
  - PID is working on a response due by April 23, 2018.

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What is going on in Washington, D.C.?
And how are we responding?

- Takeaways:
  - Both proposals, as written, will likely pull healthy consumers away from the individual market.
  - STLDI and AHPs are likely to offer cheaper, less comprehensive coverage – likely leaving the individual market smaller and sicker.
  - Premiums for the new plans may be lower, but health care costs will probably remain onerous.
  - Ignominious history.
- Going Forward:
  - At the Federal level:

  - In PA: continue to promote a robust marketplace.

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Focus On: Mental Health Parity

- Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (42 U.S.C. § 300gg-26; 45 C.F.R. §§ 146.136, 147.160).
  - Aims to make certain that Insurers provide Mental Health/Substance Use Disorder (MH/SUD) benefits on an equal footing with Medical/Surgical (Med/Surg) benefits.
  - Adopted into Pennsylvania state law as Act 14 of 2010 (40 P.S. §§ 908-11 *et seq.*).
  - MHPAEA applies to both Individual and Small Group policies through the ACA.
  - PID has extensive enforcement authority.

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Focus On: Mental Health Parity

MHPAEA Requirements

- MH/SUD benefits must be *no more restrictive* than Med/Surg benefits in three areas:
  1. Financial Requirements.
  2. Quantitative Treatment Limitations (QTLs).
  3. Nonquantitative Treatment Limitations (NQTLs).

- If MH/SUD benefits are provided in any benefit classification, they must be provided in every classification in which Med/Surg benefits are offered.
  - The plan must apply the same standards to both types of benefits.

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MHPAEA Requirements: Financial Requirements & QTLs

- Plans that provide both MH/SUD benefits and Med/Surg benefits may not apply financial requirements or quantitative treatment limitations to MH/SUD benefits that are more restrictive than the "*predominant*" financial requirements or treatment limitations applied to "*substantially all*" Med/Surg benefits.
  - Applies when both benefits are in the same classification.
  - *Substantially All* = limit applies to at least 2/3 of all Med/Surg benefits in that classification.
  - *Predominant* = limit applies to more than 1/2 of Med/Surg benefits in that classification.

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MHPAEA Requirements: NQTLs

- NQTL Specific Standard
  - Plans that provide MH/SUD and Med/Surg benefits may not apply NQTL to MH/SUD benefits in any classification unless the *processes, strategies, evidentiary standards or other factors* used in applying the limitation to MH/SUD benefits in the same classification are **"*comparable to, and are applied no more stringently than*, the processes, strategies, evidentiary standards or other factors used in applying the limitation to Med/Surg benefits in the classification."

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Focus On: Mental Health Parity

- Three Enforcement Mechanisms
  - Consumer complaints.
  - Policy form review.
  - Market conduct examinations.

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Focus On: Mental Health Parity

Example 1: Reimbursement Strategy / Medical Necessity

- *A plan requires prior authorization from the plan's utilization reviewer that lab services are medically necessary for all mental health and substance use disorder benefits.*
- *MH/SUD requests for individual tests in conjunction with panel tests are routinely denied.*
- *Providers of MH/SUD lab services seek prior authorization for panels and individual tests at the same time, and routinely get only the panels approved. Providers of med/surg lab services seek prior authorization for panels and individual tests at the same time, and routinely get both.*

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Example 2: Concurrent Review

- *Plan requires prior authorization for inpatient treatment for both med/surg and MH/SUD. If a member needs continued treatment beyond initial authorization, concurrent review may be requested for additional days. A member with severe mental illness requires an inpatient stay at a local mental health facility, in-network. The physician keeps the member in the facility for 20 days. The claim is paid appropriately.*
- *But, the initial authorization was for only 2 days. The provider then needed to seek concurrent review every 2 days to get authorization for additional days for medically necessary care.*
- *Investigation shows that members requiring surgery for a med/surg condition routinely get in-network inpatient care for whatever length of time is requested by the provider, and then as many additional days as requested by the provider.*
- *Investigation shows that for MH/SUD the plan has a standard number of inpatient days it approves initially based on expert recommendations, with additional days subject to additional authorization, and that for med/surg, there is not a standard number of inpatient treatment for the initial authorization.*

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Example 3: Exclusion of Services (contrary to clinical guidance)

- *Member needing SUD clinical counseling services goes to general medical physician, rather than psychiatrist. Services are denied because the plan requires that all services, whether MH/SUD or med/surg, be provided by a provider with particular certification in accord with clinical guidance, and the general medical doctor does not have a clinical counseling certification.*
- *Investigation shows that members can get treatment for a med/surg condition from a general practitioner. For example, a member needing foot surgery may get the surgery from a general surgeon, even if the clinical guidance recommends that foot surgery be provided only by a certified podiatrist.*

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Example 4: Formulary Concerns

- *Plan limits initial fill of specified prescription medications to 30 days, and requires an in-person visit and preauthorization approval prior to any refill.*
- *The list of specified medications requiring preauthorization includes all drugs likely to be used for MH/SUD conditions, but only certain drugs likely to be used for med/surg conditions. Moreover, MH/SUD provider is aware that his med/surg colleague routinely gets preauthorization approval for refills without having had a follow-up in-person visit.*
- *The list of specified medications requiring preauthorization includes all drugs that have a "black box warning". The list also excludes all antidepressants that have a "black box warning." It does include other MH drugs that have a "black box warning."*

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Example 5: Credentialing Standards

- *Plan requires a provider to meet the highest licensing requirement related to supervised clinical experience under applicable State law in order to participate in the plan's provider network. State law requires behavior specialists providing mental health autism services to have 1000 hours of clinical experience. The State law does not require licensed physicians providing either mental health or med/surg autism services to have any particular clinical experience.*

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Questions?

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