Changes and Challenges for Mental and Behavioral Health Providers

As Kentucky's Senate Bill 192 highlights, coverage and treatment of substance abuse problems is dramatically changing as the current penal model is slowly being replaced with a treatment model. Even terminology for what has been called "drug addiction" is now referred to as a "substance disorder" problem. Behavioral health has become the new catchall name for both mental health and substance disorders. As substance disorders become medical problems rather than drug abuse problems, the Federal Mental Health Parity Act and the Affordable Care Act now mandate that substance disorders and mental health problems, which often go hand in hand, must be covered by health insurance just as medical problems are covered. As of January 1, 2015, these illnesses must also covered by Medicare and Medicaid. Paving the road for coverage, however, has not been easy as a wealth of new federal and state government regulations are creating a complicated framework with a host of changes for behavioral health providers. While Kentucky struggles to provide and pay for services for the 150,000+ new Medicaid beneficiaries, these new laws and regulations significantly affect not just behavioral health providers, but also employers as the struggle to treat individuals who suffer from these maladies is addressed.

To bolster behavioral health services, Kentucky recently created a multitude of new behavioral health provider types that are eligible for reimbursement under the state's Medicaid plans, but which will also be reimbursed by health insurance. The most significant are the Behavioral Health Services Organization ("BHSO") and the Behavioral Health Multi-Specialty Group ("MSG"). Licensed under 902 KAR 20:430, BHSOs may provide a comprehensive variety of services from mental health and substance disorder providers that may include physicians, psychologists, therapists, social workers, nurse practitioners and physician assistants. Under this license, BHSOs may provide these services in both outpatient and residential settings. As opposed to BHSOs, MSGs are provider groups that can include only therapists and do not require licensure, but must meet credentialing requirements to be paid by Medicaid.

Kentucky's behavioral health providers are a key part of the state's plan to combat a growing substance use problem that threatens to spiral out of control. Senate Bill 192, Kentucky's "heroin bill," became law on March 25, 2015. A key provision of the new law exempts several behavioral health providers from the requirement of a Certificate of Need. SB 192 also requires Kentucky's Department for Medicaid Services ("DMS") and Medicaid managed care organizations ("MCOs") to approve or credential, respectively, behavioral health providers within forty-five days of application, expediting the process. The law requires MCOs to adjudicate all clean claims in a timely fashion as provided by statute or face a civil penalty of $100 per day. This provision addresses failures of MCOs to handle and pay claims in a timely fashion.

As health insurance, Medicaid, and Medicare begin to cover important behavioral health services that allow patients to participate in activities of daily living including work, employers will confront complicated and thorny issues about how individual employees should be treated when undergoing treatment for these problems. Issues like use of medicated assisted therapies by employees in the work place are difficult and can have significant legal implications that range from employees' rights to privacy of protected health information to rights to continued employment under the Americans with Disabilities Act.

Paradoxically, as the new legal and regulatory framework is developed with the intent of broadening access to important behavioral health services, the base of providers available to serve these patients is shrinking because of the cost of compliance with regulatory requirements and extremely low reimbursement. For instance, the regulatory landscape and the need for more providers to treat these substance disorder problems became even more complicated when the Kentucky Board of Medical Licensure ("KBML") issued regulations establishing prescribing standards for buprenorphine, also known as Suboxone, which is a narcotic prescribed by physicians to treat opioid addiction disorders. Buprenorphine is one of several medication-assisted therapies now eligible for Medicaid coverage in Kentucky for the treatment of the substance use disorders. The new regulations are the KBML's attempt to curb the abuse of these therapies and prevent doctor shopping. Law enforcement's efforts to combat Kentucky's serious drug problem by focusing on medical professionals and regularly reviewing KASPER and other reports may motivate behavioral health providers to choose less regulated areas for practice. Medicaid's low reimbursement rates drive providers to close their practices to Medicaid patients as the cost of compliance does not justify the rate of reimbursement.

The federal government's Centers for Medicare and Medicaid has just announced its intent to allow MCOs to pay all inclusive rates for behavioral health treatment, which, if enacted, may create financial incentives for providers to treat Medicaid patients if rates area reasonable. All inclusive payments for behavioral health services are being incorporated into the private health insurance market as well. Payment to providers to keep a substance disorder patient in compliance rather than on a fee for service basis may be in the future.

Interesting times are ahead for Kentucky's health care providers as the framework for treatment and payment for behavioral health services is developed and becomes recognized as a basic component of primary care and overall health. Keeping mental health and substance disorder patients healthy and productive members of the workforce will require new treatment models and most certainly will provide a host of new issues for employers. Both changes and challenges lie ahead for providers, insurance companies, regulators, and employers as the new framework is developed, but the reward will be that individuals with these issues will become productive members of our workforce.

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