



MEMORANDUM

Date: January 18, 2022

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshner 
Acting County Administrator

Re: **Provision of Benefits to Pima County Employees as Defined under the Affordable Care Act**

Late last year questions were raised about the provision of several benefits to Pima County employees, noting that the Pima County Health Benefits Trust Board had elected to opt-out of coverage of these services under the Affordable Care Act (ACA).

There are four areas of benefits for which the Health Benefits Trust Board chose to provide coverage through other than the ACA. These are:

- Mental health benefits;
- Reconstructive surgery following mastectomies;
- Dependent students on medically necessary leave of absence; and
- Benefits for mothers and newborns.

Pima County deems these services essential to the health and well-being of our employees and their families and has always provided and will continue to provide these benefits on par with, or in excess of, the ACA required level.

The decision by the Health Benefits Trust Board to opt-out of the provision by the ACA, while still providing the benefits required under the regulation, removes Pima County from the burden of federal oversight, audits and reporting requirements.

Attached is a Memorandum from Human Resources Director Cathy Bohland, which explains the history and rationale of the decision made by the Health Benefits Trust Board. Ms. Bohland's Memorandum notes that the Health Benefits Trust Board affirms that all Pima County employees will have access to all essential health care benefits as defined under the ACA and that the decision to opt-out was not made with an intent to exclude to diminish the benefits being offered to employees and their dependents.

JKL/mp

Attachments

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Cathy Bohland, Director, Human Resources Department
Health Benefits Trust Board

Date: December 29, 2021

To: Jan Leshner
Acting County Administrator

From: Cathy Bohland, Director ^{CB}
Human Resources

Re: Opt-Out Elections for Self-Funded Non-Federal Governmental Plans – Informational Only

This memorandum provides information concerning inquiries made by Arizona agencies to Board of Supervisor members concerning Pima County’s Health Benefit Trust opting-out of four of the Affordable Care Act’s (ACA) Essential Health Benefits (EHB) requirements. Those four areas include:

- Parity in the application of certain limits to mental health benefits;
- Required coverage for reconstructive surgery following mastectomies;
- Coverage of dependent students on medically necessary leave of absence; and,
- Standards relating to benefits for mothers and newborns.

As noted below, although Pima County has opted-out of these requirements, our health plan has always provided and will continue to provide these benefits on par with, or in excess of, the ACA required level, as we deem these services essential to the health and well-being of our plan members.

Background History

In October, Mental Health America of Arizona (MHA AZ) notified Board of Supervisor for District 2, via letter, that Pima County had opted out of federally mandated Mental Health Parity and Addiction Equity Act (MHPAEA) benefits. In December, Children’s Action Alliance reached out to Board of Supervisor for District 3, via letter, notifying that not only had Pima County opted out of MHPAEA, but also opted out of a total of four EHB requirements, all which are identified above in the bulleted items.

The October MHA AZ letter states and asserts in part:

.....opting out of MHPAEA, Pima County is making a very public statement that its decision-makers do not believe that Pima County employees and their families deserve the same level of care for their mental health as their physical health and that the regulatory burden of being held accountable to treat mental health as equally important as physical health is too high.

MHA AZ expressed its “dismay” with Pima County’s decision and urged immediate reversal of the decision to opt-out of MHPAEA’s requirements, indicating that Congress “should ultimately be held accountable for allowing this enormous loophole to exist.” In its December email, Children’s Action Alliance Southern Arizona Director stated that it had identified twelve other local Arizona jurisdictions who have also chosen to opt-out of one or more EHB requirements.

What is the MHPAEA?

The Mental Health Parity and Addiction Act requires health plans cover services for mental health and substance use and services for medical and surgical problems comparably; it prevents group health plans that provide mental health or substance use disorder (MH/SUD) benefits from imposing less favorable

benefit limitations on those benefits than on medical/surgical benefits. Some examples include:¹

- If a health plan covers in-network inpatient stays for patients recovering from surgery, it must also cover in-network inpatient treatment for MH/SUD.
- Treatment limitations (e.g. visit limits) cannot be more restrictive for MH/SUD benefits than for “substantially all” physical health benefits.
- Authorization of treatment, treatment frequency and medical necessity determinations must be comparable;
- Copayments, coinsurance, deductibles and out-of-pocket costs for MH/SUD benefits are subject to a formula so that the costs for these services are not higher than copayments for two-thirds of all physical health benefits in the same classification.

Decision to Opt-Out

The original decision by Pima County to opt-out of this provision, while still providing the benefits required under the regulation, was made in order to give Pima County future flexibility in decisions related to these benefits, which may prove to be financially constraining to the Health Benefits Trust or place an undue burden on Pima County staff, administrators or vendors with federal oversight/audits and reporting requirements as stated in the regulations.

The main provisions which have been alluded to and stated by other organizations facing the same decision are:

- Potential audit requirement placed upon plan by Department of Health and Human Services regarding plan compliance with providing benefits under the regulation
- Potential liability placed upon plan by legal challenges to adverse benefit decisions or assuring compliance with the MHPAEA and other regulations

It is important to note that Pima County’s health plan has always covered Mental Health and Addiction recovery services on par with, or in excess of, the Mental Health Parity Act and MHPAEA requirements.

Requirements for Opting-Out

Pima County is permitted as a self-funded, non-federal public sector employer plan, to opt-out of the MHPAEA provision and other healthcare-related service provisions as well. In opting-out, Pima County is required to file an annual letter with Centers for Medicare & Medicaid Services (CMS) stating their desire to opt-out of the regulation and its reporting requirements. Furthermore, and in accordance with requirements associated with the opt-out provision, each eligible employee of Pima County receives an annual letter from Pima County stating that Pima County has elected to opt out of the MHPAEA benefit requirement.

Pima County initially opted out of the MHPAEA provision in 2014, which was the same time that Pima County converted from a fully-insured health plan to a self-funded health plan; this was done prior to the formation of the Health Benefits Trust Board. Since 2014, Pima County has complied with the filing of the annual opt out notice letter to CMS and has complied with the required distribution of individual

¹ American Psychological Association, *What Do Employers Need to Know About Parity?*, May 5, 2021, [What do employers need to know about parity? \(apa.org\)](https://www.apa.org/press-releases/2021/05/05/parity)

opt out notifications to its approximately 5,000 employees enrolled on the medical plan. Additionally, Pima County has included a notice in the letter that the benefits required under MHPAEA are in fact, provided under Pima County's health plan. These benefits are included and outlined in Pima County's health plan document and administered accordingly by Aetna, Pima County's health plan administrator and plan fiduciary.

Opt-Outs for Other Benefits and Pima County's Compliance

After further research by outside community groups, it was noted in a CMS report of public employers opting out of MHPAEA compliance that Pima County also opts-out of three (3) other provisions of healthcare services provided under the plan and allowed by the ACA regulations. These include:

- Reconstruction benefits after mastectomies
- Coverage for students on leave of absence from education
- Coverage for mothers and newborn

The stated goal of this community group is to ask Pima County to "NOT" continue to formally opt-out. It must be noted that if we decided to not formally opt-out in the future, there would be no material change to the benefits offered under Pima County's health insurance program, as Pima County's plan is already in full compliance.

Pima County's Plan Offers Essential Health Benefits as Follows:

○ Reconstructive Breast Surgery – As Provided in Pima County's Plan Document

- Covered expenses include reconstruction of the breast on which a mastectomy was performed, including an implant and areolar reconstruction. Also included is surgery on a healthy breast to make it symmetrical with the reconstructed breast and physical therapy to treat complications of mastectomy, including lymphedema.
- Important Notice.
- A benefit maximum may apply to reconstructive or cosmetic surgery services.

○ Coverage for Dependent Children (regardless of student status)

- To be eligible for coverage, a dependent child must be under 26 years of age;
- An eligible dependent child includes: your biological children; your stepchildren; your legally adopted children; your foster children, including any children placed with you for adoption; and any children for whom you are responsible under court order; and,
- Coverage for a child with a disability may be continued past the age limits shown above. See Dependent Children with Disabilities for more information.

○ Coverage for mothers and newborns

Standard Maternity is covered and does not exclude anything different. Aetna Maternity program is also being used as a benchmark to cover all those services as well.

○ *Newborns' and Mothers' Health Protection Act – As Stated in Pima County Plan Document (NMHPA)*

- Under federal law, group health plans and health insurance issuers offering group health insurance coverage generally may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a delivery by cesarean section.
- However, the Plan or issuer may pay for a shorter stay if the attending provider (e.g., your physician, nurse midwife, or physician assistant), after consultation with the mother, discharges the mother or newborn earlier.
- Also, under federal law, plans and issuers may not set the level of benefits or out-of-pocket costs so that any later portion of the 48-hour (or 96-hour) stay is treated in a manner less favorable to the mother or newborn than any earlier portion of the stay.
- Additionally, a plan or issuer may not, under federal law, require that a physician or other health care provider obtain authorization for prescribing a length of stay of up to 48 hours (or 96 hours). However, to use certain providers or facilities, or to reduce your out-of-pocket costs, you may be required to obtain precertification.

Conclusion

As stated previously, Pima County made the decision to opt-out in preparation for the conversion to a self-funded health plan and to be free of the burden of the reporting requirements and potential costly federal audits. The decision was made with the intention of providing Pima County with administrative and financial flexibility when it came to providing these benefits to employees and dependents **and not with an intent to exclude or diminish the benefits being offered to employees and their dependents.**

Pima County is in agreement with MHA AZ and the Children's Action Alliance, in that our employees and their families deserve the same level of care for mental health as their physical health and that we must ensure that children's behavioral health programs, services, and insurance coverage are easily available. To this end, Pima County assures that its employees have access to all essential health care benefits as defined under the ACA that fall under our health plan and we will continue to provide this level of benefits for our plan members.