

MEMORANDUM

Date: January 11, 2019
TO: Residential Eating Disorders Consortium
FROM: Center Road Solutions
RE: Department of Labor MH/SUD Parity Roundtable Discussion

I. Executive Summary

On January 10, 2019, the U.S. Department of Labor (DOL) hosted a “Mental Health and Substance Use Disorder Parity Roundtable” discussion to confer on the ongoing successes, challenges, and best practices as it relates to the continuing implementation of the Mental Health Parity and Addiction Equity Act (MHPAEA). The roundtable included stakeholders from federal agencies, patient advocacy organizations, legal advocacy organizations, and insurers. Some of the participating entities included: American Psychiatric Association, Association for America’s Health Insurance Plans (AHIP), Autism Legal Resource, BlueCross BlueShield, Cigna, CMS, Depression and Bipolar Support Alliance, ERISA Industry Committee, National Association of Addiction Treatment Providers, National Association for Behavioral Healthcare, National Association of Insurance Commissioners, National Alliance for Mental Illness, National Business Group on Health, Parity Implementation Coalition, Pennsylvania Department of Insurance, SAMHSA, and The Kennedy Forum.

Key Takeaways:

- DOL currently collects data on parity non-compliance and enforcement on a case-by-case basis. The agency is now exploring the use of “treatment, payment and healthcare options” (TPOs) to better inform how parity is or is not being implemented on the ground.
- The Center for Consumer Information and Insurance Oversight (CCIIO) within the Centers for Medicare and Medicaid Services (CMS) wants to hear from stakeholders if they know of states that are not in compliance with MHPAEA. CCIIO is dedicated to bridging the education gap between states and MHPAEA.
- DOL is expected to have webinars and education trainings on parity during Mental Health Awareness Month in May.
- Stakeholder participant, The Kennedy Forum is working on accreditation standards to help ensure parity compliance for insurers. Additionally, they have developed a [six-step parity compliance guide](#) for non-quantitative treatment limitations (NQTLs) that was released earlier this year.

II. Roundtable Discussion

The Department of Labor, Employee Benefits Security Administration (DOL, EBSA) has been very active working with public stakeholders for the continued implementation of the Mental Health Parity and Addiction Equity Act (MHPAEA). The latest action by the eating disorders community was the submission of [public comments](#) by the [Eating Disorders Coalition](#) in June 2018 in response to DOL’s proposed FAQs Part 39, Self-Compliance Toolkit and Request for Information/Model Disclosure Form. The roundtable held on January 10, 2019 discussed nonquantitative treatment limitations (NQTLs), disclosure issues, and federal/state coordination and best practices, which will each be discussed briefly below.

i. Nonquantitative Treatment Limitations (NQTLs)

DOL inquired what insurers are already doing to ensure that NQTLs are enforced. The Association for America’s Health Insurance Plans (AHIP) stated that large compliance teams are being created across their memberships and they are relying heavily on DOL’s resources and compliance toolkit. There was some concern from the insurer community that compliance with MHPAEA is getting very granular and increasingly challenging to adhere to as the compliance protocols keep changing.

Further, insurers addressed taking into consideration the broader health care delivery challenges present within the U.S. healthcare system that affects compliance with MHPAEA. For example, network adequacy/narrow provider networks for MH/SUD providers and low reimbursement rates. Conversely, a non-profit law and policy organization addressed the need for transparency for insurance regulators to better understand the formulas insurers use to come up with final reimbursement

rates. However, it is often the case that insurance regulators are unclear what their legal authority is to request this information from insurers.

The EDC public comment submission addressed several concerns around NQTLs, which included:

- Clarifying that for the purposes of MHPAEA compliance, MH/SUD residential treatment is a category of inpatient benefit under the six-benefit classification for coverage.
- Placing the burden of proof on the insurer to demonstrate what evidentiary standards or other factors were utilized to develop and apply differing step therapy or fail-first policies for MH/SUD and medical/surgical benefits.

ii. Disclosure Issues

DOL updates their compliance toolkits every couple of months and works hard to ensure that the information they provide is up-to-date and informative for the public. However, the insurer stakeholders requested additional guidance around what regulators want to see provided. However, the patient advocacy stakeholders pushed back at this request stating that uncertainty around what should be disclosed should not be excuse for not disclosing.

Further, there was some discussion related to the sophistication of the consumer. If a consumer is writing to request additional information on a denial, the insurer should be taking those requests seriously. Typical one-line responses from the insurer is not in keeping with the spirit of the request asked.

The EDC public comment submission recommended:

- Providing additional guidance requiring medical guidelines and medical necessity criteria be automatically provided to providers and patients' agents upon request within 7 business days.

iii. Federal/State Coordination and Best Practices

The Center for The Center for Consumer Information and Insurance Oversight (CCIOO) within the Centers for Medicare and Medicaid Services (CMS) stated that MHPAEA created a baseline for states to adhere to regardless if their state law does not align with the MHPAEA. States must follow the MHPAEA and the agency encourages stakeholders to get in touch with CCIOO if they are aware of states out of compliance.

Some participants suggested instituting a federal initiative to help states become MHPAEA compliant and work to educate states on the basics of parity law because it is such a complex topic. To help address this knowledge gap, The Kennedy Forum is working on accreditation standards in an effort to provide insurers with guidance on how to back into some of the compliance issues they consistently face. There are still some fundamental disagreements on what the accreditation standards should ultimately look like but will be forthcoming.

III. Conclusion

DOL continues to be in the process of finalizing guidance and the roundtable further informed their efforts to ensure parity compliance. Additionally, the Department is actively working on cleaning up the FY18 parity enforcement results and will be releasing those figures soon. This data will include the number of parity investigations and the number of non-compliant cases from last year.