



State Parity Legislative and Regulatory Compliance Workgroup

November 11, 2020

Agenda

- ***Wit v. United Behavioral Health* Remedies Ruling**
- **USDOL Self-Compliance Tool**
- **State Updates**
 - **Pennsylvania**
 - **Louisiana**
 - **Other Bills**
 - **NYS Medical Necessity Criteria Reviews**
 - **Final NYS Regulations Requiring Parity Compliance Programs**
- **Post-Election Outlook**

Wit v. UBH Remedies Order

- Judge Spero issued 10-year injunction requiring:
 1. UBH to exclusively apply medical necessity criteria developed by non-profit clinical specialty associations;
 2. Appointment of a special master;
 3. Training of UBH in the proper use of court-ordered medical necessity criteria; and
 4. Reprocessing of nearly 67,000 mental health and substance use disorder benefit claims denied during the class period.
- Required criteria are:
 - **ASAM Criteria:** primary diagnosis of SUD
 - **LOCUS (Level of Care Utilization System):** adults with primary diagnosis of MH condition
 - **CASII (Child and Adolescent Survey Intensity Instrument):** ages 6 to 18 with primary diagnosis of MH condition
 - **ECSII (Early Childhood Survey Intensity Instrument):** ages 5 and under with primary diagnosis of MH condition
- Non-ERISA insureds (such as gov't employees) adversely impacted by UBH's defective guidelines must rely on state and federal regulators to intervene on their behalf.

<https://psych-appeal.com/wp-content/uploads/2020/11/2020-11-2-Remedies-Order.pdf>

MHPAEA Self-Compliance Tool Revisions

- USDOL publishes MHPAEA Self-Compliance Tool for health plans' sponsors and administrators, state regulators, and other stakeholders to determine MHPAEA compliance. Last published April 2018.
- Generally a good tool. Law requires updates every 2 years.
- Proposed revisions put out for comment in July.
<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/compliance-assistance-guide-appendix-a-mhpaea-proposed-updates.pdf>
- Many proposed revisions were fine/helpful, but some areas of concern:
 - Insufficient language on parity compliance programs – suggests they're optional.
 - Reference to flawed National Association of Insurance Commissioners (NAIC) reporting form.
- Self-Compliance Tool was finalized in late October:
<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf>
 - Made some suggested changes. Ignored others. Step-wise approach to NQTLs maintained.
 - Parity compliance programs still suggested to be optional.
 - Reference to NAIC tool softened, but not removed.

Pennsylvania

HB 1696

- **Status:** Signed Into Law by Governor Wolf – October 29, 2020
- **Summary:**
 - Insurer must file annual attestation that it has conducted analyses on Federal Parity Act compliance
 - Parity compliance analyses must be available for review.
 - Parity compliance analyses must contain all the information required in the model parity bill.
- HB 1696 is a version of the model bill's reporting requirements that doesn't require annual parity reporting to insurance department, but rather requires attestation that the analyses have been conducted and must be made available to the department upon request.
- Given that PA Insurance Department has already been requiring insurers to submit parity compliance analyses, this strengthens statutory requirements

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2019&sind=0&body=H&type=B&bn=1696>



Pennsylvania

HB 1439

- **Status:** Signed Into Law by Governor Wolf – October 29, 2020
- **Summary:**
 - o Extends insurer certification of compliance with MHPAEA to actual delivery of services vs. only policy forms and documents.

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sy=2019&ind=0&body=H&type=B&bn=1439>

Louisiana

Louisiana Dept. of Insurance Directive 216

- **Issued:** September 9, 2020
- **Summary:**
 - o Announces that insurers must submit annual report regarding mental health parity beginning January 31, 2021.
 - o Lists the Six-Step Kennedy Forum / APA Process from Model Reporting Bill

<https://www.lidi.la.gov/docs/default-source/documents/legaldocs/directives/dir216-cur-mentalhealthparityre>

New York

A. 11145

- **Status:** Introduced November 6, 2020
- **Author:** Gunther (D) – Democratic legislature
- **Summary:**
 - o Prohibits “fail-first” or “step therapy” protocols for mental health benefits, including drug coverage

https://assembly.state.ny.us/leg/?leg_video=&term=2019&Floor%26nbspVotes=Y&Text=Y&bn=A11145&default_fld=&Memo=Y&Committee%26nbspVotes=Y&Actions=Y&Summary=Y

New York Review of Criteria

- Governor Cuomo’s office had provision included in 2020 budget implementation bill that requires:
 - “A utilization review agent shall use clinical review criteria deemed appropriate and approved for such use by the commissioner of the office of mental health...”
- Office of Mental Health (OMH) followed up by quickly finalizing “Guiding Principles for the Review and Approval of Clinical Review Criteria for Mental Health Services”:
https://omh.ny.gov/omhweb/bho/omh_mnc_guiding_principles.pdf
- Now conducting review of all health plans subject to state regulation.
- **All submitted criteria submitted were rejected by the state! Shows how flawed criteria plans using are.**
- Last week, NYS sent all plans a memo outlining two options:
 1. Adopt the LOCUS criteria, along with its counterpart for children and adolescents (CALOCUS), for level of care determinations as well as a new “best practices for utilization review” guide developed by OMH.
 2. Submit modified clinical review criteria and policies/procedures that “address deficiencies identified by OMH in its initial review.”
- NYS has issued conditional approval of plans’ current (flawed) criteria through 1/8/21.

Post-Election Outlook

- **President-Elect Biden**

- Administration will have ability to take action to improve compliance with Federal Parity Act.
- CMS and DOL choose how much to make enforcement a priority.
- Likely can take action relating to *Wit* case and generally accepted standards of care.
- Will likely undo harmful changes of Trump Administration in Medicaid and marketplace

- **Congress**

- Democrats have retained House. Senate the big question mark.
- Some desired policy changes on parity may be more difficult in divided Congress. Addressing any adverse SCOTUS ruling on ACA is likely more difficult in divided Congress.

- **COVID Stimulus and MH/SUD??**

- Outlook unclear prior to new Congress / Administration.
- Latest House HEROES Act has \$8.5 billion for MH/SUD.
- Senate Republicans have pushed for “skinny” package that doesn’t include MH/SUD (previously had released plan with MH/SUD funding that was never voted upon).