



State Parity Legislative and Regulatory Compliance Workgroup

October 20, 2021

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Agenda

- **State Updates**
- **Federal Updates**
- **Campaign to Test Compliance with Required Parity Disclosures**



States Updates

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California

SB 221

- **Status:** Signed by Governor Newsom on October 8, 2021
- **Sponsor:** Sen. Wiener (D)
- **Summary:**
 - Codify regulations adopted by the Department of Managed Health Care and Department of Insurance.
 - Provide access standards for health care services plans and insurers such that:
 - Appointments for MH or SUD services are subject to timely access requirements; and
 - Ensure follow up appointment within 10 business days.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB221

Massachusetts

H. 1041

- **Status:** Referred to Joint Committee on Mental Health, Substance Use and Recovery
- **Sponsor:** Balser (D)
- **Summary:**
 - Applies to both commercial insurance and Medicaid managed care plans.
 - Contains NQTL reporting requirement for plans consistent with MHPAEA statute (CAA amendments).
 - Requires report to legislature on MHPAEA enforcement activities.

<https://malegislature.gov/Bills/192/H1041>

Massachusetts

S. 675

- **Status:** Referred to Joint Committee on Mental Health, Substance Use and Recovery
- **Sponsor:** Friedman (D)
- **Summary:**
 - Applies to both commercial insurance and Medicaid managed care plans.
 - Contains NQTL reporting requirement for plans consistent with MHPAEA statute (CAA amendments).
 - Requires annual reports to legislature on MHPAEA enforcement activities.
 - Requires plans to pay for costs of market conduct examinations.
 - Strengthens enforcement authorities, including penalties.
 - Requires claims data reporting.
 - Strengthens external review rights for Medicaid managed care beneficiaries.

<https://malegislature.gov/Bills/192/S675>



Massachusetts

S. 703 / H. 1038

- **Status:** Referred to Joint Committee on Mental Health, Substance Use and Recovery
- **Sponsor:** Lovely (D) / Balsler (D)
- **Summary:**
 - Prohibits discrimination in short- and long-term disability policies against MH/SUD.

<https://malegislature.gov/Bills/192/H1038>

Pennsylvania

SB 225

- **Status:** Reported by Senate Banking and Insurance Committee
- **Sponsor:** Phillips-Hill (R)
- **Summary:**
 - Prior authorization bill
 - Has Clinical Criteria and medical necessity provisions that should be strengthened

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?year=2021&sind=0&body=S&type=B&bn=0225>

Details on Criteria Provisions

Language on clinical criteria in Pennsylvania bill is problematic (and unfortunately commonplace). Here's why:

THE CRITERIA SHALL:

- (1) BE BASED ON NATIONALLY RECOGNIZED STANDARDS. **[not meaningful unless defined]**
- (2) BE DEVELOPED IN ACCORDANCE WITH THE CURRENT STANDARDS OF NATIONAL ACCREDITATION ENTITIES. **[accreditation is a process measure, doesn't measure quality of criteria]**
- (3) REFLECT COMMUNITY STANDARDS OF CARE. **[not meaningful unless defined]**
- (4) ENSURE QUALITY OF CARE AND ACCESS TO NEEDED HEALTH CARE SERVICES. **[vague and hard to enforce]**
- (5) BE EVIDENCE-BASED OR BASED ON GENERALLY ACCEPTED EXPERT CONSENSUS STANDARDS. **[close to Generally Accepted Standards of Care, but should be defined]**
- (6) BE SUFFICIENTLY FLEXIBLE TO ALLOW DEVIATIONS FROM THE STANDARDS WHEN JUSTIFIED ON A CASE-BY-CASE BASIS. **[while desire is likely to benefit patient, could be used by insurers to deviate from criteria as they wish]**
- (7) BE EVALUATED AND UPDATED ANNUALLY. **[sounds good, but actually effectively outlaws ASAM Criteria – good criteria (especially level of care criteria) doesn't need to be updated constantly.]**



Federal Updates

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Reconciliation and DOL Parity Fines

DOL Civil Monetary Penalty Authority Included in House Reconciliation Language

- Future largely dependent on whether Democrats can agree on final reconciliation package
- Currently, DOL lacks ability to issue fines for MHPAEA violations
- Obama 2016 Parity Task Force and Trump Opioid Commission both recommended giving DOL this authority
- The Parity Enforcement Act (H.R. 1364) would give DOL this power
- Utilizes DOL's civil monetary penalty authority to enforce the Genetic Information Nondiscrimination Act (GINA)
- Civil monetary penalty provisions included in House Education and Labor Committee language that passed committee last month

Pg. 117 of <https://edlabor.house.gov/imo/media/doc/Committee%20Print.pdf>

Extending Parity to Medicare / FFS Medicaid

Recent Letter to Senate Finance Committee

- Senate Finance Chairman Wyden and Ranking Member Crapo put out a request for input on how to improve MH/SUD system – parity is one of specific areas of interest
- The Kennedy Forum, American Psychiatric Association, and ASAM led letter with Coalition to Stop Opioid Overdose and Mental Health Liaison Group (signed by more than 60 national orgs) urging Senate Finance to close MH/SUD coverage gaps in Medicare and apply MHPAEA to Medicare and FFS Medicaid
- Individuals without parity protections: >60 million in Medicare, >20 million in traditional Medicaid, ~10 million in TRICARE

Letter can be found here: <https://www.thekennedyforum.org/app/uploads/2021/10/MHSUD-Medicare-Parity-Letter-to-Chair-Wyden-and-RM-Crapo-FINAL-10-13-21.pdf>





Parity Disclosure Campaign

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New Parity Act Requirements

- The Consolidated Appropriations Act (CAA), 2021 signed into law in December 2020 amended the Federal Parity Act
 - Requires most health plans to perform detailed parity compliance analyses of their non-quantitative treatment limitations, or NQTLs (e.g. prior authorization)
 - Compliance analyses must be given to state and federal regulators upon request
 - Applies to all private insurers and all group health plans (unfortunately, not to Medicaid managed care organizations)
 - Requirements took effect in February 2021
- *Federal regulators have explicitly stated that health plans must provide enrollees (or their authorized representatives) with these analyses upon request*

Testing Health Plan Compliance

- **Goal:** Have individuals (or their authorized representative) send parity disclosure requests to their health plan to test compliance with Federal Parity Act requirements
- **Requests:** Send one or more parity disclosure requests using the letter templates for each customized communication
- **Documentation:** After 30 days, document the response by the health plan by filling out a survey and uploading key documents
- **Analysis:** The Center for Health Law & Policy Innovation at Harvard Law School will help analyze the results
- **Advocacy:** We will work key policymakers to highlight the need for more transparency and disclosure by health plans

Parity Disclosure Template Letters

The Four Parity Disclosure Template Letters

- Parity Disclosure Model Letter (general request)
 - Member version
 - Authorized representative
- Adverse Determination Model Letter (for use after a claim denial)
 - Member version
 - Authorized representative

Note: Contact The Kennedy Forum for a link to these template letters

Documentation the Plan's Response

- After 30 days, fill out the Parity Disclosure Survey
- The Survey covers the following:
 - About the person filling out the online form
 - About the type of plan
 - Basic information about what information was requested; and
 - Was a response received within 30 days
- The following documentation
 - Original request letter that was submitted to plan
 - Any response from the plan sponsor or administrator

How Information Will Be Used

- The information received will be used on an anonymized basis to evaluate whether health plans are following disclosure requirements and are in compliance with the Federal Parity Act
- The results will help inform regulators' efforts, as well as give insights into the whether plans' non-quantitative treatment limitation analyses demonstrate compliance with the Federal Parity Act
- The project may also help push broader health coverage reforms to improve access to mental health and substance use disorder care
- Project will be ongoing through at least the end of 2021

Reach out to David Lloyd if you or your organization is interested in participating

Thank You!

Questions?

