



State Parity Legislative and Regulatory Compliance Workgroup

February 9, 2022

Agenda

- **Federal Updates**
 - DOL/HHS Parity Report
 - Civil Monetary Penalty Update
 - Congressional Mental Health Efforts
- **State Updates**
 - State/Local Parity Opt Outs
 - State Bills



Federal Updates

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DOL / HHS Parity Report

Damning Parity Report Released in Late January

- Report jointly released by DOL, HHS, and Treasury (though Treasury plays very minor role).
- In recommendations at the end, DOL called on Congress to pass civil monetary penalty authority, which “has the potential to greatly strengthen the protections of MHPAEA” and “would lead to more meaningful penalties for non-compliance and would incentive compliance.”
- **None of the comparative analyses reviewed contained sufficient information upon initial receipt.**
- Titles of Employee Benefits Security Administration (EBSA)’s sections are instructive:
 - “Many Plans/Issuers Were Unprepared”
 - “All Comparative Analyses Reviewed by EBSA Were Initially Insufficient”
 - “EBSA’s Comparative Analysis Review Detected Common Problems and Shed Light on Unexamined Plan Terms and Practices”

<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf>



DOL / HHS Parity Report Cont.

- EBSA observed several common themes in deficiencies:
 - Failure to document comparative analysis before designing and applying the NQTL;
 - Conclusory assertions lacking specific supporting evidence or detailed explanation;
 - Lack of meaningful comparison or meaningful analysis;
 - Non-responsive comparative analysis;
 - Documents provided without adequate explanation;
 - Failure to identify the specific MH/SUD and medical/surgical benefits or MHPAEA benefit classification/s affected by an NQTL;
 - Limiting scope of analysis to only a portion of the NQTL at issue;
 - Failure to identify all factors;
 - Lack of sufficient detail about identified factors;
 - Failure to demonstrate the application of identified factors in the design of an NQTL; and
 - Failure to demonstrate compliance of an NQTL as applied.

<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf>

DOL / HHS Parity Report Cont.

- **EBSA has issued 80 insufficiency letters** for over 170 NQTLs, requesting additional information and identifying specific deficiencies.
- **CMS has issued 19 insufficiency letters** identifying deficiencies in the comparative analyses and requested additional information to address these deficiencies.
- Even despite insufficient analyses, EBSA has so far issued 30 initial determination letters finding **48 NQTLs imposed on MH/SUD benefits violate parity** (36 unique NQTLs).
- Even despite insufficient analyses, CMS has so far issued 15 initial determination letters to plans and issuers finding **16 NQTLs violate parity**.
- Examples of parity violations found:
 - Applied Behavioral Analysis (ABA) therapy exclusions for autism
 - Exclusion on Medication-Assisted Treatment (MAT) for Opioid Use Disorder
 - Nutritional Counseling Exclusion for eating disorders
 - Limitation on Urine Drug Testing
 - Blanket Pre-certification Requirement for MH/SUD Benefits
- **EBSA received corrective action plans from 19 plans** in response to initial determination letters. These corrective action plans address 36 NQTLs (30 unique NQTLs).
- **CMS received corrective action plans from 6 plans and issuers** in response to initial determination letters. These corrective action plans address 13 NQTLs.
- **26 plans and issuers so far have agreed to make prospective changes to their plans.**

DOL Civil Monetary Penalties

DOL Explicitly Asked for Ability to Assess Parity Fines

- In report, DOL called on Congress to pass civil monetary penalty authority, which “has the potential to greatly strengthen the protections of MHPAEA” and “would lead to more meaningful penalties for non-compliance and would incentive compliance.”
- CMP authority has been in every version of Build Back Better Act.
- Best chance for enactment in short term is through reconciliation package, which is TBD.

Congressional Mental Health Efforts

Senate Finance Committee Bipartisan Mental Health Co-Chairs

- Chairman Wyden and Ranking Member Crapo solicited comments on needed mental health reforms this past fall. Five areas of focus:
 - Strengthening the workforce (Stabenow / Daines)
 - Increasing integration, coordination, and access to care (Cortez-Masto / Cornyn)
 - **Ensuring parity between behavioral and physical health care (Bennet / Burr)**
 - Furthering the use of telehealth (Cardin / Thune)
 - Improving access to behavioral health care for children and young people (Carper / Cassidy)
- Senate HELP also planning to work on mental health reforms within its jurisdiction.



State Updates

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Pima County, Arizona Opt Out

Board of Supervisors Considering Ending Opt Out

- MHA Arizona has been leading.
- Sent letter to all opted-out plans in Arizona expressing concern.
- Ongoing dialogue with Pima County on its opt out.
- MHA national and Kennedy Forum sent letter urging an end to the opt out.
- Progress TBD

Utah Opt Outs

Likely Progress in Utah

- University of Utah has pledged to get rid of most obvious as written parity violations.
- Bill likely to apply many of MHPAEA requirements to opted out plans under state law. But would not prohibit state/local plans in Utah plans from opting out.

Delaware

HB 303

- **Status:** Introduced (likely) February 9, 2022
- **Sponsor:** House Majority Leader Valerie Longhurst
- **Summary:**
 - Creates a pre-deductible, annual Behavioral Health Well Check with a licensed mental health clinician of masters level or higher.
 - Reimbursement for this benefit must be no less than what a similarly qualified medical professional would receive for an annual physical.

Link to come

Georgia

SB 342

- **Status:** Passed Senate 48-3-5 on February 7, 2022
- **Sponsor:** Senator Kay Kirkpatrick (13 R's, 6 D's)
- **Summary:**
 - For each insurer's 5 largest plans in the individual, small group, and large group market, insurer must prepare and submit parity compliance analyses annually and other information relating to claims denials.
 - Insurer must make summary of analyses available on public website.
 - Requires Commissioner to review each analyses submitted for compliance with MHPAEA.

<https://www.legis.ga.gov/legislation/61158>

Georgia

HB 1013

- **Status:** Introduced, January 27, 2022
- **Sponsor:** Speaker Ralston (4 R's, 2 D's)
- **Summary:**
 - Large bill that includes requirements that insurers must follow generally accepted standards of mental health and substance use disorder care.
 - Includes AMA/APA definition of medical necessity.
 - Defines MH/SUD as current versions of DSM or BH Chapter of ICD.
 - Submit parity compliance analyses required by MHPAEA annually.
 - Submit data on NQTLs annually. If data suggests potential violations, the department shall initiate a market conduct examination, with parity being examined in an exam at least ever 5 years.
 - The Commissioner shall submit report to GA Data Analytic Center and General Assembly annually.
 - Institutes Medical Loss Ratio of 85% consistent with 42 CFR Section 438.8.
 - Defines MH/SUD as current version of DSM or ICD.
 - Removes antiquated code language.
 - Establishes loan forgiveness program for MH/SUD professions serving underserved areas/populations.
 - Civil commitment provisions are updated.
 - Various MH/SUD criminal legal system provisions and reforms. And more!

<https://www.legis.ga.gov/legislation/61365>

Hawaii

SB 2585 / HB 1946

- **Status:** Introduced, January 21 and 26, 2022 (respectively)
- **Sponsor:** Senator Chang, Rep. Kobayashi
- **Summary:**
 - Requires coverage of annual mental health wellness examination and defines covered components.
 - Shall not be less extensive than coverage provided for physical health examination and shall comply with MHPAEA.

https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=2585&year=2022

https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=1946&year=2022

Maryland

HB 517 / SB 460

- **Status:** Introduced, January 21 and 27, 2022 (hearing 2/23 and 2/22), respectively
- **Sponsor:** Delegate Lewis (D), Senator Augustine (D)
- **Summary:**
 - Establishes a Consumer Health Access Program for Mental Health and Addiction Care to assist State residents in accessing mental health and substance use disorder services under public and private health insurance and address insurance-related barriers to mental health and substance use disorder services.
 - “Incubator entity” is Univ. of Maryland Baltimore School of Social Work Center for Addiction Research, Education, and Services.
 - Enters into an Memorandum of Understanding with Health Education and Advocacy Unit of the Attorney General.
 - Collect and make available to public data and recommendations on policies and practices to resolve deficiencies in coverage and access to services.

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0517?ys=2022rs>

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0460?ys=2022RS>

Maryland

HB 684 / SB 659

- **Status:** Introduced, Jan. 31 and Feb. 4, 2022 (hearing 2/23 and 2/22), respectively
- **Sponsor:** Delegate Bagnall and Senator Benson
- **Summary:**
 - Department of Health may not limit or restrict a Medicaid enrollee's admission for inpatient care at a special psychiatric hospital or an acute general care hospital with separately identified inpatient psychiatric service unless limitation is based on:
 - Medical necessity of admission
 - Establishes the limit or restriction through regulation

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0684?ys=2022rs>

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0659?ys=2022RS>

Oklahoma

SB 1413

- **Status:** Introduced, January 19, 2022
- **Sponsor:** Senator Montgomery (R)
- **Summary:**
 - Directs Insurance Department to conduct a market conduct examination to analyze NQTLs compliance with parity.
 - Must examine network adequacy.
 - The Department must use parity analyses that it receives pursuant to previously enacted law.
 - Must provide findings to legislature and Governor and make public report available.

<http://www.oklegislature.gov/BillInfo.aspx?Bill=SB1413&session=2200>

Virginia

SB 434

- **Status:** Passed Senate 40-0 on February 7, 2022
- **Sponsor:** Senator Barker (D)
- **Summary:**
 - Originally required insurers to submit parity compliance reports required by 42 U.S.C. § 300gg-26(a)(8) to the Bureau of Insurance annually.
 - Amended to only require Bureau of Insurance to report a summary annually of the parity compliance analyses that they collected during the previous year.

<https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+SB434>

Virginia

SB 321 / HB 225

- **Status:** SB 321 Passed Senate 39-0 on January 28, 2022; HB 225 Passed House 98-0 on February 2, 2022
- **Sponsor:** Senator Vogel (R) / Delegate Coyner (R)
- **Summary:**
 - Amends autism spectrum disorder mandate section to explicitly tie definition to the most recent edition of the DSM.
 - Adds language to existing definition of medical necessity that references “generally accepted standards of mental disorder or condition care.”

<https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+SB321>

<https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB225>

Washington

SB 5618 / HB 1688

- **Status:** HB 1688 passed Committee on Health Care & Wellness (1/26) and Committee on Appropriations (2/4)
- **Sponsor:** Sen. Cleveland (D) / Rep. Cody (D) – Insurance Commissioner Requested
- **Summary:**
 - Aligns state law with federal No Surprises Act.
 - Defines “behavioral health emergency services provider” to include mobile crisis response team and crisis stabilization.
 - Amends requirement for coverage of “emergency services” to include “behavioral health emergency services provider” (i.e. not just hospitals).
 - Insurers must reimburse (no in-network vs. out-of-network distinctions). BH emergency services provider may not balance bill.
 - Modifies dispute resolution process between insurers and providers.

<https://app.leg.wa.gov/billsummary?BillNumber=5618&Year=2021&Initiative=false>

<https://app.leg.wa.gov/billsummary?BillNumber=1688&Chamber=House&Year=2021>





Other Updates?