



# **State Parity Legislative and Regulatory Compliance Workgroup**

April 13, 2022

# Agenda

- **Update on *Wit v. United Behavioral Health***
- **Federal Updates**
  - President's FY23 Proposed Budget
  - Parity Hearings
  - Upcoming Parity Webinar with Sec. Becerra
- **State Updates**



## *Wit v. UBH*

[thekennedyforum.org](http://thekennedyforum.org)

# Deeply Flawed Decision in *Wit v. UBH*

- 3-judge panel of Ninth Circuit Court of Appeals reversed District Court ruling
- District Court had issued two 100+ page rulings detailing how UBH used flawed medical necessity criteria inconsistent with Generally Accepted Standards of Care (GASC)
- In seven-page opinion, the panel found it “not unreasonable” for plans’ coverage determinations to be inconsistent with GASC.
- The panel even got basic facts of the case wrong. It reasoned that health plans are not obligated to cover treatment consistent with GASC if the treatment sought is not a covered benefit under the plan. Yet the plaintiffs never even argued this.
- The panel did not cite a single holding of the trial court, or any single fact from the case, despite the District Court’s exhaustive findings.
- It also ignored that UBH violated multiple states’ laws that mandate use of non-profit professional association guidelines like ASAM Criteria.
- **Next Steps:**
  - Strong amicus briefs from national groups supporting review before full Ninth Circuit (*en banc*)
  - Raising public awareness – particularly in Ninth Circuit states (CA, OR, WA, AZ, NV, MT, ID, HI, AK)



# Federal Updates

[thekennedyforum.org](http://thekennedyforum.org)

# President's FY23 Budget Proposal

- Wish list of proposed spending levels and policy changes, but puts important things on the agenda for discussion
- Significant provisions on parity and MH/SUD coverage. Highlights include:
  - Asks Congress to grant DOL civil monetary penalty authority (ability to issue parity fines) and stronger ability to go after third party administrators, define MH/SUD in uniform and objective manner, and make it clearer that those in ERISA plans who have been wrongly denied care can receive reimbursement for denied care.
  - Apply MHPAEA to all coverage types – including Medicare. Eliminate 190-day inpatient psychiatric limit within Medicare.
  - Require all plans and issuers to provide MH/SUD benefits.
  - Require all private plans to use medical necessity criteria consistent with nonprofit medical associations.
  - Limit considerations of profit in medical necessity determinations.
  - Allow HHS and DOL to regulate behavioral health network adequacy.
  - Issue regulations for a standard for parity in reimbursement rates.
  - Require coverage of three MH/SUD visits without cost-sharing
  - End opt outs of self-funded state and local government plans

# Two Hearings on Parity

- March 30<sup>th</sup> Senate Finance Hearing:  
<https://www.finance.senate.gov/hearings/behavioral-health-care-when-americans-need-it-ensuring-parity-and-care-integration>
  - Chairman Wyden spoke forcefully on parity (watch / read his statement)
  - Highlighted new GAO report on access: <https://www.gao.gov/products/gao-22-105912>
- April 5<sup>th</sup> House Energy & Commerce Health Subcommittee Hearing:  
<https://energycommerce.house.gov/committee-activity/hearings/hearing-on-communities-in-need-legislation-to-support-mental-health-and>
  - Hearing on numerous MH/SUD bills, including parity:
  - Mark-up likely to come
- Bills considered at House E&C hearing include:
  - H.R. 7232 – 988 and Parity Assistance Act of 2022 (Cardenas)
  - H.R. 7254 – Mental Health Justice and Parity Act of 2022 (Porter)

# Upcoming KF Parity Webinar with HHS

- In May 2021, Kennedy Forum hosted a parity webinar with DOL Secretary Walsh
- Kennedy Forum will host another parity webinar with HHS Secretary Becerra on Tuesday, April 26, 2-3 PM ET
  - Dr. Delphin-Rittmon, Assistant Secretary of Mental Health and Substance Use will also join
- HHS oversees MHPAEA enforcement for Medicaid / CHIP / Alternative Benefit Plans, ACA Marketplace Plans, and self-funded state and local government plans

Link to Free Registration: <https://www.thekennedyforum.org/events/mental-health-and-addiction-parity-ensuring-equal-coverage-in-medicaid-and-marketplace-plans/>





# State Updates

[thekennedyforum.org](http://thekennedyforum.org)

# New York Medicaid Compliance Report

## NYS Department of Health has conducted detailed parity compliance reviews of all Medicaid MCOs in the state

- Extensive review – over 125 pages long.
- To date, the State has issued 95 citations to Medicaid plans for parity compliance issues.

[https://www.health.ny.gov/health\\_care/managed\\_care/reports/docs/compliance\\_report\\_3-22.pdf](https://www.health.ny.gov/health_care/managed_care/reports/docs/compliance_report_3-22.pdf)

Phase I NQTLs				
Plan	Prior Authorization	Concurrent Review	Medical Necessity Criteria	Formulary Design
Affinity	Noncompliant	Noncompliant	Compliant	Noncompliant
Amida Care	Noncompliant	Noncompliant	Noncompliant	Noncompliant
CDPHP	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Emblem	Noncompliant	Noncompliant	Noncompliant	Compliant
Excelsus	Compliant	Compliant	Compliant	Noncompliant
Fidelis	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Healthfirst	Noncompliant	Noncompliant	Noncompliant	Noncompliant
HealthNow	Noncompliant	Noncompliant	Noncompliant	Noncompliant
HealthPlus	Noncompliant	Noncompliant	Noncompliant	Noncompliant
IHA	Noncompliant	Compliant	Compliant	Noncompliant
MetroPlus	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Molina	Noncompliant	Noncompliant	Noncompliant	Noncompliant
MVP	Noncompliant	Noncompliant	Noncompliant	Noncompliant
UHC	Noncompliant	Noncompliant	Noncompliant	Noncompliant
VNSNY	Compliant	Noncompliant	Noncompliant	Compliant
WellCare	Noncompliant	Noncompliant	Noncompliant	Noncompliant
YourCare	Compliant	Compliant	Compliant	Noncompliant

Phase II NQTLs					
Plan	Coding Edits	OON Coverage Standards	Geographic Restrictions	Reimbursement	Provider Type Exclusion
Affinity	Compliant	Noncompliant	Compliant	Noncompliant	Compliant
Amida Care	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant
CDPHP	Noncompliant	Compliant	Compliant	Noncompliant	Compliant
Emblem	Noncompliant	Compliant	Compliant	Noncompliant	Compliant
Excelsus	Compliant	Compliant	Compliant	Noncompliant	Compliant
Fidelis	Noncompliant	Noncompliant	Compliant	Noncompliant	Compliant
Healthfirst	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant
HealthNow	Noncompliant	Noncompliant	Compliant	Compliant	Compliant
HealthPlus	Noncompliant	Noncompliant	Compliant	Compliant	Compliant
IHA	Noncompliant	Noncompliant	Compliant	Noncompliant	Compliant
MetroPlus	Noncompliant	Noncompliant	Compliant	Noncompliant	Compliant
Molina	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant
MVP	Noncompliant	Compliant	Compliant	Noncompliant	Compliant
UHC	Noncompliant	Compliant	Compliant	Noncompliant	Compliant
VNSNY	Compliant	Noncompliant	Compliant	Noncompliant	Compliant
WellCare	Noncompliant	Noncompliant	Compliant	Noncompliant	Compliant
YourCare	Compliant	Compliant	Compliant	Noncompliant	Compliant

Plan	Phase III NQTLs									
	Retro Review	Outlier Review	Experimental/ Investigational Determinations	Fall First	Provider Credentialing	Cert Req.	Unlicensed Provider	UCR Rate Determinations	Exclusions for Court-Ordered Treatment	Failure to Complete
Affinity	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant	Noncompliant
Amida Care	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
CDPHP	Compliant	Compliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant
Emblem	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
Excelsus	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
Fidelis	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
Healthfirst	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
Highmark*	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
HealthPlus	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Noncompliant	Compliant	Noncompliant	Noncompliant
IHA	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
MetroPlus	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant
Molina	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Noncompliant
MVP	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant
UHC	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant	Compliant
VNSNY	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Compliant	Compliant	Compliant	Compliant	Compliant

\*Highmark f/k/a. HealthNow



# Connecticut

## SB 414

- **Status:** Reported favorably from Joint Committee on Insurance and Real Estate 3/22/22
- **Sponsor:** Rep. Michael Winkler, Sen. Saud Anwar
- **Summary:**
  - Requires annual report to Joint Committee on Insurance and Real Estate from the Insurance Commissioner on the effectiveness of Connecticut's mental health parity reporting law.

[https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=SB00414&which\\_year=2022](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB00414&which_year=2022)

# Delaware

## HB 303

- **Status:** Reported favorably from Health & Human Development Committee 4/13/22
- **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.

<https://www.legis.delaware.gov/BillDetail?legislationId=79148>

# Georgia

## **HB 1013**

- **Status:** Enacted! April 4, 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.
  - 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.
  - 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>



# Maine

## LD 1910 (HP 1416)

- **Status:** Passed both houses (Senate on 4/11/22)
- **Sponsor:** Sen. Tepler (D)
- **Summary:**
  - Prohibits an insurer from denying mental health services that "use evidence-based practices and are determined to be medically necessary health care for an individual 21 years of age or younger."
  - "Evidence-based practices" defined as:
    - "clinically sound and scientifically based policies, practices, and programs that reflect expert consensus on the prevention, treatment, and recovery science" – then points to SAMHSA and other government recommendations.

<https://legislature.maine.gov/LawMakerWeb/summary.asp?paper=HP1416&SessionID=14>

# Maine

## LD 1822 (HP 1355)

- **Status:** Passed both houses (Senate on 4/11/22)
- **Sponsor:** Rep. Morales (D)
- **Summary:**
  - Requires first behavioral health visit a year to be without cost-sharing
  - Includes model parity reporting language – annual insurer reporting on NQTLs, parity market conduct exams by Superintendent, report to legislature on parity enforcement activities
  - Section repealed April 30, 2028

<https://legislature.maine.gov/LawMakerWeb/summary.asp?paper=HP1355&SessionID=14>

# Maryland

## **SB 460**

- **Status:** Passed Senate 44-0
- **Sponsor:** 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.
  - 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/mgawebwebsite/Legislation/Details/SB0460?ys=2022RS>

# Maryland

## HB 684

- **Status:** Passed both houses unanimously (passed Senate 4/8/22)
- **Sponsor:** Delegate Bagnall (D)
- **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
  - Requires annual reporting to legislature on average length of stay

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

# Maryland

## **HB 912**

- **Status:** Passed both Houses, March 31, 2022
- **Sponsor:** Delegate Sample-Hughes
- **Summary:**
  - Improves access to care by ensuring that, when in-network MH/SUD care is not available in-network, enrollees can access nonphysician out-of-network providers at in-network cost-sharing.
  - Does this by expanding the definition of “nonphysician specialist” to include a MH/SUD providers.

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0912?ys=2022RS>

# Massachusetts

## S. 2774

- **Status:** Hearing in Health Care Financing held April 11, 2022
- **Sponsor:** Governor Baker (R)
- **Summary:**
  - Large health care bill
  - Contains provisions on MH/SUD parity
  - Requires Insurance Commissioner to issue regulations mandating similar rates of reimbursement for evaluation and management (E&M) office visits for MH/SUD compared to primary care
  - Requires Insurance Commissioner to collect data on utilization review – e.g. requests, approvals, denials, out-of-network utilization

<https://malegislature.gov/Bills/192/S2774>

# New York

## A 3276 / S 5909

- **Status:** A. 3276 Passed Assembly 146-1 on 4/5/22
- **Sponsor:** Assemblymember Gunther / Senator Kaminsky
- **Summary:**
  - Prohibits insurers from applying fail-first or step therapy protocols to coverage for the diagnosis and treatment of mental health conditions.

[https://assembly.state.ny.us/leg/?default\\_fld=&leg\\_video=&bn=A3276&term=2021&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y](https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A3276&term=2021&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y)

# Oklahoma

## **SB 1413**

- **Status:** Passed Senate 43-2
- **Sponsor:** Senator Montgomery (R)
- **Summary:**
  - Amends parity NQTL reporting requirements to emphasize need for "detailed, written, and reasoned" comparative analysis.
  - Adds provision explicitly requiring sufficient detail in parity analyses.
  - The Commissioner shall promulgate rules and standardized reporting templates, and issue guidance consistent with CMS and DOL.
  - Deleted provisions that direct Insurance Department to conduct a market conduct examination to analyze NQTLs compliance with parity.

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

# Virginia

## **SB 434**

- **Status:** Signed into law April 11, 2022 (effective July 1)
- **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:** Signed into law April 6, 2022 (effective July 1)
- **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>

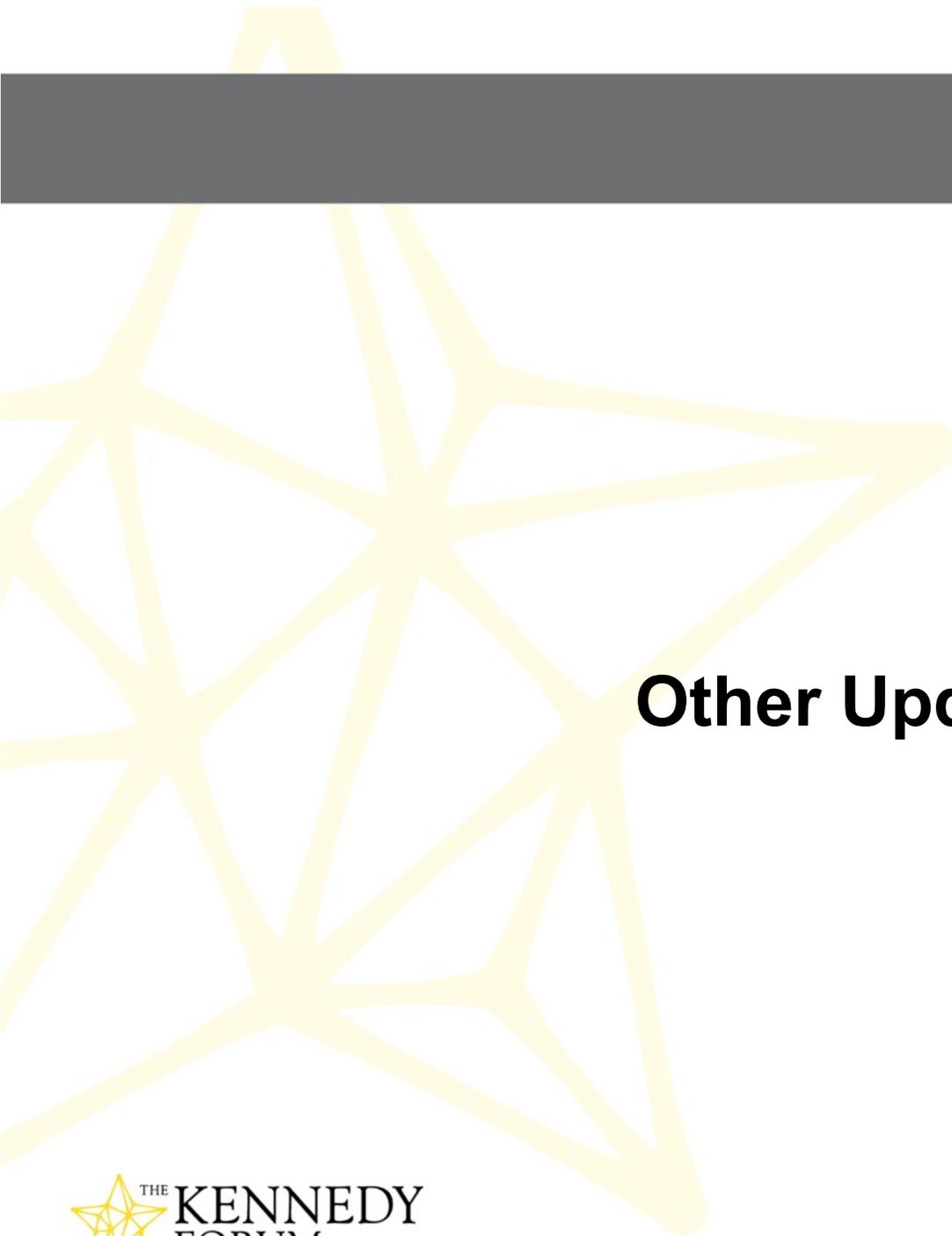
<https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB225>

# Washington

## **HB 1688**

- **Status:** Signed into law March 31, 2022 (effective immediately)
- **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=1688&Chamber=House&Year=2021>



## Other Updates?