



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

July 13, 2022

# Agenda

- **Update on *Wit v. United Behavioral Health***
- **Federal Updates**
- **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, and the panel got basic facts of the case wrong.
- Petition for rehearing before full court filed (en banc). Amicus briefs filed Monday by:
  - Attorneys General of IL, RI, CT + Attorney General Bonta (CA)
  - AMA / American Psychiatric Association
  - NABH / American Psychological Association / AHA, et al.
  - Consumer groups – NHELP, Kennedy Forum, NAMI, MHA, AFSP, et al.
- *Positive signs with Ninth Circuit asking UBH to respond. Court then accepted plaintiffs’ response to UBH’s filing. Appears that court is actively considering en banc petition.*
- **For more information on the case (including links to rulings and amici), visit [www.thekennedyforum.org/wit](http://www.thekennedyforum.org/wit)**



# Federal Updates

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

# Federal Parity Action

- House passed the Restoring Hope for Mental Health and Well-Being Act of 2022 ([HR 7666](#)) in June by vote of 402-20.
  - Section 321 would end self-funded nonfederal government plan opt outs.
  - Section 331 would provide grants to states for parity implementation.
- Ending the parity opt-outs have also been included in bipartisan Senate legislation:
  - Section 8 of the Mental Health Reform Reauthorization Act ([S. 4170](#), Cassidy/Murphy)
  - Also contains grants to states to support parity implementation (Section 7). Requires state regulators receiving grants to request and review parity compliance analyses from insurers.
- Senate reconciliation package once again being discussed
  - Senators Manchin and Sinema again critical.
  - Previously, USDOL parity fine authority included in Build Back Better.



# State Updates

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# Delaware

## **HB 303**

- **Status:** Passed both houses on June 30, 2022
- **Sponsor:** Rep. Valerie Longhurst (D)
- **Summary:**
  - Creates a pre-deductible, annual Behavioral Health Well Check with a licensed mental health clinician for commercial and Medicaid plans
  - Reimbursement for this benefit must be no less than what a similarly qualified medical professional would receive for an annual physical.
  - Third-party administrators for the State Employee Group Health Insurance Program (GHIP) have estimated up to 15,000 well checks could be covered annually with a yearly cost to the GHIP of \$2.4 million.
  - The Division of Medicaid and Medical Assistance (DMMA) has estimated up to 37,500 well checks could be covered annually with a yearly Medicaid cost of \$4.7 million of which the General Fund cost share would be \$1.9 million.

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



# Louisiana

## **HB 278**

- **Status:** Signed into law, June 15, 2022
- **Sponsor:** Rep. Michael Echols (R)
- **Summary:**
  - Requires coverage of Psychiatric Collaborative Care Model.

<http://www.legis.la.gov/Legis/BillInfo.aspx?s=22RS&b=HB278>

# Maryland

## **HB 684**

- **Status:** Signed into law, May 29, 2022
- **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>

# Massachusetts

## S. 2584

- **Status:** Passed both Houses June 16, 2022, conference committee appointed
- **Sponsor:** Senators Cyr and Friedman
- **Summary:**
  - Very large mental health bill
  - Requires student health plans to comply with MHPAEA
  - Requires Insurance Commissioner and Medicaid to conduct parity market conduct examinations and provide annual report to the Senate and House
  - Requires annual report containing NQTL analyses
  - Requires use of the ASAM Criteria (or criteria no more stringent than ASAM) for SUD determinations
  - Sets up Commission to make recommendations on “common set of criteria for providers and payers to use in making medical necessity determinations for behavioral health treatment.”

<https://malegislature.gov/Bills/192/S2584/BillHistory>



# New Jersey

## S. 2790

- **Status:** Introduced, June 6, 2022
- **Sponsor:** Senators Corrado and Schepisi (both R's)
- **Summary:**
  - Requires coverage of annual mental health screening.

<https://www.njleg.state.nj.us/bill-search/2022/S2790>

# New Jersey

## A. 2008

- **Status:** Signed in law, June 30, 2022
- **Sponsor:** Assemblymember Conaway
- **Summary:**
  - Requires coverage of collaborative care model

<https://www.njleg.state.nj.us/bill-search/2022/A2008>

# New York

## A3276 / S5909

- **Status:** Passed both houses on May 24, 2022
- **Sponsor:** Delegate Bagnall (D)
- **Summary:**
  - Prohibits the application of fail-first or step therapy protocols for medication to treat mental health conditions.

<https://www.nysenate.gov/legislation/bills/2021/A3276>

# Oklahoma

## **SB 1413**

- **Status:** Signed by Governor, May 20, 2022
- **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.

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



## Other Updates?