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# State Parity Legislative and Regulatory Compliance Workgroup

September 14, 2022

# Agenda

- Federal Updates
- State Bill Updates
- 2023 State Legislative Opportunities

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# Federal Updates

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# Parity for Frontline Workers

- 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 (state/local plans) 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).
- Possibility of Senate HELP markup, although calendar is tight prior to midterm elections.

# USDOL Parity Fine Authority

- The final reconciliation package (Inflation Reduction Act) did not include language to provide USDOL the ability to issue fines (civil monetary penalties) for parity violations
  - Package pared back significantly from Build Back Better, which included this provision.
- Senators Murphy/Luján introduced a Senate version of Parity Enforcement Act.
  - S. 4804 has same language as the Build Back Better Act.
  - https://www.congress.gov/bill/117th-congress/senate-bill/4804/text?r=1&s=1
- Giving USDOL this authority is still a high priority.
- USDOL has requested it, and it was a recommendation of the 2017 Opioid Commission.

# No Surprises Act & BH Crisis Services

**988 is central to the BH emergency services continuum**

Key components include:

- 24/7 Crisis Call Centers – “Someone to talk to”
- Mobile Crisis Teams – “Someone to respond”
  - Staffed mental health professionals, including peers
- Crisis stabilization programs – “Somewhere to go”
  - Short-term observation and stabilization with “warm hand-off” to follow-up services (both more and less intensive)

<u>Potential funding sources:</u>

- Federal funding (include block grants), Medicaid, state general funds, 988 telephone user fees (authorized by federal law)
- *Why isn’t commercial insurance part of the conversation?*

# No Surprises Act & BH Crisis Services

- Under No Surprises Act, coverage of behavioral health emergency services in a state-licensed facility is **required** (i.e. crisis receiving and stabilization)
  - "Emergency medical condition" includes mental health and substance use disorders.
  - "Emergency services" are essentially services needed to stabilize the patient (though, NSA expands further to some post-stabilization services).
  - "Independent freestanding emergency department" is "a health care facility that— (i) is geographically separate and distinct and licensed separately from a hospital under applicable State law; and (ii) provides any of the emergency services…"
  - If behavioral health crisis receiving/stabilization facilities are licensed in your state and if they are providing "emergency services," insurers must cover these services:
    - Without prior authorization
    - Without regard to network status
    - Limiting enrollee's obligations to in-network cost sharing
- FAQ 10 of Final Rule of No Surprises Act affirms this interpretation.
  - https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-55.pdf

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# State Updates

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# California

## AB 988

- **Status:** Passed both Houses Unanimously, Now with Governor
- **Sponsor:** Asm. Bauer-Kahan (D)
- **Summary:**
  - Creates planning process for 988 systems implementation in California.
  - Establishes telecom user fee to fund services.
  - *Includes language clarifying coverage requirements for mobile crisis response services pursuant to SB 855 (medical necessity bill previously enacted)*.
    - Prohibits prior authorization
    - Limits cost-sharing to in-network amount regardless of provider's network status.

# Delaware

## HB 303

- **Status:** Signed into law August 3, 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

# Massachusetts

## S. 3097

- **Status:** Signed by Governor Baker on August 10, 2022
- **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/S3097

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# 2023 State Legislative Opportunities

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# Parity Reporting Requirements

- Less than half states require annual parity reporting by plans to state regulators.
- Very easy legislatively to require such reporting – simply have a requirement that plans submit to regulator (either state department of insurance or Medicaid agency) the Non-Quantitative Treatment Limitation (NQTL) analysis required by 42 U.S.C. 300gg-26(a)(8).
- This provision is part of MHPAEA statutory text.
- States that have reporting requirements include:
  - AZ, CO, CT, DE, GA, IL, IN, KY, LA, MA, MD, ME, MT, NY, NV, OK, OR, PA, RI, TN, TX, WV
- Model parity bill includes reporting requirements and other good provisions (which many of these states have enacted).
- https://pjk-wp-uploads.s3.amazonaws.com/www.paritytrack.org/uploads/2018/08/2018-State-Model-Parity-Legislation1.pdf
- American Psychiatric Association has created bills for each states: https://www.psychiatry.org/psychiatrists/advocacy/state-affairs/model-parity-legislation

# Medical Necessity Requirements

- States can put in place strong medical necessity standards and require plans to follow Generally Accepted Standards of Care.
- Even more important with *Wit v. UBH* case in jeopardy!
- Provisions can be found in the Ramstad Model Legislation: https://www.thekennedyforum.org/app/uploads/2021/05/Ramstad-Model-Legislation-May-2021.pdf
- Provisions include:
  - Strong medical necessity definition.
  - Requirements to follow Generally Accepted Standards of care.
  - Requirements to use strong medical necessity criteria.
  - Prohibition on denying coverage because plans believes gov't program should pay.
- CA, IL, and OR have enacted comprehensive versions. GA has enacted slimmer version (but still big step forward!).

# Require BH Emergency / Crisis Coverage

- Federal No Surprises Act helps ensure coverage of BH crisis receiving and stabilization services.
- Missing piece is Mobile Crisis Response Services.
- While there are parity arguments for why these services should be covered currently, states can also take steps to ensure coverage through legislation.
- See Washington State (HB 1688) and California (AB 988).
  - https://www.insurance.wa.gov/federal-no-surprises-act -- under “Behavioral health crisis services”
- Implementation of federal No Surprises Act and 988 offers great opportunity to move this issue forward.
- Reach out to David Lloyd if interested in advancing Mobile Crisis Response coverage in your state.

# Other Updates?