



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

November 9, 2022

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# Agenda

- **Legal Action Center Presentation on Estimating Cost of Full SUD Coverage in Medicare**
- **Federal Updates**
- **State Updates**



# Federal Updates

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# End-of-Year Package?

- Question of size / composition of a possible end-of-year package. Senate is the key – what will Republicans agree to?
- For parity, 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).

# H.R. 7780 – Mental Health Matters Act

- Passed House on party-line vote in late September.
  - Insurance provisions include changes to ERISA (private sector employer plans)
  - Would outlaw “discretionary clauses,” which plans insert into plan contracts to create a heightened standard to overturn benefits denials.
  - Rather than equal weighing of the evidence to determine whether benefits are due under plan, plan members must overcome much higher burden (showing that plan’s decision was “arbitrary and capricious”)
  - The granting of discretion is a key element in overturning of *Wit v. UBH*.
  - **NAIC has state model bill banning. Highly recommend your state consider this. Diverse group of 25 states have already banned:** AK, AR, CA, CO, CT, HI, ID, IL, IN, KY, ME, MD, MI, MN, NH, NJ, NY, OR, RI, SD, TX, UT, VT, WA, WY.
  - H.R. 7780 also includes ban on mandatory binding arbitration clauses in ERISA plans. Regulations prohibit, but statutory ban much less subject to challenge.
- These types of insurance issues are critical to helping people get the care they need and systemically challenging illegal practices.

# House Ways & Means Legislation

- Bipartisan W&M markup included several insurance related bills
  - Bills on: Home visiting, Medicare coverage, requiring coverage of forensic exams w/o cost sharing, provider directories / parity, network adequacy rating system
- Medicare Coverage:
  - Establishing intensive outpatient (IOP) coverage;
  - Authorizing MFTs and MHCs as Medicare providers
  - There's effort to add SUD as well. (Gaps should be fixed together.)
- Provider Directory / Parity:
  - Adds definition of MH/SUD for parity. Ensures parity protection of autism.
  - Provisions to increase transparency in plan directories.
  - Reporting provisions on crisis services coverage.
- Network Adequacy
  - Rate plans on % of MH/SUD providers in service area that plan is contracted with.
- Senate Finance discussion draft also adds MFTs and MHCs.



# State Updates

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# California

## AB 988

- **Status:** Signed in late September by Governor Newsom
- **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.



# California

## **SB 855 (Enacted 2020) Regulatory Update**

- California has two insurance regulators – CA Dept. of Insurance and Dept. of Managed Health Care
- Both are moving forward with SB 855 regulations.
- CDI's draft regulations (still before formally proposed) are very comprehensive. Would put real teeth into SB 855's guarantees.
- CDI's draft regulations include language to implement AB 988 as well.
- Makes clear that Coordinated Specialty Care for early psychosis is part of required coverage.

# New Jersey

## **SB 311**

- **Status:** Signed into law June 30, 2022
- **Sponsor:** Senator Joseph Vitale (D)
- **Summary:**
  - Implements 988 in New Jersey.
  - Includes important provision mandating commercial insurance coverage of crisis care continuum. Under-the-radar provision that garnered no opposition.

<https://www.njleg.state.nj.us/bill-search/2022/S311>



# 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?