

ADDICTION SOLUTIONS CAMPAIGN

PARITY TRACKING PROJECT: *MAKING PARITY A REALITY*

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EXECUTIVE SUMMARY

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PARITY TRACKING PROJECT: SUMMARY

KEY FINDINGS

The study highlights significant barriers to front-line enforcement of the Parity Act. Based on our review of publicly available plans documents and subsequent analysis, the study concludes that:

1. Regulators cannot conduct a complete assessment of parity compliance through form review with even a comprehensive data-gathering template because required information is not available in these documents;
2. Consumers cannot ascertain all standards that will determine access to substance use treatment and are not informed of their rights under the Parity Act;
3. Neither consumers nor regulators can identify Parity Act violations from plan documents routinely reviewed for plan approval.
4. Prescription drug formularies include wide discrepancies in the coverage of, and restrictions on, medications for the treatment of substance use disorders.

KEY RECOMMENDATIONS

To achieve better compliance, regulators must obtain complete plan information that is responsive to the Parity Act's standards so that they may conduct comprehensive plan review prior to approval. Consumers must be better informed of the Parity Act protections, have assistance in identifying potential problems in their contract, and have easy access to information that is needed to pursue a complaint. The following recommendations will strengthen the enforcement of the Parity Act and improve access to the benefits consumers are entitled to:

- Plans should be required to submit their internal analyses to demonstrate that coverage is compliant with the Parity Law, including identification of all non-quantitative treatment limitations (NQTLs) and their application.
- As part of review for Parity compliance, Regulatory Agencies should evaluate the scope of prescription drug coverage for mental health and substance use disorder treatment and utilization management requirements.
- Regulatory Agencies should develop model contracts that fully describe substance use and mental health benefits, align standards with Parity Act requirements and inform consumers of their rights under the law.
- Regulatory Agencies should enhance the provider community's capacity to identify potential Parity Act violations and advocate for plan compliance in network adequacy and rate setting standards.

EXECUTIVE SUMMARY

OVERVIEW

The Mental Health Parity and Addiction Equity Act (MHPAEA or Parity Act) provides a framework that is intended to open doors to long-blocked addiction care by guaranteeing insurance coverage of addiction treatment services and medications that is equal to that provided for other medical and surgical conditions. One measure of the Parity Act's effectiveness is whether insurance reimbursement for substance use treatment and the number of individuals receiving care have increased since the enactment of the law. The Parity Act's requirements for equitable benefits, medical management practices and provider network and reimbursement standards should lead to increased insurance reimbursement for substance use treatment. With more comprehensive coverage and fair out-of-pocket costs, more individuals should enter treatment, particularly as families across the country struggle with epidemic levels of opioid and other substance use disorders.

Unfortunately, the data suggest that the enactment of the Parity Act, which targets the very discriminatory standards that have fueled gaps in insurance coverage and limited access to benefits and prescription drugs, has not put an end to restrictive coverage and limited reimbursement for substance use treatment in either private insurance or Medicaid.¹ These payers continue to shift the cost of care to state and local governments and deny many consumers health care benefits that they pay for in private health plans or are entitled to receive through their Medicaid managed care plan. An integrated health care system is essential for treating and managing addiction and payment and participation by all health insurers is needed now more than ever to address the nation's opioid epidemic and the high rates of untreated alcohol and other substance misuse.

As the data show, in the years since the law's enactment in 2009, addiction and mental health treatment numbers have not increased significantly, even in the face of the worst opioid

¹ Tami L. Mark, Tracy Yee, Katharine R. Levit, Jessica Camacho-Cook, Eli Cutler, and Christopher D. Carroll, *Insurance Financing Increased for Mental Health Conditions But Not For Substance Use Disorders, 1984-2014*, 35 HEALTH AFFAIRS 958, 963-64 (2016).

epidemic in our nation’s history.² It is evident that the Parity Act cannot achieve its promise without vigorous enforcement.

PROJECT SCOPE AND GOALS

The current parity enforcement framework depends on two groups to identify potential violations: regulators and consumers. Thus, this study sought to assess these groups’ ability to flag and report instances of non-compliance as necessary to spur enforcement. Our study questions were:

1. Can a state regulator identify potential violations of the Parity Act for substance use disorder services through a common regulatory review process known as form review?
2. Can a consumer, based on the information typically made available to them by health plans, readily identify benefit and formulary coverage, out-of-pocket costs and any restrictions on accessing substance use care and identify plan design features that raise “red flags” for Parity Act violations?

In order to obtain quantitative and qualitative data related to the key study questions, the research team designed a data gathering template that tracks all plan design features regulated by the Parity Act, including financial requirements, quantitative treatment limitations and non-quantitative treatment limitations (NQTLs), with the exception of network admission standards, reimbursement rates and network adequacy, which were outside the scope of this review.³ The template is designed to go beyond an insurance department’s form review checklist, which, at best, describes the relevant Parity Act standard and requires the carrier to identify a contract provision that purportedly satisfies the legal requirement. The template produced by the study team frames the regulator’s form review by seeking detailed information about benefit and formulary coverage, as well as utilization management

² See, e.g., Michael Greenwood, *Parity Law Has Little Effect on Spending for Substance Abuse Treatment*, YALE NEWS (Jan. 23, 2014), <http://news.yale.edu/2014/01/23/parity-law-has-little-effect-spending-substance-abuse-treatment>.

³ Insurance Departments do not regulate reimbursement rates and generally review provider networks and network adequacy through regulatory activities not related to plan approval. Carriers that offer commercial plans in New York are required to submit information about provider networks during the form review process, including provider selection criteria, quality assurance procedures and a sample provider agreement. Network Adequacy Submission Instructions available at: http://www.dfs.ny.gov/insurance/health/network_adeq_submission_instructions.pdf (last visited Jan. 29, 2017). The assessment generally evaluates whether the carrier meets the state’s network adequacy standards and does not evaluate compliance with the Parity Act. Network Adequacy Standards and Guidance at 1 and 4, Pt. 9 available at http://www.dfs.ny.gov/insurance/health/Network_Adeq_standards_guidance_Instructions_9.15_Final.pdf (last visited Jan. 29, 2017).

requirements. It poses questions that probe for evidence of comparability across substance use disorder and medical standards, and evaluates plan notification of Parity Act protections.

The team then evaluated the template by performing an analysis of publicly available documents for seven health plans offered in the small and large group markets in New York or Maryland. Of note, the study team was comprised of senior staff from three organizations (the Legal Action Center, the National Center on Addiction and Substance Abuse, and the Treatment Research Institute) with substantive expertise in the Parity Act, specifically, and treatment of substance use disorders broadly. In addition to reviewing the plan documents provided to regulators, the study team sought to obtain additional information from publicly available documents via simple internet searches (i.e., medical necessity criteria/medical policies). The background of the study team and depth of their review is notable in the context of the key findings.

KEY FINDINGS

Based on our review of publicly available plans documents and subsequent analysis, the study concludes that:

- Regulators cannot conduct a complete assessment of parity compliance through form review with even a comprehensive data-gathering template because required information is not available in these documents;
- Consumers cannot ascertain all standards that will determine access to substance use treatment and are not informed of their rights under the Parity Act;
- Neither consumers nor regulators can identify Parity Act violations from plan documents routinely reviewed for plan approval.
- Prescription drug formularies include wide discrepancies in the coverage of, and restrictions on, medications for the treatment of addiction.

In order to answer the major study question *“Can a state regulator identify potential violations of the Parity Act for substance use disorder services through form review?”* researchers endeavored to develop a more robust data collection template to support regulators’ review of plan documents for parity compliance. The development of this template and subsequent review of publicly available plan documents revealed that even with a comprehensive data-gathering template, regulators would not be able to accurately assess whether a plan is parity

compliant because required information is not available in the plan documents that regulators receive from carriers prior to approving plans for sale. Specifically:

- Benefit classifications, which are critical to a parity analysis, are not evident from plan documents. If regulators only rely on plan documents for form review, benefit classifications cannot be determined.
- Form review provides no information about NQTLs, with the exception of prior authorization requirements for specific levels of care. The plan's approach to imposing and applying NQTLs, which is essential for determining compliance, is not referenced in plan documents, and cannot be determined by form review.
- Although form review can confirm that specific substance use disorder benefits are covered, it is insufficient to make a scope of benefits determination. Based solely on the description of benefits provided in plan documents, regulators cannot determine if plans, particularly non-essential health benefit plans, are offering a comparable scope of benefits for substance use disorders.
 - In certain states, plans use model contract language developed by the state to define benefits, but these contracts do not provide robust descriptions, equivalent to the definitions for medical/surgical benefits.
 - Carriers must conduct internal analyses to ensure that their plans are parity compliant but these analyses are not provided to regulators prior to approving the sale of any plan in their state.
- Carriers that rely on behavioral health organizations (BHO) to manage substance use disorder benefits may be deferring to utilization management standards developed by the BHO, but it is not evident that the BHO's documents are collected or evaluated by regulators, during form review, to compare standards for medical benefits and substance use disorder benefits.
 - Additionally, plan documents do not appear to be required to state that the plan carves out benefit management to a third party BHO, creating a lack of transparency for both regulators and consumers.
- The study team reviewed the plan formularies to determine whether medications for the treatment of substance use disorders seem to be covered on par with medications for diabetes, and placed on tiers with a consistent approach based on clinical efficacy and cost. Some significant discrepancies were uncovered that may represent red flags for

regulators. One New York plan covers no medications for the treatment of alcohol use disorders and few medications for opioid use disorders, all of which have strict utilization management requirements. A second New York plan places most generic medications for both alcohol and substance use disorders on a tier that imposes greater costs on the consumer, in contrast to the other New York plans that place generic medications on the lowest cost tier. Regulators do not appear to be looking at the formulary to determine whether scope of coverage, tier placement and utilization management is compliant.

In order to answer the second major question *“Can a consumer readily identify benefit and formulary coverage, out-of-pocket costs and any restrictions on accessing substance use care from plan documents and identify plan design features that raise “red flags” for Parity Act violations?”* researchers conducted in-depth reviews and analyses of publicly available plan documents. It is worth noting again that the study team was comprised of individuals with substantive knowledge of the Parity Act as well as substance use disorder treatment (all with graduate and/or post-graduate degrees). Despite the team’s depth of relevant knowledge, they identified numerous inconsistencies within the plan documents and found that, for the most part, plan documents were not transparent about benefit and formulary coverage. With respect to restrictions on accessing substance use care, plans were not transparent about utilization management requirements. It would be challenging, if not impossible, for an average consumer to identify plan design features that raise “red flags” for Parity Act violations based on publicly available documents. Our specific findings about the transparency of the plan documents and consumer access to, and awareness of, their rights under the Parity Law include:

- Lack of transparency for covered substance use disorder benefits in plan documents
 - In 5 of 7 plans reviewed, it was not evident from the insurance contract or the Schedule of Benefits that the plan covered all the critical benefits, as outlined by the American Society of Addiction Medicine’s (ASAM’s) criteria to treat addiction. There are frequently internal contradictions between plan documents as to whether a benefit is covered. For example, a benefit may be described in the insurance contract but not listed on the Schedule of Benefits, or vice versa. This is problematic because the consumer cannot readily understand what will be covered by the plan and will have difficulty holding the plan accountable when requests or claims for services are denied.

- It is not clear from the plan contracts how and when utilization management requirements are applied. Specifically, the contract language provides no specificity as to whether all benefits subject to utilization management requirements are identified in the contract. Further, where a plan relies on a BHO, it is unclear whether the plan's contract term will govern when the BHO applies a different standard or process for utilization management requirements.
- Plan documents provide inadequate descriptions of substance use disorder benefits, creating additional issues with identification of covered services. A specific service is often named without a definition or description. When a description is provided, there is a stark contrast between the level of detail provided for medical benefits as compared to the level of detail provided in plan documents for substance use disorder benefits. The description of one medical service (e.g., skilled nursing facility) may be longer than the description of all covered substance use disorder services.
- Benefit classifications, which are critical to a parity analysis, are not evident from plan documents.
 - While consumers would never be able to complete a full parity analysis, the absence of classification information makes it difficult for consumers to identify possible parity violations related to financial requirements (e.g., co-payments, co-insurance) and quantitative treatment limitations (e.g., visit limits).
- Carriers of plans reviewed do not inform consumers about their rights and protections under the Parity Act. The Parity Act's non-discrimination protections are not explained in plan documents, and information about filing a complaint does not specifically reference how to file a parity complaint. Our review revealed few mentions of the Parity Act or the rights it affords consumers seeking mental health and/or substance use disorder treatment.
 - The Parity Act is subject to a patchwork of regulations and various federal and state agencies have oversight and responsibility for complaints. Based on information in plan documents, a consumer would have no idea whether a parity complaint should be filed in the same way as complaints related to denials of other health services through the carrier's internal grievance process and the State or federal agency external review process.

- The lack of transparency in plan documents, coupled with the lack of clear processes and instructions for filing a complaint, put the consumer at a severe disadvantage for being able to assert her rights under the parity law.
- An individual complaint-driven process is insufficient for resolving parity violations which generally occur systemically, not just individually. Parity violations may occur with the exclusion of a benefit, such as opioid treatment services, or with the application of burdensome utilization management standards. Without regulatory oversight, a carrier may overturn its decision, thereby resolving problem for one consumer but failing to correct the underlying Parity Act violation for all members.

Table 1 provides a quick snapshot of our findings, which are further discussed in the full report.

Table 1: Summary of Findings		
	Yes/ No	Explanation
Scope of benefits		
Regulator could assess parity	X	Inconsistent and/or missing information
Consumer can determine coverage	X	Missing information
Consumer could spot parity red flag	X	Missing information
Aggregate lifetime or annual dollar limit		
Regulator could assess parity	✓	Information provided in plan documents
Consumer can determine dollar limits	✓	Information provided in plan documents
Consumer could spot parity red flag	✓	Information provided in plan documents
Copayments		
Regulator could assess parity	X	Plan cost data is not available in plan documents
Consumer can determine applicable copayments	✓	Information typically appears on Schedule of Benefits
Consumer could spot parity red flag	✓	Consumer could identify what appears to be an outlier copayment for an SUD service as a “red flag”
Qualitative Treatment Limits		
Regulator could assess parity	X	Plan cost data is not available in plan documents
Consumer can determine qualitative treatment limits	✓	Information typically appears on Schedule of Benefits or in insurance contract
Consumer could spot parity red flag	✓	Consumer could identify what appears to be an outlier QTL for an SUD service as a “red flag”
Prescription Drugs: Scope		
Regulator could assess parity	X	Regulators do not review the formulary rules dictating/applying coverage or tier placement
Consumer can determine which SUD medications are covered	✓	Information is available on plan formulary but need access through member portal (after enrollment) to confirm coverage
Consumer could spot parity red flag	X	Consumer could not easily identify whether exclusion of an SUD medication is an outlier
Prescription Drugs: Tiers/ Cost Sharing		
Regulator could assess parity	X	Rules dictating/applying tier placement are not reviewed
Consumer can determine tier/ cost sharing for SUD medications	✓	Information is available on plan formulary
Consumer could spot parity red flag	X	Consumer could not easily compare tier placement across medications
Prescription Drugs: NQTLs		
Regulator could assess parity	X	Rationale for creating/applying NQTL is not available
Consumer can determine NQTLs on SUD medications	✓	Information is available on plan formulary
Consumer could spot parity red flag	X	Consumer could not easily compare NQTL requirements across medications
Non-quantitative treatment limitations (NQTLs)		
Regulator could assess parity	X	Plan documents do not identify most NQTLs and do not provide rationale for creating/applying NQTLs
Consumer can determine NQTL limits on SUD services	X	Inconsistent and/or missing information
Consumer could spot parity red flag	X	Rationale for creating/applying NQTL not available
Description of Parity Rights and complaint process		
Does the plan provide members with a description of their parity rights?	X	Information does not appear in insurance contract

Does the plan provide members with the process for filing a complaint?	X	While extensive information is provided about the process for filing a complaint related to adverse coverage or benefit determination, no information is provided in plan contract about the consumer's right to appeal a determination based on an alleged violation of the Parity Act
Medical Necessity Criteria		
Regulator could assess parity	X	Information not available
Consumer can determine what medical necessity criteria apply	X	Unable to evaluate. This information would only be available upon request by the consumer
Consumer could spot parity red flag	X	Information not available

MAJOR RECOMMENDATIONS

The study highlights significant barriers to front-line enforcement of the Parity Act. To achieve better compliance, regulators must obtain complete plan information that is responsive to the Parity Act's standards so that they may conduct comprehensive plan review prior to approving the plan for sale. Consumers must be better informed of the Parity Act protections, have assistance in identifying potential problems in their contract, and have easy access to information that is needed to pursue a complaint. In addition, plans must be more transparent about how substance use care is covered so that consumers can be better informed when purchasing a plan. In order to address the barriers identified in this study, the following recommendations should be considered:

- **Regulatory Agencies Should Require Carriers To Submit Their Internal Analyses For Ensuring That Plans Are Parity Compliant.**
 - Plans are already required to complete this analysis to affirm compliance to regulators, but regulators do not regularly request this evidence. We refer to the more robust requirement as a "Parity Act Transparency and Compliance Report", and recommend that this is required as part of form review.
 - Formulary review should be included as a standard part of the parity compliance process to examine coverage as well as application of NQTLs on medications to treat mental health and substance use disorders.
 - The Parity Act stipulates that carriers are responsible for ensuring compliance; regulators should put the burden of proof on the carriers and require documentation, not just attestation, of compliance.

- The proposed “Parity Act Transparency and Compliance Report” would give regulators the tools required to *prevent* the sale of a contract that illegally limits coverage of substance use disorder treatment or access to care.
- It would also require the collection of plan documents that consumers and providers could readily obtain from state insurance departments if needed to challenge a denial of care and allege a parity violation.⁴
- **Regulatory Agencies Should Use A Parity Compliance Template To Review The Information Contained In The Parity Act Transparency And Compliance Report.**
 - As noted above, Plans should be required to submit their Analyses to attest to Parity Compliance. Regulators should utilize a Template to Review the ‘Parity Act Transparency and Compliance Report’ submitted by Plans.
- **Regulatory Agencies Should Develop Model Contracts That Fully Describe Substance Use And Mental Health Benefits, Align Standards With Parity Act Requirements And Inform Consumers Of Their Rights Under The Law.**
- **Regulatory Agencies Should Enhance The Provider Community’s Capacity To Identify Potential Parity Act Violations And Advocate For Plan Compliance In Network Adequacy And Rate Setting Standards.**
 - Improving provider knowledge of the Parity Act would further support consumers in understanding their rights and identifying potential violations in their plan benefits. Enhancing the substance use provider community’s understanding and capacity to enforce the Parity Act is important from two perspectives. First, as providers increasingly serve consumers with private insurance coverage, they must use the Parity Act’s protections to obtain admission to carrier networks and secure an equitable reimbursement rate. Second, as they conduct the front-line communications with carriers on authorization and continuing care for their patients, they must be prepared to identify, report and challenge plan requirements that appear to be discriminatory.

⁴ The White House Parity Task Force report notes that stakeholder have observed that carrier response to parity disclosure requests vary. EXEC. OFFICE OF THE PRESIDENT, THE MENTAL HEALTH & SUBSTANCE USE DISORDER PARITY TASK FORCE FINAL REPORT, 18 (Oct. 2016).

Adoption of the above recommendations for improved prospective regulatory review would relieve consumers of the nearly impossible burden of identifying Parity Act violations and asserting their right to care in the midst of a health crisis. The Parity Act standards are complex and require access to and comparison of standards for both substance use and medical services. Consumers face formidable roadblocks in navigating this process. Most of the relevant information is not in the consumer's insurance contract, and consumers are not informed of their right to obtain plan information. Even if they were aware of their rights, consumers may be in crisis and lack the time and resources needed to pursue them.

CONCLUSION

The current enforcement framework raises important questions about whether it can effectively identify Parity Act violations. Regulators' assessment of plans' compliance with the Parity Act during form review is insufficient to ensure that consumers can obtain equitable coverage for substance use care, which they are entitled to under federal law. For consumers seeking substance use treatment, the documents available to consumers do not fully identify the services that are covered or all requirements that may affect admission into care. Further, the information provided is often contradictory and difficult to understand, raising questions about transparency. Finally, the insurance contracts reviewed do not sufficiently inform consumers of the rights afforded to them by the Parity Act, how to determine whether a violation exists, how to seek recourse for a plan's non-compliance or how to obtain the full range of plan documents to which they are entitled under the Parity Act. Better enforcement of the Parity Act is attainable if regulators and carriers adopt a few reasonable changes to the current process. With better enforcement of the Parity Act, the discriminatory coverage and barriers that the law seeks to eliminate will be removed and consumers will begin to receive the substance use services that they are paying for in their insurance coverage. Equitable insurance coverage of substance use services may also spur better health care integration, which is essential for treating and managing our nation's addiction crisis.