

Enforcing the Federal Parity Law: Ensuring People in Your State Have Good Access to Addiction and Mental Health Benefits



**GABRIELLE DE LA GUERONNIERE
LEGAL ACTION CENTER**

About LAC and the CWH

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- **Legal Action Center**
 - National law and policy organization that works to fight discrimination against people with histories of addiction, HIV/AIDS, or criminal records
 - ✦ Public policy advocacy on behalf of SAAS
- **Coalition for Whole Health**
 - A coalition of over 100 national, state, and local organizations in the mental health and substance use disorder fields and allied organizations working to ensure health reform is successfully implemented for individuals with mental health and substance use disorder needs

What We'll Discuss Today

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- **The federal parity law**
 - What is MH/SUD parity and what should we look for to determine whether the coverage meets parity?
 - ✦ Provisions of the statute and implementing regulations (including the final rule)
 - What types of plans must comply with parity and which agencies have oversight responsibilities?
 - What elements should your state's parity enforcement plan include?

Policy Goals of the Federal Addiction and Mental Health Parity Law

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- Eliminating certain forms of discrimination in insurance coverage of mental health and substance use disorder treatment benefits
- Expanding access to treatment for people with mental illness and/or substance use disorders

Background of the Federal Parity Law

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- The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) became Public Law 110-343 in October 2008
 - Twelve year process
 - Significant bi-partisan support
 - Huge advocacy victory for the addiction and mental health fields
 - Full and equal inclusion of “substance use disorders”
 - Interplay with the federal health care law, the ACA

Central Analysis to Determine Compliance with the Federal Parity Law

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- The federal parity law prohibits group health plans/health insurers offering SUD or MH benefits from applying financial requirements or treatment limitations to SUD or MH benefits that are more restrictive than the *predominant* financial requirements or treatment limitations applied to *substantially all* medical/surgical benefits
 - Regulations identify a specific formula to determine whether a plan's coverage of MH or SUD benefits is so restrictive that it violates the federal parity law

Central Requirement of the Federal Parity Law

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- The federal MH/SUD parity law prohibits most private health plans from providing mental health and substance use disorder (MH/SUD) benefits in a more restrictive way than other medical and surgical procedures covered by the plan
 - Extends out-of-network coverage for MH/SUD where there is out-of-network coverage for medical/surgical conditions
 - Requires comparison with plan coverage of MH and SUD services and medications for other illnesses
 - ✦ Financial requirements and treatment limitations

Examining Parity Compliance: Comparing Financial Requirements and Treatment Limitations Across Service Categories

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- The Interim Final Parity Rule identified six categories of classifications of benefits for purposes of a parity analysis:
 - Inpatient, in-network
 - Inpatient, out-of-network
 - Outpatient, in-network
 - Outpatient, out-of-network
 - Emergency care
 - Prescription drugs
- Following confusion about what parity means for services not entitled “inpatient” or “outpatient,” the Final Rule included important clarification about scope
 - ✦ Final rule is clear that all MH/SUD services (including intensive outpatient, partial hospitalization and residential care) and all medical/surgical services must be placed into the above framework to complete a parity analysis

Comparing Financial Requirements for MH/SUD Benefits with those for other Medical/Surgical Benefits

- **Financial requirements defined as including:**
 - Deductibles
 - Copayments
 - Coinsurance
 - Out-of-pocket maximums
 - ✦ Separate cost-sharing requirements only imposed on SUD or MH benefits are prohibited
 - ✦ Financial requirements applied to MH/SUD benefits can't be more restrictive than those applied to corresponding covered medical/surgical benefits
 - Example: examine the copay for an outpatient session of SUD treatment provided in-network alongside a copay for an outpatient medical visit provided in-network

Comparing Treatment Limitations for MH/SUD Benefits with those for other Medical/Surgical Benefits

- Parity requires examination of both quantitative treatment limitations and non-quantitative treatment limitations
- Quantitative treatment limitations
 - Day or visit limits
 - Frequency of treatment limits
 - ✦ Separate treatment limits only imposed on SUD or MH benefits are prohibited
 - ✦ Treatment limits applied to MH/SUD benefits can't be more restrictive than those applied to corresponding covered medical/surgical benefits
 - Example: compare the number of days covered for inpatient SUD care with the number of days covered for care in an inpatient medical facility

Comparing Non-Quantitative Treatment Limitations for MH/SUD Benefits with those for other Medical/Surgical Benefits

- Often most challenging to determine and most rife with potential parity violations: non-quantitative treatment limitations (NQTLs)
 - NQTLs = a plan's medical management tools
 - Requirement for comparison of NQTL imposed on specific MH or SUD benefit with NQTL imposed on corresponding medical or surgical benefit
 - ✦ Need for plan disclosure of detailed information about how they manage both their MH/SUD and medical/surgical benefits
 - Different disclosure requirements for different types of plans
 - ✦ Ability for providers to access this plan information on behalf of consumers

Common Examples of Non-Quantitative Treatment Limitations

- Parity rules include a non-exhaustive list of examples of NQTLs:
 - ✦ Medical management standards, including medical necessity criteria and utilization review, and criteria to determine coverage or exclusion of a specific service
 - ✦ Prescription drug formulary design
 - ✦ Fail-first policies/step therapy protocols
 - Medications and services
 - ✦ Standards for provider admission to participate in a network
 - ✦ Provider rates (must examine type, geographic market, demand for services, supply of providers, provider practice size, Medicare rates, training, experience, and provider licensure)
 - ✦ Treatment limitations based on:
 - Geography
 - Facility type
 - Provider specialty
 - Criteria limiting the scope or duration of benefits or services

Examining Whether NQTLs Meet the Requirements of the Federal Parity Law

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- Processes/factors used to apply non-quantitative treatment limitations to SUD or MH benefits in a classification have to be comparable to and applied no more stringently than the processes/factors used to apply to medical/surgical benefits in the same classification
 - Must examine NQTL imposed on a MH or SUD benefit along side an NQTL imposed on a medical/surgical benefit in the same classification
 - ✦ What criteria did the plan use to make this coverage decision? How does that criteria compare with the criteria used to make coverage decisions about corresponding medical/surgical benefits? Was the NQTL imposed more stringently on the MH or SUD benefit than the corresponding medical/surgical benefit?

More on Non-Quantitative Treatment Limitations and Disclosure

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- Requires medical necessity criteria and reasons for denials of reimbursement to be available to participants and beneficiaries
 - Different requirements for different types of plans—additional guidance is expected
 - For most plans that have to comply with the federal parity law, they must:
 - ✦ Disclose in writing how NQTLs are applied to medical/surgical, MH and SUD benefits covered by the plan, including what processes, strategies, evidentiary standards and other factors plans use to apply NQTLs
 - ✦ Provide claimants with any new additional evidence used to make benefit determinations during appeals
 - ✦ Disclose the above information within 30 days to any current or potential enrollee or contracting provider

A Few Notes on Parity and Coverage of “Intermediate” Services and Methadone

- Coverage of SUD residential, intensive outpatient and partial hospitalization services
 - Final rule makes clear that all medical, surgical, MH and SUD benefits must fit into the six-category benefit framework for purposes of a parity analysis; examples from the final rule:
 - If a plan classifies care in a skilled nursing facility or a rehabilitative hospital as an “inpatient” benefit, the plan must also classify residential SUD services as an “inpatient” benefit for parity purposes
 - If a plan classifies home health care as an “outpatient” benefit, the plan must classify IOP or partial hospitalization services as an “outpatient” benefit for purposes of a parity analysis
 - Additional guidance in the final rule key to residential coverage and coverage of methadone maintenance therapy: limits due to provider specialty and geography, admission to providers networks

Which Plans Must Comply with the Provisions of the Federal Parity Law?

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- Plans that must comply under the 2008 federal parity law (MHPAEA):
 - Large group employer-funded plans
 - Non-federal employer-funded plans
 - Self-funded ERISA plans
 - Medicaid managed care plans
 - ✦ These plans aren't required to provide MH and SUD benefits—if they do, however, those benefits must be provided at parity with other covered medical and surgical benefits
- In 2009, the law governing the federal SCHIP (State Children's Health Insurance Program) was amended to require compliance with the federal parity law

Which Plans Must Comply with the Provisions of the Federal Parity Law? (*cont'd*)

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- Following 2010 passage of the federal health reform law, the Affordable Care Act (ACA), the following plans must offer MH and SUD benefits and provide those benefits in compliance with the federal parity law:
 - Individual and small group plans operating on the health insurance exchange or “marketplace plans”
 - Non-grandfathered individual and small group plans operating outside the health insurance exchanges
 - Medicaid Alternative Benefit Plans coverage (including for the Medicaid expansion population)
 - ✦ Different sets of guidance have been issued on how MHPAEA applies to different types of plans

Enforcing the Federal Parity Law: Who is Responsible?

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- Oversight and enforcement of the federal parity law is shared by a number of federal and state agencies and has been very challenging
 - ✦ State insurance commissioners have primary responsibility over large and small group, and individual market coverage
 - Five states (AL, MO, OK, TX, WY) are not enforcing the market reforms of the ACA, which include the Essential Health Benefit and parity requirements—federal regulators have primary jurisdiction
 - ✦ DOL and Treasury share jurisdiction over ERISA plans
 - ✦ HHS has primary authority over non-federal governmental plans
 - ✦ State Medicaid directors and CMS share jurisdiction of Medicaid plans

Limitations of the Federal Parity Law

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- The federal parity law does not:
 - Require large group plans to offer MH and SUD benefits
 - ✦ Difference between “original” MHPAEA plans and ACA plans that require MH and SUD benefits
 - Apply to certain plans (grandfathered individual or small group plans, traditional fee-for-service Medicaid, Medicare, and Tricare plans)
- Certain plans can opt out
 - Group health plans whose costs increase more than two percent in the first year and one percent after that
 - Non-federal governmental employers providing self-funded group health plan coverage
- Timing for the final parity rule to go into effect:
 - The final rule will become effective for most plans in January 2015
- Challenges of shared jurisdiction...

Questions to Consider When Examining Whether a Plan May Violate Parity

- Is the plan a type that is required to comply with the federal parity law?
- Are the financial requirements imposed on the MH or SUD benefits more restrictive than those imposed on corresponding covered medical/surgical benefits?
- Are the quantitative treatment limitations imposed on the MH or SUD benefits more restrictive than those imposed on corresponding covered medical/surgical benefits?
- Are the non-quantitative treatment limitations imposed on the MH or SUD benefits more restrictive than those imposed on corresponding covered medical/surgical benefits?
- What are the plan disclosure requirements under the federal parity law?
- Based on the type of plan, which state and federal agencies have jurisdiction over enforcement?

Items to Consider for Your Parity Enforcement Plan

- Role of education, training, and technical assistance on the federal parity law and its implementation and enforcement
 - Potential target audiences: MH and SUD providers, other health care providers, consumers and the recovery community, and other allies
- Focus on provider-specific provisions in the parity law and the ACA
 - Network adequacy protections for ACA marketplace plans
 - Discussion of provider rates, exclusion of benefits provided in certain settings, etc.
- Outreach to plans, issuers and other payors
- Outreach to key state decision-makers (insurance commissioners, Medicaid directors, and others) and possibility of state regulations and/or legislation on parity
 - Clarifying the scope of the state's work on the federal parity law
 - Looking to other states and their implementation/enforcement activity

Items to Consider for Your Parity Enforcement Plan

- Outreach to key federal decision-makers (including those overseeing your state's health insurance marketplace, if applicable)
- Ability to examine MH and SUD coverage in plans that must comply with the federal parity law
- Possibility of linking with ongoing parity compliance work (ex: NAATP project)
- Connection to the legal service provider community in your state

Questions or for more information

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- **Coalition for Whole Health website**
 - www.coalitionforwholehealth.org
 - <http://www.coalitionforwholehealth.org/resources-for-local-advocates/>