

## PATIENTS NEED YOUR HELP TO ENFORCE MENTAL HEALTH PARITY

With all the recent discussion of the future of the Affordable Care Act (ACA), members have asked about the impact of the ACA's destiny on the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). MHPAEA is a separate statute that applies to large group employer plans (+50 people), Medicaid managed care arrangements and nonfederal government plans that do not opt out. The ACA expanded MHPAEA to Medicaid expansion plans, Exchange Plans and to the individual and small group markets. Right now, MHPAEA impacts almost all insurance products on the market, and your patients need your help in dealing with possible parity issues and ensuring access to care.<sup>1</sup> What can you do?

### 1. **Work with your patients to recognize potential parity violations and complain when they experience one.**

One of the most common things APA has heard from regulatory authorities is that violations cannot exist because no one is complaining! Twenty states have been granted money by the federal government to enforce parity in the state. Regulators need to hear from you to know where to look for problems. You must not be silent.

Here are some potential parity violations<sup>2</sup>:

- A. **Pre-authorization** including blanket preauthorization requirements for all mental health or substance use disorder (MH/SUD) services, treatment facility preauthorization requirements not applied to medical/surgical services, or more stringent medical necessity review or prescription drug preauthorization requirements than those applied to medical/surgical services;
- B. **Fail-first protocols**, requiring an individual to fail to achieve progress with a less intensive form of treatment before a more intensive form is covered;
- C. **Probability of improvement** requirements, for example, offering coverage of continuing treatment only if improvement is demonstrated or probable;
- D. **Written treatment plans**, requiring treatment plans completed by specified professionals, within a certain time, or on a regular basis where similar requirements are not applied equally to medical/surgical coverage;
- E. **Other** limits or exclusions, including:
  - Excluding chemical dependency services in event of noncompliance,
  - Excluding coverage for residential treatment,
  - Geographical limitations on MH/SUD services not imposed on medical and surgical services, or
  - Facility licensure requirements not imposed on medical/surgical facilities.

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<sup>1</sup> Currently, broad bipartisan support for parity remains and the outlook for the parity extensions under the ACA depends on what repeal and replace does.

<sup>2</sup> It can be complex to demonstrate an actual parity violation, but there is no need for you to do the legal analysis. You should report any of these potential violations to the enforcement authorities.

Each of these is explained in detail here: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtls-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf>

If you or your patients experience these issues, go to this consumer portal, and complain. <https://www.hhs.gov/mental-health-and-addiction-insurance-help> Federal authorities have assured us that there are benefits experts available to help with the problem and/or steer people to the right place.

**2. Help your patients ask for documents from their insurance plan when their care is denied.**

The Substance Abuse and Mental Health Services Administration (SAMSHA) recently issued a new consumer rights publication that specifies what documents patients are entitled to get from their plans, if they ask, when their MH/SUD care is denied. It is important to get further information from the plans and SAMSHA has made clear that the patient is entitled to information both on the MH/SUD side of the plan and from the medical/surgical side of the plan to determine if MH/SUD is treated differently. These documents include: the plan's medical necessity criteria, utilization review standards, and its analyses performed to verify whether the plan complies with MHPAEA. We suspect that many plans do not actually do the required analysis under MHPAEA and therefore cannot comply. SAMHSA's Consumer Rights publication provides for discovery from the health plan of a wealth of information and patients need to take advantage of it. See, SAMHSA's publication here: <http://store.samhsa.gov/shin/content/SMA16-4992/SMA16-4992.pdf>. If you need assistance once a document request is made and the documents are produced or not produced, please contact Maureen Bailey at [m Bailey@psych.org](mailto:m Bailey@psych.org).

**3. Do not substitute a consumer complaint to enforcement authorities for an appeal.**

Patient have only a limited amount of time to appeal a denial of a claim. Filing a complaint with a regulatory agency is not a substitute for an appeal. Help your patient appeal denials and include in the appeal a claim that the action may violates MHPAEA. Also include in the appeal a request for the documents in the SAMSHA publication above. Many denials are reversed on appeal, particularly when the appeal advances to the external stage and an independent third party. Don't give up, when the patient's claim is not appealed, the plan wins.

**4. Post the APA's parity rights poster in your office.**

This poster clearly and simply explains the parity law and the steps to take when a violation is suspected. Share the link with colleagues. The poster can be found here <https://psychiatry.org/File%20Library/Psychiatrists/Practice/Parity/Parity-Poster.pdf>

**5. Tell APA about your experiences.**

APA is in regular contact with state and federal authorities tasked with enforcing the parity laws and they need feedback about patients' experiences getting MH/SUD care which may implicate

the parity laws. If APA is able to collect sufficient data, APA can better relay to the authorities what is working and not working with parity enforcement. Contact [mbailey@psych.org](mailto:mbailey@psych.org).

For patients, parity means reasonable access to care. For psychiatrists, it means the ability to practice medicine without unnecessary interference so that you can spend your time in patient care rather than intentional hurdles to block care. Psychiatrists have made substantial gains in making parity a reality, but it requires vigilance and your participation. Keep up the good work!