

End Discrimination in Mental Health & Addiction Insurance Coverage: Save Lives and Reduce Costs

Action Steps to End Unlawful Insurance Discrimination in Maryland

Elected officials in Maryland have substantial enforcement power to ensure health plans comply with mental health and substance use disorder parity laws. Parity at 10 recommends that Maryland officials implement the following **five action steps**:

- Vigorously enforce state and federal parity laws through consumer and provider education, insurance department and Medicaid compliance reviews, and Attorney General Investigations.
- Verify that plans are in full compliance *prior to plans being offered* by collecting and approving health plans' parity compliance analyses.
- Conduct regular parity market conduct examinations and data audits to check for plan compliance.
- Create consumer assistance services to help consumers navigate insurance denials.
- Create a consumer-friendly complaints process and investigate all MH/SUD complaints for potential parity violations.

Robust enforcement of existing parity laws will help residents access affordable mental health and substance use disorder treatment.

What Is Mental Health and Substance Use Disorder Parity & Why Is It So Important?

Mental health and substance use disorder parity means fair and equal access to treatment for mental health and substance use disorders (MH/SUD). With the goal of ending insurer discrimination against MH/SUD – including high out-of-pocket costs, shorter lengths of care, and even complete exclusions of covered services – President George W. Bush signed the landmark federal Mental Health Parity and Addiction Equity Act of 2008 (“Parity Act”). States have a primary role parity enforcement in private insurance and Medicaid. **Like other anti-discrimination laws, state and federal parity laws require equity.** MH/SUD coverage – both as written and in practice – must be provided at the same level as the coverage of other medical care.ⁱ

Parity saves lives. Increasing access to MH/SUD treatment is essential in Maryland to address our rapid rise in deaths from opioids and suicide. **In the past three years alone, annual overdose deaths in Maryland increased by more than 1,200, or 119%.**ⁱⁱ MH/SUD are treatable, but people are dying because they cannot access treatment prescribed by their providers. By making MH/SUD parity a reality, Maryland will save lives, reduce overall health care costs associated with untreated MH/SUD, and improve the health, well-being, and economic productivity of Maryland residents.

Parity protects consumers. As consumers pay more for health coverage, parity is necessary to ensure that consumers get the MH/SUD care they are entitled to and pay for. By ending long-standing discrimination by health insurers, parity protects consumers, with little or no increase in costs.ⁱⁱⁱ

Groundbreaking Civil Rights Law Not Vigorously Enforced

State and federal parity laws have not achieved their promise because of inadequate enforcement in Maryland. While health plans have eliminated many of the most obvious parity violations by fixing out-of-pocket cost requirements and removing set caps on the number of days of care, health plans continue to impose other barriers to care such as:

EQUAL INSURANCE COVERAGE OF SUBSTANCE USE AND MENTAL HEALTH DISORDERS. IT'S THE LAW.

- Stricter medical necessity criteria;
- More frequent and burdensome prior authorization requirements;
- Prescription drug formulary design that limits access to MH/SUD medications and/or places them on more expensive tiers; and
- More frequent refusal to pay for higher-cost treatment until lower-cost treatments have failed.

Despite clear rules from the federal government on health plans' obligations under the Federal Parity Act, Maryland regulators do not thoroughly reviewed plans' written policies and actual practices to ensure parity compliance.

Evidence From Maryland Shows Parity Not Adequately Enforced

Health plan transparency on MH/SUD coverage is severely lacking, but the data we have show that health plans are not in compliance with parity laws. A recent report by the actuarial firm Milliman that examined actual claims data in Maryland found that patients had to go out-of-network for MH/SUD care far more often than they did for medical/surgical care.^{iv} It also found that Maryland MH/SUD providers are reimbursed far less than other medical providers when billing the same reimbursement codes.

Since 2015, the Maryland Insurance Administration has identified significant gaps in provider networks for substance use disorder and mental health services. In 2017, Marylanders residing in 8 counties did not have access to essential opioid treatment services through some carrier plans. Residents needing treatment for bi-polar disorder lacked critical services in 12 counties.^v July 2018 data from Maryland's carriers show that most do not satisfy appointment wait time standards required by state law. Only 1 of 13 carriers have sufficient mental health and substance use providers to allow their members to get non-urgent services within ten days. While carriers also report deficiencies for physical health services, they admit to far worse performance for mental health and addiction treatment.^{vi}

Milliman Analysis of Claims Data Point to Parity Violations in Maryland

Metric	Results from 2015 Claims Data
Inpatient Out-of-Network Utilization	Behavioral Health: 17.4% Medical Surgical: 2.5%
Outpatient Facility Out-of-Network Utilization	Behavioral Health: 31.6% Medical Surgical: 9.0%
Outpatient Office Visit Out-of-Network Utilization	Behavioral Health: 31.2% Primary Care: 3.3% Specialist Care: 3.5%
Reimbursement Rates for MH/SUD Providers	21.6% below primary care 17.3% below specialty care

ⁱ The Federal Parity Act requires that plans offer MH/SUD at parity with medical/surgical coverage if those plans offer MH/SUD coverage. Because the Affordable Care Act requires most health plans to offer MH/SUD coverage, these plans must then provide MH/SUD coverage at parity.

ⁱⁱ Maryland Department of Health, "Unintentional Drug- and Alcohol-Related Intoxication Deaths in Maryland Annual Report," 2017, https://bha.health.maryland.gov/OVERDOSE_PREVENTION/Documents/Drug_Intox_Report_2017.pdf.

ⁱⁱⁱ Susan H. Busch, "Implications of the Mental Health Parity and Addiction Equity Act," *Am J Psychiatry*. 2012 Jan; 169(1): 1-3, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3617811/>. Plans can opt out of the Parity Law if they can demonstrate an annual cost increase of more than 1% due to the Parity Law. No plan has ever opted out due to cost.

^{iv} Milliman, "Addiction and mental health vs. physical health: Analyzing disparities in network use and provider reimbursement rates," December 2017, <http://www.milliman.com/uploadedFiles/insight/2017/NQTLDisparityAnalysis.pdf>.

^v Al Redmer, Commissioner, Maryland Insurance Administration, to Honorable Thomas McLain Middleton, Update of Survey Two Analysis, June 30, 2017 at p. 4.

^{vi} Ellen Weber, Legal Action Center, to Robert Morrow, Assoc. Commissioner, Maryland Insurance Administration, Sept. 18, 2018 at p. 4-5.

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