POLICY BRIEF

September 2018

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

Action Steps to End Unlawful Insurance Discrimination in Ohio

Elected officials in Ohio have substantial enforcement power to ensure health plans comply with mental health and substance use disorder parity laws. Parity at 10 recommends that Ohio 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 to play in 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 on par with coverage of other medical care.[i]

Parity saves lives. Increasing access to MH/SUD treatment is essential in Ohio to address our rapid rise in deaths from opioids and suicide. Between 2015 and 2017, annual overdose deaths in Ohio exceeded 5,100, an increase of more than 1,700, or 53%.[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, Ohio will save lives, reduce overall health care costs associated with untreated MH/SUD, and improve the health, well-being, and economic productivity of Ohio 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 Ohio. 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:

- 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, states have not thoroughly reviewed plans' written policies and actual practices to ensure parity compliance.

Evidence From Ohio 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. Nationally, patients responding to a National Alliance on Mental Illness (NAMI) survey have reported being denied twice as often for mental health care as for medical/surgical care under ACA plans.[iv]

A recent report by the actuarial firm Milliman that examined actual claims data in Ohio found that patients had to go out-of-network for MH/SUD care far more often than they did for medical/surgical care.[v] It also found that Ohio MH/SUD providers are reimbursed far less than other medical providers when billing the same reimbursement codes.

When states have closely examined insurer practices, they have found numerous parity violations. For example, the New York State Attorney General reached 8 settlements with 7 different health plans, requiring them to **changes their practices, return $2 million to patients and pay $3 million in penalties.** [vi] California has also increased enforcement, finding that a major plan has repeatedly violated MH/SUD parity laws.[vii]

Milliman Analysis of Claims Data Point to Parity Violations in Ohio

Metric	Results from 2015 Claims Data
Inpatient Out-of-Network Utilization	Behavioral Health: 10.7% Medical Surgical: 4.7%
Outpatient Facility Out-of-Network Utilization	Behavioral Health: 24.6% Medical Surgical: 6.2%
Outpatient Office Visit Out-of-Network Utilization	Behavioral Health: 9.3% Primary Care: 1.9% Specialist Care: 2.1%
Reimbursement Rates for MH/SUD Providers	17.4% below primary care 18.0% 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] Centers for Disease Control and Prevention, "Provisional Drug Overdose Death Counts," New Jersey predicted drug overdose deaths for 12-month period ending December 2017 vs. December 2015, https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.

[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] NAMI, A Long Road Ahead: Achieving True Parity in Mental Health and Substance Use Care, 2015, https://www.nami.org/About-NAMI/Publications-Reports/Public-Policy-Reports/A-Long-Road-Ahead/2015-ALongRoadAhead.pdf.

[v] 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.

[vi] New York State Office of the Attorney General, Health Care Bureau, Mental Health Parity: Enforcement by the New York State Office of the Attorney General (May 2018), https://ag.ny.gov/sites/default/files/hcb_mental_health_parity_report.pdf.

[vii] Jenney Gold, Kaiser Health News, "Kaiser Permanente Cited—Again—For Mental Health Access Problems," June 30, 2017, http://khn.org/news/kaiser-permanente-cited-again-for-mental-health-access-problems/.

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