

Parity: Mental Health and Substance Use Disorder Treatment: On the Hill and In the Courts



Several developments have refocused attention on parity – in positive, promising and potentially worrisome ways.

First, the positive: In March, the U.S District Court for the Northern District of California found that the largest managed behavioral health care company in the country was illegally denying mental health and substance use disorder (SUD) treatment, based on flawed medical necessity criteria. United Behavioral Health (UBH) lost the national class-action suit brought by 11 plaintiffs on behalf of more than 50,000 patients whose claims were wrongly denied.

The Court found that UBH developed inappropriately restrictive medical necessity criteria, and used it systematically to deny outpatient, intensive outpatient and residential treatment. UBH's internal guidelines limited coverage to acute care and crisis stabilization, disregarding generally accepted standards of care for the effective treatment of pervasive, chronic and underlying conditions. Among its detailed findings, the Court noted the lack of coverage criteria specific to children and adolescents. More information is available on the website of Psych Appeal, the mental health law firm that litigated the suit.

On the promising front: Three bills have been introduced in Congress to beef up implementation and enforcement of the Mental Health Parity and

Addiction Equity Act (MHPAEA). We'll hear more about them, and their prospects, at this week's NACBH Public Policy Conference:

- The Mental Health Parity Compliance Act (S 1737, HR 3165) – With bipartisan, bicameral support, this is the most likely of the three to pass. The Senate version was introduced by Senators Chris Murphy (D-CT) and Bill Cassidy (R-LA), who co-authored the successful Mental Health Reform Act of 2016. The bill would require group health plans and insurers to submit a comparative analysis of their medical versus mental health/SUD managed care practices, when requested by the HHS Secretary. It would require the Secretary to request such analyses when parity complaints are received, as well as from 50 randomly selected plans annually. HHS would report the compiled results to Congress each year and use the results to issue updated parity compliance guidance every two years. Non-compliance would be reported to the Inspectors General of HHS, Labor and Treasury.
- The Behavioral Health Coverage Transparency Act (S 1576, HR 2874) – While bicameral, this bill is not bipartisan, unless you count Senator Bernie Sanders (I-VT). It would require health plans and insurers to disclose the analysis they perform in making parity determinations, and to report annually on their denial rates and reasons for mental health/SUD versus medical claims. It would require federal regulators to conduct no less than 12 random audits each year and to create a central online portal to both receive complaints and allow consumers to access information about their parity rights, disclosures submitted by insurers and results of audits.
- Parity Enforcement Act (HR 2848) – There is no companion bill in the Senate, where an identical bill in the Health, Education Labor and Pensions (HELP) Committee failed last year, with all Republican members of the committee voting against it. This bill would authorize the Department of Labor (DOL) to assess penalties for parity violations by health plans that are subject to ERISA. Consistent with DOL's current authority to penalize violations of the Genetic Information Non-Discrimination Act, the parity penalty would be capped at \$500,000 unless the violation were due to "willful neglect." In that case, the penalty is \$100 per day per affected beneficiary.

And in the "we're not sure what this might mean, or when" category: As has been widely reported in the national media, a panel of three appellate court judges heard arguments last week on whether to strike down the

Affordable Care Act (ACA). It may be months before the U.S. Court of Appeals for the Fifth Circuit rules on whether to uphold the lower court's decision last December – that the ACA's individual mandate is unconstitutional, and because it is essential to the rest of the massive law, the entire ACA must be invalidated when the individual mandate is removed. Mental health parity is not at the top of the list of our concerns if that decision is affirmed, but we are mindful that the ACA's extension of MHPAEA coverage to populations beyond the parity law's original reach would be a significant loss.