



## Mental Health Parity: Advocacy Is Increasing State Enforcement June 2013

### What is Mental Health Parity?

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (the parity law) is a federal law that requires health insurance carriers, including certain Medicaid plans, to cover mental health and substance use disorder (MH/SUD) treatment to the same extent the plans cover other medical or surgical treatment. In addition to the federal law, almost every state has enacted its own parity law. When the Affordable Care Act (ACA) is fully implemented in 2014, it will expand federal parity protections to most consumers.

Although the parity law passed in 2008, many health insurance plans still fall short of full compliance with the law's requirements. While several reasons contribute to plans' lax compliance, one of the most significant is states' hesitance – or even refusal – to do their share to enforce the federal parity law. Responsibility for enforcing the federal law is shared between the federal and state governments. Fortunately for consumers who need MH/SUD services, recent events suggest state parity enforcement is improving.

### Enforcement Trends and Progress

Several states made significant progress in their enforcement of mental health parity over the last year. Here is a sampling of recent enforcement measures observed across the country:

- The **California** Department of Managed Health Care (DMHC) flexed its parity enforcement muscle in March 2013 when it investigated Kaiser Permanente's mental health coverage practices. Following the investigation, DMHC cited Kaiser for multiple violations of mental health laws. Specifically, Kaiser denied health plan members access to critical information about their MH/SUD benefits. Kaiser must now comply with a corrective action plan or face fines.
- For years, advocates in **Connecticut** urged the Connecticut Insurance Department (CID) to take a stronger position on parity enforcement. In the wake of the Sandy Hook tragedy, the Connecticut legislature passed a law requiring the CID to assume parity enforcement authority. In April 2013, CID brokered an agreement under which Anthem Health Plans agreed to provide equity in provider reimbursement rates (discussed below).

- As a result of consumer advocacy, **Massachusetts** legislation passed in 2012 requires state agencies to implement and enforce the federal parity law. The Division of Insurance (DOI) and Office of Medicaid (MassHealth) are charged with issuing regulations to govern mental health parity enforcement. The regulations will lay out an annual compliance reporting and certification process for health plans, and establish a complaint process through which health plan members and providers may report alleged parity violations to the agencies.<sup>1</sup>

As consumer advocates and provider organizations become increasingly familiar with the requirements of the parity law, groups are filing lawsuits to address wide-scale parity violations.

- The New York State Psychiatric Group [filed a class action lawsuit](#) against United Behavioral Health in March 2013 alleging parity violations, including prior authorization policies applied exclusively to MH/SUD services, and different financial requirements for MH/SUD and medical/surgical benefits.
- The American Psychiatric Association (APA) [filed a lawsuit against Anthem Health Plans](#) in April 2013 alleging that Anthem's reimbursement rates and billing structure violated parity laws. Shortly after the lawsuit was filed, the CID brokered an agreement with Anthem to raise the plan's reimbursement rates to providers. Despite this agreement, the APA remains committed to the lawsuit, stating that the agreement fails to fully address Anthem's parity violations.
- In May, a district court in Vermont issued the [first federal court decision interpreting the parity law](#) – a win for consumers with mental illness or substance use disorders. In this case, a patient sued her health plan for parity violations including a policy that triggered automatic reviews after the patient reached a set number of mental health visits. In finding for the plaintiff, the Vermont court ruled that an insurance plan has the burden of establishing clinically appropriate standards of care to justify treating MH/SUD claims differently than medical/surgical claims.

Parity advocates believe these lawsuits are just the “tip of the iceberg,” and expect a greater volume of parity litigation in the coming months and years. As parity enforcement continues to gain momentum, health plans will increasingly be held accountable for any failures to provide equal MH/SUD and physical health coverage.

### **What to Expect in 2014 and Beyond**

The ACA makes several important changes to mental health parity starting in January 2014. Perhaps most significantly, the ACA expands parity to many health plans that were not previously covered by the law, including plans for new Medicaid enrollees and those purchasing insurance through the Exchange. Parity enforcement, together with robust benefits<sup>ii</sup> for MH/SUD, will improve consumers' access to needed behavioral health services.

## What Advocates Can Do Now

Even with the recent progress seen in some states, there is still much to do to further parity enforcement across the country. Here are some steps you can take to improve mental health parity in your state:

- **Build a coalition of parity stakeholders.** To help coordinate and strengthen parity efforts in Massachusetts, Health Law Advocates (HLA) organized a broad coalition of providers, consumer advocates, and organizations with an interest in parity issues. When Massachusetts' parity enforcement agencies released proposed regulations in the spring of 2013, the coalition worked together to co-sign written comments, and organized compelling panels of testimony for the public hearing. By forming a cohesive coalition of parity stakeholders, advocates will project a stronger, more unified voice, avoid duplicative or wasteful efforts, and be more likely to improve care for consumers.
- **Meet with and write to state legislators.** As demonstrated in the state examples above, provisions of Massachusetts and Connecticut state legislation got state insurance agencies to accept and exert their parity enforcement obligations. If your state is lagging in enforcement, consider meeting with your state senators and representatives to discuss how legislative efforts can help advance parity enforcement.
- **Learn more and spread the word.** You can find Mental Health and Addiction Parity education materials and guidance on the websites of HLA, [www.healthlawadvocates.org](http://www.healthlawadvocates.org), Parity Implementation Coalition, <http://parityispersonal.org>, and the United States Department of Labor, [www.dol.gov/ebsa/mentalhealthparity](http://www.dol.gov/ebsa/mentalhealthparity). Also, keep an eye out for trainings and information sessions in your area relating to mental health parity.

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<sup>i</sup> Although advocates dispute the need for conforming state legislation to enforce the federal parity law, in some states this will be the best avenue to implement the law. For more, see [Consumer Rights to Mental Health Treatment: State Responsibility for Enforcing the Federal Parity Act](#).

<sup>ii</sup> Learn more about the mental health and substance use disorder services required under Essential Health Benefits [here](#) and [here](#).