

Guidance for Advocates: Identifying Parity Violations & Taking Action

The Federal Mental Health Parity and Addiction Equity Act (“federal parity law”) and its [regulations](#) prohibit most health insurance plans from discriminating in the coverage of mental health and substance use disorders benefits. The federal parity law offers substantial protections for consumers in need of care for substance use disorders. However, the law is complex and not well understood by consumers or their advocates.

This guide provides a “What, Who, How and Where” approach to understanding what parity violations are, and how to seek appropriate remedies under the federal parity law.

WHAT does a parity violation look like?

The basic parity rule is that a health plan’s policies and practices for behavioral health services cannot be more restrictive than policies and practices for medical or surgical services.

A parity violation can take many forms. Some policies and practices covered under the parity law are easily measured by a dollar amount or a number: for example, “financial requirements,” such as co-payments or deductibles, and “quantitative limits,” such as the number of outpatient visits allowed each year. Under the parity law, financial requirements and quantitative limits cannot be more restrictive for behavioral health services than for similar medical services.

Other health plan practices or policies are called “nonquantitative treatment limitations,” or NQTLs, as they cannot be measured by a dollar amount or number. There is no easy way to measure or “test” these types of limitations, but the basic rule is that a health plan may not apply an NQTL more restrictively to mental health or substance use disorders benefits than it does to medical benefits.

Here are some common examples of policies and practices that may violate the federal parity law if they are applied too restrictively:

- **Fail-first policies.** A health plan may be using a “fail-first” policy if it denies coverage for behavioral health treatment (e.g. hospital care) because the health plan member has not yet tried, and failed, at a lower level of care (e.g. outpatient care). If a health plan uses a fail-first policy for substance use disorders or other behavioral health treatment, but does not impose fail-first policies for medical care, the plan may be violating the federal parity law.
- **Limits on the quantity or frequency of outpatient treatment.** If a health plan places arbitrary caps on the number of outpatient behavioral health visits allowed each year, but does not have similar caps on outpatient medical visits, the health plan may be in violation of the federal parity law. Similarly, if a health plan limits outpatient behavioral health visits to once a week or every other week, but does not limit the frequency of medical outpatient visits, there may be a parity violation.

- **More restrictive prior authorization policies for behavioral health.** Many health plans require prior authorization for non-emergency inpatient hospital services, both medical and behavioral health. However, if in practice, a health plan's prior authorization for medical services routinely approves up to seven inpatient days, but behavioral health inpatient services are generally approved for just one day, the plan is likely in violation of the federal parity law because it is applying a prior authorization process more restrictively to behavioral health services.
- **Excessive concurrent review policies.** When a patient is admitted to an inpatient or residential treatment setting or needs long-term counseling, health plans may periodically review the medical necessity of the treatment in a process known as concurrent review. If health plans require concurrent review too frequently, or impose overly burdensome requests on health care providers to justify continued treatment, the plan may be in violation of the federal parity law.

WHO should I contact if I think a plan is violating the parity laws?

- For most commercial health plans, the **state Insurance Commissioner** is the primary enforcement authority when it comes to parity. Contact your state's insurance department to learn about available complaint processes for consumers.

Advocacy Opportunity: Some state insurance departments have developed parity-specific complaint processes or other enforcement systems. If your state hasn't taken parity enforcement steps yet, write to your Insurance Commissioner and demand action! You can find additional state advocacy tips [here](#). If you can't make headway with your Insurance Commissioner, you can contact the regional office of federal Department of Labor's Employee Benefit Security Administration (EBSA).

- If the plan is a large group employer plan (sometimes called an ERISA plan) you can submit a complaint directly to the federal **Employee Benefit Security Administration (EBSA)**. You can contact EBSA online to initiate a consumer complaint: www.askebsa.dol.gov
- If the plan is a Medicaid Managed Care plan, your state **Office of Medicaid** is responsible for enforcing the parity laws.
- **State Attorneys General.** Though your state's Attorney General is not the *primary* enforcement authority on parity, an AG's office has significant investigative and enforcement tools at its disposal. Throughout 2014, the [New York Attorney General's Office](#) demonstrated its significant enforcement power by reviewing consumer complaints of parity violations, investigating health plans against which complaints were filed, and assessing penalties when violations were found.

HOW do I demonstrate that I have found a parity violation?

If you are planning to file a complaint of a parity violation, you should provide specific examples and gather documents to support your position.

- **Request member health plan documents.** Health plans are legally required to provide a copy of plan documents to members and their providers upon request. Relevant health plan documents include covered benefits, coverage restrictions and other policies. For example, the plan documents may describe when a consumer must obtain preauthorization, any limits on treatment visits, and when a plan will authorize out-of-network benefits.
- **Request medical necessity criteria and utilization review policies.** In addition to a member's plan documents, health plans also have written medical necessity criteria and utilization review policies which they use to determine whether to authorize or approve coverage for a given health care service. Health plan members and their providers have the right to request a copy of any such medical necessity criteria and utilization review policy used by the health plan to make coverage determinations.
- **Build a case.** Provide specific case examples to demonstrate how a written health plan policy is actually being applied in practice. It is important to demonstrate how a health plan practice or policy is unfairly restricting a member's access to services.

WHERE can I find more information about the parity laws?

- The **U.S. Department of Labor** maintains a [parity resource webpage](#) with links to the federal parity regulations, "Frequently Asked Questions" and other agency guidance, educational fact sheets, videos, reports, and links to other websites and organizations with helpful parity information.
 - www.dol.gov/ebsa/mentalhealthparity
- **Community Catalyst and Health Law Advocates** post a wide range of health care resources, including [resources for substance use disorders advocates](#) and [resources for healthcare consumers](#).
 - www.communitycatalyst.org
 - www.healthlawadvocates.org
- The **Parity Implementation Coalition**, which was formed to follow implementation and enforcement of the federal parity law, [provides helpful resources](#) including comprehensive toolkits for employers and advocates.
 - www.parityispersonal.org
- Follow "[Parity Perspectives](#)," the **Maryland Parity Project's** blog, to keep up to date with important parity developments.
 - www.marylandparity.org

Authored by:
Laura Goodman, Health Law Advocates Staff Attorney