



**HHSC: Mental Health  
Condition and  
Substance Use Disorder  
Parity Workgroup, July  
22, 2020**



The Mental Health Condition and Substance Use Disorder Parity Workgroup was established by HB10. During the 2017 Texas Regular Legislative Session, lawmakers passed an important bill related to mental health parity ([House Bill 10](#)). The new law, signed by Governor Abbott, aims to address ongoing challenges with mental health and substance use disorder “parity” protections. The goal is for more insured Texans have equal access to both physical health care and care for mental health and substance use disorder needs. The new law took effect September 1, 2017, though full implementation will take more time.

In health care, “parity” describes the equal treatment of mental health conditions and substance use disorders by insurance plans, when compared to coverage for physical health care. When a plan has “parity” it means that health insurance coverage of mental health is equal to coverage for physical health. For example, if an insurer provides unlimited doctor visits for a condition like diabetes, then the insurer should also provide unlimited doctor’s visits for mental health conditions like depression or schizophrenia. It is important to note that “parity” requires *equal* coverage, not necessarily *good* or *comprehensive* coverage.

The workgroup, which is a [subcommittee of the Behavioral Health Advisory Committee](#), is established to increase the understanding of and compliance with state and federal rules, regulations and statutes concerning the availability of, and terms and conditions of, benefits for mental health conditions and substance use disorders. The workgroup is tasked with studying and making recommendations on:

- Increasing compliance with the rules, regulations and statutes described above.
- Strengthening enforcement and oversight of these laws at state and federal agencies.
- Improving the complaint process relating to potential violations of these laws for consumers and providers.
- Ensuring HHSC and Texas Department of Insurance can accept information on concerns relating to these laws and investigate potential violations based on de-identified information and data submitted to providers in addition to individual complaints.
- Increasing public and providers' education on these laws.



### Members include

**Greg Hansch, Chair**

National Alliance on Mental Illness Texas  
Term ends: Sept. 1, 2021  
Advocate

**Diane J. Felder, M.D., Vice Chair**

Magellan Health  
Term ends: Sept. 1, 2021  
Physician

**Naomi Garcia Alvarez**

Molina Healthcare of Texas  
Term ends: Sept. 1, 2021  
MCO

**Bill Bailey**

Cenikor Foundation  
Term ends: Sept. 1, 2021  
Family member

**Joe A. Bedford, M.D.**

United Healthcare  
Term ends: Sept. 1, 2021  
Commercial benefit plan

**Christine Bryan**

Clarity Child Guidance Center  
Term ends: Sept. 1, 2021  
Children

**Luis Calo, M.D., MMM**

United Healthcare  
Term ends: Sept. 1, 2021  
Utilization Review

**Tracy Vilella Gartenmann**

Recovery Brands, LLC  
Term ends: Sept. 1, 2021  
Family member

**Meredith Stacy Jones**

Bluebonnet Trails Community Services  
Term ends: Sept. 1, 2021  
Advocate

**Kirk Kureska**

Signature Behavioral Health Hospitals  
Term ends: Sept. 1, 2021  
Hospital

**Sherri Layton, MBA, LCDC, CCS**

La Hacienda Treatment Center  
Term ends: Sept. 1, 2021  
Provider

**Debbie A. Mitchell**

Starcare Specialty Health Services  
Term ends: Sept. 1, 2021  
Consumer

**Andrea Ramirez**

Project Amistad  
Term ends: Sept. 1, 2021  
Provider

**Deborah Rosales-Elkins**

National Alliance on Mental Illness Texas  
Term ends: Sept. 1, 2021  
Consumer

**Alba Villegas**

The Harris Center for Mental Health and  
Intellectual and Development Disabilities  
Term ends: Sept. 1, 2021  
Provider

**Welcome and Opening Remarks.** The meeting was opened by the Chair, Greg Hansch. A quorum was not initially established.

**Review and Approve March 11, 2020, Meeting Minutes.** The minutes were not approved due to the absence of a quorum. Once a quorum was finally established, the minutes were approved as written.

**State Agency Updates.**

**Medicaid and Children's Health Insurance Program.** Residential treatment issues were raised as well as the difference between mental health services and substance use services.



**Office of the Ombudsman.** They are continuously reviewing complaints that come in from MCOs, but there have not been any complaints from private providers. They are working on the assignment from last time to determine the five best portal sites for the different states. There are no states that seem to do it very well. There have been a lot of complaints due to COVID-19.

**Texas Department of Insurance.** Published an informal draft of the parity rules. Comments were due July 10<sup>th</sup>. The comments have been reviewed. The rule has four divisions:

- Division 1 aligns with federal parity standards
- Division 2 data collection requirements
- Division 3 complaints and investigations
- Division 4 repeals existing rules for Autism coverage because they are in statute but states that Autism is covered by parity.

They are moving forward with the formal rule making process. For more information please follow this link: <https://www.tdi.texas.gov/rules/documents/mhpcvrltr2.pdf>

**Department of Labor Parity Complaint Process.** The mission of the Employee Benefits Security Administration is to assure the security of the retirement, health and other workplace related benefits of America’s workers and their families. We will accomplish this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.

EBSA has jurisdiction over Title 1 of the Employee Retirement Income Security Act (ERISA)

- Part 1 • Reporting and Disclosure
- Part 2 • Participation and Vesting
- Part 3 • Funding
- Part 4 • Fiduciary Responsibility
- Part 5 • Administration/ Enforcement
- Part 6 • Group Health Plan Continuation Coverage (COBRA)
- Part 7 • Group Health Plan portability, access, renewability, market reforms

ERISA has been amended by the following:

Consolidated Omnibus Budget Reconciliation Act (COBRA)

- Health Insurance Portability and Accountability Act (HIPAA)
- Newborns’ and Mothers’ Health Protection Act (Newborns’)
- Mental Health Parity Act (MHPA) & Mental Health Parity and Addiction Equity Act (MHPAEA)
- Women’s Health and Cancer Rights Act (WHCRA)
- Affordable Care Act (ACA)
- Pension Protection Act (PPA)
- 21st Century Cures Act E



## OUTREACH, EDUCATION AND ASSISTANCE

### EBSA's Benefits Advisors

- Individualized Assistance/Info to:
  - Plan Participants
  - Employers
  - Plan Officials
  - Service Providers

### Informal Dispute Resolution

#### FY 2019 Results

- 166,627 Inquiries
- \$510.0 Million in Benefits Recovered Through Informal Dispute Resolution
- 501 Investigations Opened from Inquiry Referrals

**Enforcement:**



If enforcement falls short, then litigation through the solicitor's office is pursued. The issue is often systemic to the plan when a singular complaint comes in. They do not only look at a specific benefit, but a thorough review of all benefits in the plan. Reviews can last six months to several years for plan complaint reviews.

Ask questions electronically – [askebsa.dol.gov](https://askebsa.dol.gov)

Contact a Benefits Advisor at the Regional Office nearest you by calling toll-free: 1-866-444-3272

**Questions/Answers/Comments**

- How is progress monitored and communicated during the process? Quarterly updates are provided to the complainant.
- Is there a way to identify specific parity-related complaints? There is a way to break that information out. The system is updated to code the complaints.
- There is a 1-800 number, but is there a portal online to reach out? <https://www.dol.gov/agencies/ebsa> provides access also.
- I have submitted complaints on behalf of people with suspected parity violations. We did not receive a response. The speaker stated that if it is submission on behalf of a participant, the response would go the participant. This is a function of the customer service office.
- Do you have access to the number of Texans who are self-insured vs insured through government plans? That information is not accessible for the Complaints office.



- Do you have access to the number of parity investigations? The agency puts out a fact sheet annually.

**Mental Health Condition and Substance Use Disorder Parity Workgroup legislative report.** (Vote required.)

**Selected items from the report appear below.**

The Mental Health Condition and Substance Use Disorder Parity Workgroup Progress Report is submitted in compliance with House Bill (H.B.) 10, 85th Legislature, Regular Session, 2017. This report was prepared by the Mental Health Condition and Substance Use Disorder (MHCSUD) Parity Workgroup (“Workgroup”) and highlights Workgroup activities and implementation of legislative directives toward development of the MHCSUD Strategic Plan. In accordance with H.B. 10, the Workgroup was established to study and make recommendations to increase understanding of and compliance with state and federal rules, regulations, and statutes concerning the availability and terms and conditions of benefits for MHCSUDs. The bill directs the Workgroup to study and make recommendations concerning the following charges:

1. Increase compliance with MHCSUD parity rules, regulations, and statutes;
2. Strengthen enforcement and oversight of these laws at state and federal agencies;
3. Improve the complaint processes relating to potential violations of these laws for consumers and providers; and
4. Ensure the Texas Health and Human Services Commission (HHSC) and the Texas Department of Insurance (TDI) can accept information on concerns relating to these laws and investigate potential violations based on de-identified information and data submitted to providers in addition to individual complaints; and
5. Increase public and provider education on these laws.

The Workgroup is further required to develop a strategic plan with metrics to serve as a roadmap to increase compliance with MHCSUD rules, regulations, and statutes. This report is intended to provide an update on the progress of the Workgroup in meeting the requirements described above and provided for in H.B. 10. The accomplishments of the

**Workgroup so far are:**

1. Establishment of the Workgroup;
2. Development of Workgroup vision, mission, and guiding principles;
3. Convening of a subcommittee structure to work on legislative directives;
4. Continued coordination with HHSC and TDI;
  - a. The Behavioral Health Ombudsman (BHO) position within HHSC was filled. The Ombudsman is working very closely with the Workgroup and TDI under a Memorandum of Understanding (MOU).
  - b. The BHO has met with members and reviewed the complaint process. Also suggestions from members on keeping complainants informed throughout the

inquiry/complaint process have been modified to provide more coordination with TDI and a warm handoff process. Also the BHO webpage was posted online for access and as a resource for stakeholders, and parity education materials have been developed.

- c. TDI Consumer Protection staff code complaints to support tracking of parity issues. A complaint may be tracked using “mental health parity” as a reason, or “mental illness,” “chemical dependency,” or “alcoholism” as potential keywords.
  - d. TDI and HHSC have completed the data collection requirements for commercial health plan issuers and Medicaid/CHIP Managed Care Organizations (MCOs), respectively, for analysis and inclusion in related summary reports.
5. Engagement with various stakeholders to gain input on state and federal parity issues;
  6. Review of existing processes and best practices for parity;
  7. Review of parity landscape reports for Texas completed by national experts with Milliman Foundation and Legal Action Center; and
  8. Development of preliminary recommendations.

Currently the Workgroup continues to research, fact find, seek stakeholder testimony about parity experiences, identify study areas to gain an understanding about level-set issues surrounding MHCSUD parity, and develop preliminary recommendations. Once complete, the Workgroup will focus on developing and finalizing recommendations as prescribed in the legislation.

The MHCSUD Parity Workgroup must make recommendations in five key areas as specified in the H.B. 10 legislation. Members were surveyed to gain feedback on the process of how to develop Workgroup recommendations. Members agreed to form three subcommittees to focus on the five key areas.

- Subcommittee 1: Compliance, Enforcement, and Oversight
- Subcommittee 2: Complaints, Concerns, and Investigations
- Subcommittee 3: Education and Awareness

Each subcommittee is chaired by a MHCSUD member. To gain additional information, support, and input external stakeholders were invited to participate within the subcommittees. Additional stakeholders may also participate as needed based on their subject matter expertise. Each subcommittee created a purpose statement and goals. Per guidance the Workgroup received on strategic planning, each of the subcommittees was asked to focus on 1-2 overarching goals. The subcommittees have been tasked with developing objectives and strategies for each goal. The objectives are intended as metrics to serve as a roadmap to increase compliance with MHCSUD rules regulations, and statutes. The strategies are specific actions that can be taken to increase compliance with MHCSUD rules, regulations, and statutes. Each subcommittee’s scope, purpose, goals, and preliminary recommendations are listed below.

Subcommittee 1's preliminary recommendations include:

- HHSC and TDI develop and maintain standardized compliance tools that align with best practices to evaluate parity compliance with all products.
  - In current rulemaking as of July 2020, TDI has proposed requiring insurers to utilize the PA compliance tools, the NQTL component of which is comparable to the 6 Step NQTL Compliance Toolkit. The Subcommittee supports this approach.
- All insurance plans complete a parity analysis using the standardized tool and submit to the appropriate regulatory authority.
- Empower regulators to identify any parity compliance violation, require corrective action, and deter future violations. Tactics may include:
  - Incorporate parity compliance into existing processes for contract oversight and enforcement;
  - Require annual reports of key data, specifically the data reporting requirements expressed in TDI's draft rule released in June 2020.
  - Perform market conduct examinations of plans for parity compliance.

Subcommittee 2's preliminary recommendations include:

- TDI and HHSC review how easy or difficult it is to find parity complaint portals and compare with other states. Tactics may include:
  - identifying easy-to-access parity complaint portals nationwide;
  - offering multiple options for filing a parity complaint; and
  - using meta-tags and search engine optimization to improve visibility of parity complaint portals.
- TDI and HHSC identify effective complaint submission processes and tracking nationwide, standardize parity complaint portals, ensure portals are easy to read and understand, and minimize phone tree options on portals.
- TDI and HHSC identify options to increase the understanding of parity related denial, as well as status throughout the complaint process.
- TDI and HHSC ensure the use of best practice process and complainant satisfaction for parity complaints.
- TDI and HHSC ensure equitable resolution of complaints across all groups

Subcommittee 3's preliminary recommendations include:

- TDI and HHSC provide basic teaching and/or training related to parity rights and responsibilities. Strategies for accomplishing this objective may include:
  - Audience-specific parity law training modules;
  - Annual updates on parity rights and responsibilities;
  - Deeming October each year as recognition of mental health and substance use disorder parity awareness;

- Developing awareness materials for individuals without readily available Internet access;
- Shared language and both emblems (TDI and HHSC) on parity public publications; and
- Leveraging external parity education materials.

#### **Comments on the Report by Members**

- The content for the strategic plan is still being developed.
- The document was reviewed ahead of time by the workgroup.
- The recommendation is for HHSC to have baseline data collection requirements that align with TDI's. This could be included in Subcommittee One related to TDI rulemaking. Add a second sub-bullet stating that HHSC should take an approach to parity tools that are at least the same or better than what is in the TDI draft rule proposed in June 2020.
- Use the Non-Quantitative Treatment Limitations (NQTL) approach used by Pennsylvania.

**MOTION:** *include new language as discussed - prevailed.*

On pages 19 and 20, language excluded state retirement and insurance plans. TDI stated that that was a mistake and plans on healthcare.gov are regulated by CMS and TDI. State employee and teacher plans are exempt from this parity requirement. Add the words "Some individual plans" because some state mandates do not apply to individual plans.

HB 10 does not differentiate between adults and children. HHSC stated that they are required to break out children per federal requirement.

The workgroup believes data collection requirements should match TDI's requirements in draft rules form June 2020.

**MOTION:** *adopt the change as drafted - prevailed.*

**MOTION:** *TO APPROVE THE REPORT WITH CHANGES - PREVAILED.*

**Mental Health Condition and Substance Use Disorder Parity Workgroup statewide strategic plan.** In health care, "parity" describes the equal treatment of mental health conditions and substance use disorders (MHC/SUDs) by insurance plans, when compared to coverage for physical health care. When a plan has "parity," it means that health insurance coverage of mental health is equal to coverage for physical health. For example, if an insurer provides unlimited doctor visits for a condition like diabetes, then the insurer should also provide unlimited doctor's visits for SUDs or for MHCs like depression or schizophrenia. During the 85th Legislative Regular Session lawmakers passed House Bill 10, to address ongoing



challenges with MHC/SUD parity protections. The goal of the legislation is to ensure all Texans have equal access to physical health care and behavioral health care. An important piece of the legislation includes bringing stakeholders together and establishing a workgroup to develop a Texas strategy and common understanding for successful compliance with parity protections. The Mental Health Conditions and Substance Use Disorder Parity Workgroup (the Workgroup) was established to study and make recommendations to increase understanding of and compliance with state and federal rules, regulations, and statutes related to parity protections and use these to develop a strategic plan. The legislation charges the Workgroup to study and make recommendations on:

1. Increase compliance with MHC/SUD parity rules, regulations, and statutes;
2. Strengthen enforcement and oversight of these laws at state agencies;
3. Improve the complaint processes relating to potential violations of parity laws for consumers and providers; and
4. Ensure the Texas Health and Human Services Commission (HHSC) and the Texas Department of Insurance (TDI) can accept information on concerns relating to these laws and investigate potential violations based on de-identified information and individual complaints; and
5. Increase public and provider education on these laws. The Workgroup is required to develop a strategic plan with metrics to serve as a roadmap to increase compliance with parity laws.

The Workgroup developed the following vision, mission and guiding principles of the MHCSUD Strategic Plan.

**Vision:** Elimination of barriers to care that consumers and providers commonly encounter as they seek to access and utilize mental health and substance use disorder services.

**Mission:** To provide a coordinated approach that serves as a roadmap to improve compliance, complaint resolution, education, and outreach relating to the laws concerning benefits for mental health conditions and substance use disorders in Texas. Guiding Principles Compliance, education, and outreach efforts relating to the laws concerning benefits for mental health conditions and substance use disorders in Texas must emphasize:

- **Accountability:** All stakeholders will be subject to oversight regarding their obligations under the laws.
- **Timely access to care:** Consumers in need of care deserve access to the right care at the right time.
- **Equity:** Treatment and service determinations must be made fairly and impartially.
- **Awareness:** All stakeholders should have the opportunity to know and understand the laws.
- **Efficiency:** Systems must be streamlined, coordinated, and cost-effective.



- Continuous improvement and evaluation: Efforts to reduce barriers to care and increase compliance, education, and outreach must be subject to ongoing and routine continuous improvement and evaluation efforts.
- User-friendliness: Systems must be simple, understandable, and navigable.
- Transparency: Stakeholders must have a clear window into processes concerning benefits for mental health conditions and substance use disorders.

**Guiding Principles:** Compliance, education, and outreach efforts relating to the laws concerning benefits for mental health conditions and substance use disorders in Texas must emphasize:

- Accountability: All stakeholders will be subject to oversight regarding their obligations under the laws.
- Timely access to care: Consumers in need of care deserve access to the right care at the right time.
- Equity: Treatment and service determinations must be made fairly and impartially.
- Awareness: All stakeholders should have the opportunity to know and understand the laws.
- Efficiency: Systems must be streamlined, coordinated, and cost effective.
- Continuous improvement and evaluation: Efforts to reduce barriers to care and increase compliance, education, and outreach must be subject to ongoing and routine continuous improvement and evaluation efforts.
- User-friendliness: Systems must be simple, understandable, and navigable.
- Transparency: Stakeholders must have a clear window into processes concerning benefits for mental health conditions and substance use disorders.

**High level discussion.** The plan is due September 1, next year. The plan outline appears below:

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- We want this to be done sooner rather than later.
- An ad hoc subcommittee should continue to be employed to continue working on the plan with no more than seven members to avoid a quorum.
- How do members communicate with the ad hoc subcommittee? Any member of the workgroup can go to the Google document and make changes through Track Changes or add a comment.
- We have outside reports like the Milman report that could inform the process
- Timing of the plan can be an issue when it comes to keeping the ideas in front of the leadership.
- We should look at the workgroup schedule for the next year.



**Subcommittee 1: Compliance, Enforcement, and Oversight.** The committee met June 29<sup>th</sup> and July 16<sup>th</sup>. They made suggestions to the progress report and recommendations. They discussed the COVID-19 issues. They addressed mental illness associated with marijuana use and associated mental health issues. They are revising their goals, objectives and strategies, focusing on the strategic plan.

**Subcommittee 2: Complaints, Concerns, and Investigations.** They have made recommendations for the ombudsman. They are reviewing goals, objectives and strategies.

**Subcommittee 3: Education and Awareness.** They met last Thursday and focused on the progress report and aligned their recommendations with their goals, objectives, and strategies. They did a brief review of the current landscape and additional information will be forthcoming.

**Public Comment.** No public comment was offered.

**Planning for Next Meeting.** Changes to the strategic plan will be a focus of the next meeting. Meeting times were discussed as well as the need for more frequent meetings. September 2<sup>nd</sup> was proposed along with November 2<sup>nd</sup>.

#### **Action Items**

- AD Hoc subcommittee schedule a meeting.
- Standing committee continue to meet and work on their section of the strategic plan.

**Closing remarks.** There being no further business, the meeting was adjourned.

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*This summary contains supplemental information from third-party sources where that information provides clarity to the issues being discussed. Not every comment or statement from the speakers in these summaries is an exact transcription. For the purpose of brevity, their statements are often paraphrased. These documents should not be viewed as a word-for-word account of every meeting or hearing, but a summary. Every effort has been made to ensure the accuracy of these summaries. The information contained in this publication is the property of Texas Insight and is considered confidential and may contain proprietary information. It is meant solely for the intended recipient. Access to this published information by anyone else is unauthorized unless Texas Insight grants permission. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted in reliance on this is prohibited. The views expressed in this publication are, unless otherwise stated, those of the author and not those of Texas Insight or its management.*

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