HHSC: The Mental Health Condition and Substance Use Disorder Parity Workgroup, September 2nd, 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.

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Members as Provided by HHSC:

Greg Hansch, Chair National Alliance on Mental Illness Texas Term ends: Sept. 1, 2021 Advocate	**Meredith Stacy Jones** Bluebonnet Trails Community Services Term ends: Sept. 1, 2021 Advocate
Diane J. Felder, M.D., Vice Chair Magellan Health Term ends: Sept. 1, 2021 Physician	**Kirk Kureska** Signature Behavioral Health Hospitals Term ends: Sept. 1, 2021 Hospital
Naomi Garcia Alvarez Molina Healthcare of Texas Term ends: Sept. 1, 2021 MCO	**Sherri Layton, MBA, LCDC, CCS** La Hacienda Treatment Center Term ends: Sept. 1, 2021 Provider
Bill Bailey Cenikor Foundation Term ends: Sept. 1, 2021 Family member	**Debbie A. Mitchell** Starcare Specialty Health Services Term ends: Sept. 1, 2021 Consumer
Joe A. Bedford, M.D. United Healthcare Term ends: Sept. 1, 2021 Commercial benefit plan	**Andrea Ramirez** Project Amistad Term ends: Sept. 1, 2021 Provider
Christine Bryan Clarity Child Guidance Center Term ends: Sept. 1, 2021 Children	**Deborah Rosales-Elkins** National Alliance on Mental Illness Texas Term ends: Sept. 1, 2021 Consumer
Luis Calo, M.D., MMM United Healthcare Term ends: Sept. 1, 2021 Utilization Review	**Alba Villegas** The Harris Center for Mental Health and Intellectual and Development Disabilities Term ends: Sept. 1, 2021 Provider
Tracy Vilella Gartenmann Recovery Brands, LLC Term ends: Sept. 1, 2021 Family member	

Welcome and Opening Remarks. The meeting was convened by Greg Hansch. A quorum was established. The Chair stated that they have submitted the progress report as required by law and on the legally required date. The remaining deliverable is the strategic plan and they are on-point to complete it timely.

Review and approve July 22, 2020, Meeting Minutes. The minutes were approved with minor corrections.

State Agency Updates.

Medicaid and Children's Health Insurance Program. Presenters gave a brief overview of the behavior benefits under Medicaid and CHIP.

Residential treatment is covered up to 35 days; additional episodes are allowed if requested and medically necessary. Under CHIP, substance use disorder and mental health are both covered.

For inpatient care, it is a Medicaid benefit. There is a difference between Managed Care and Fee-for-Service.

Any interested member of the public can use a topic nomination form to ask for a new service to be added to the state plan. Topic Nomination Form.

Regarding substance use disorders, HHSC is working on proposed rules to bring rules in alignment with state and federal requirements. The hard limits have been lifted and the rules are catching up.

Question/Answers/Comments
CHIP has a residential treatment component for children with behavioral health conditions. In Medicaid, there are not RTC services for mental health.

Are you saying there is no PA required for the first 26 hours individual counseling or the 135 hours of group counseling? Yes. For residential treatment, there is a PA required.

On the medical surgical side, what would be a comparable medical/surgical benefit? When you do a comparison, it is not a benefit-to-benefit comparison. It is a complicated formula. It is a nonquantitative comparison.

There should be a comparable service comparison. Day limits should be considered a quantitative issue.

All inpatient and outpatient are based on medical necessity.

We get stuck on medical necessity which is how we get to medical necessity to begin with. A comparison is needed.

If we have to bring the rules in line with parity, how do we help the staff implement this? Numbers are quantitative limitations. How do we ensure services are in line with the spirit of parity? On the Medicaid side there are residential services for substance use but not mental

health. There are issues that are caused by federal matching funds. There is no residential Medicaid benefit for adults.

HHSC stated that there are clarifying questions that HHSC staff will address in writing.

The Chair stated that we have to work this into the strategic plan… perhaps in the landscape portion. There is missing content for the plan on this issue.

The next meeting is in November. The staff information will be available at that meeting.

The IMD exclusion has been temporarily waived and this group would like to see that made permanent.

Office of the Ombudsman. Avril Harriman made the presentation. The parity position is frozen so one person must handle all parity issues. It is fortunate that there are not more parity complaints. They recently received a parity complaint from a provider on behalf of a patient.

She described the document depicted below, Parity at 10.

Executive Summary: Parity at 10

State insurance regulators rely heavily on consumer complaints to identify the scope and nature of insurance carrier violations of state and federal parity laws. Yet the volume and frequency of consumer complaints about mental health and substance use disorder service denials do not reflect the magnitude of parity violations, which have been well documented by state attorney general investigations, court decisions and department of insurance market examinations.

State policymakers and insurance regulators can do more to assist consumers in identifying and reporting possible parity violations and filing complaints to challenge discriminatory limits on mental health substance use disorder benefits. The Parity at 10 Campaign has developed the Best Practices Guide to Improve the Parity Complaint Process to highlight effective consumer assistance practices that states have implemented to support consumers and treatment providers. Implementing an effective parity complaint process will help consumers access the treatment that they are entitled to receive and help state regulators enforce parity protections.

The Best Practices Guide identifies four key elements of an effective Parity Complaint Process.

- A simple complaint process that allows consumers and providers to notify state regulators of potential parity violations without filing a formal complaint.

- A consumer assistance program that works directly with consumers to explain insurance rights and file complaints.
- Effective outreach and education about parity laws and basic insurance practices to inform consumers about their rights and available assistance.
- A coordinated data collection system that gathers information about claims, adverse decisions and complaints and is used by regulators to identify trends that result from underlying parity violations.

The Guide identifies state models for each element and includes a Sample Mental Health and Addiction Parity Complaint Form.

To assist with the implementation of an effective Parity Complaint Process, the Guide offers a step-by-step plan to help state stakeholders assess their state's existing complaint framework and systematically improve the complaint process for parity enforcement.

For more detail see: Parity at 10

The speaker stated that the current process is governed by the way complaints come in. They speak with the complainant and keep them in the loop. They are doing a lot of handholding and asking questions (concerning denial letters and other documentation).

The complaint process is simple because they are involved at every step.

They are challenged in the area of outreach because they have limited staff. They believe outreach is important, but with COVID-19 it is even a greater challenge. People do not know what parity is and some people do not have computer access.

No state has a parity-specific complaint form. This would assist with helping people understand if they have a parity-related complaint.

Questions/Answers/Comments
Discussion about having ombudsman comments on every denial letter sent out. Providers have not had any information on parity since the parity guide was released. There is the need for webinars from the Ombudsman's Office. The behavioral health ombudsman is mandated in HB10.

When asked for help to send out information to the psychiatric hospitals, the regulatory division told them they could not send out that information. They also went through the Texas Hospital Association.

Texas Department of Insurance.

Texas statutes on mental health and substance use disorder benefits that predate HB 10 – Summary: The Texas Department of Insurance (TDI) has published draft rules to clarify the way HB 10's parity requirements affect other Insurance Code sections on mental health and substance use disorder treatment. The draft rules will make clear that a plan may only apply those sections if and to the extent their application satisfies HB 10's parity limits. This document was created at the request of the HB 10 Working Group. It should not be considered or construed as legislative recommendations by TDI.

Draft rule on how parity requirements affect other laws

§21.2403. Coordination of Coverage Limitations. Restrictions on coverage limitation. If a provision of the Insurance Code or the Administrative Code allows a health benefit plan issuer to place quantitative or nonquantitative limitations on coverage for mental health and substance use disorder conditions, an issuer may apply the limitation only to the extent that the limitation does not violate the parity requirements of Insurance Code Chapter 1355, Subchapter F, concerning Coverage for Mental Health Conditions and Substance Use Disorders, and this subchapter.

Statutes predating HB 10 that allow a benefit structure that may not meet parity standards.

Insurance Code §1355.004(a)(3) requires a plan's quantitative treatment limitations for mental health and substance use disorder to be "the same" as for physical illness. But providing an equivalent benefit may violate parity if the financial requirement or limit applied is more restrictive than the "substantially all" and "predominant" tests used to assess parity.

(a) A group health benefit plan: (3) must include the same amount limitations, deductibles, copayments, and coinsurance factors for serious mental illness as the plan includes for physical illness.

Insurance Code §1355.006(b)(2) allows a plan to exclude coverage of a serious mental illness if it results from the illegal use of a controlled substance. A plan could exclude all benefits for both medical/surgical and mental health/substance use disorder treatments that result from the illegal use of a controlled substance. But if this exclusion only related to benefits for mental illness it would violate parity requirements.

(b) This subchapter does not require a group health benefit plan to provide coverage for the treatment of:

(2) mental illness that results from the use of a controlled substance or marihuana in violation of law.

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Insurance Code §1355.015(a-1) allows a plan to exclude autism coverage for people diagnosed at age 10 or older; §1355.015(c-1) allows a dollar limit for applied behavioral analysis treatment.

These unusual limits are unlikely to apply to medical/surgical benefits. A plan may need to remove these limits to comply with parity.

(a-1) At a minimum, a health benefit plan must provide coverage for treatment of autism spectrum disorder as provided by this section to an enrollee who is diagnosed with autism spectrum disorder from the date of diagnosis, only if the diagnosis was in place prior to the child's 10th birthday.

(c-1) The health benefit plan is not required to provide coverage under Subsection (b) for benefits for an enrollee 10 years of age or older for applied behavior analysis in an amount that exceeds $36,000 per year.

Insurance Code §1355.054 allows a plan to apply coverage limits in a crisis stabilization unit or residential treatment center for children and adolescents that may be more restrictive than comparable limits applied to medical/surgical care. If these limits are more restrictive than those under medical necessity guidelines, they may violate parity requirements.

(a) Benefits of coverage provided under this subchapter may be used only in a situation in which:
(1) the covered individual has a serious mental illness that requires confinement of the individual in a hospital unless treatment is available through a residential treatment center for children and adolescents or a crisis stabilization unit; and
(2) the covered individual's mental illness:
(A) substantially impairs the individual's thought, perception of reality, emotional process, or judgment; or (
B) as manifested by the individual's recent disturbed behavior, grossly impairs the individual's behavior. 3 Insurance Code §1355.104 allows a plan to apply restrictions on care in a psychiatric day treatment facility that may be more restrictive than comparable limits on medical/surgical care. (a) A group insurance policy that provides coverage for treatment of mental or emotional illness or disorder when an individual is confined in a hospital must also provide coverage for treatment obtained under the direction and continued medical supervision of a doctor of medicine or doctor of osteopathy in a psychiatric day treatment facility that provides organizational structure and individualized treatment plans separate from an inpatient program. (b) The psychiatric day treatment facility coverage required by this section may not be less favorable than the hospital coverage and must be subject to the same durational limits, deductibles, and coinsurance factors. (c) A group insurance policy subject to this section may require that: (1) the treatment obtained in a psychiatric day treatment facility be provided by a facility that treats a patient for not more than 8 hours in

any 24-hour period; (2) the attending physician certify that the treatment is in lieu of hospitalization; and (3) the psychiatric day treatment facility be accredited by the Program for Psychiatric Facilities, or its successor, of the Joint Commission on Accreditation of Healthcare Organizations. Insurance Code

§1355.105 may allow a plan to restrict coverage for mental health treatment in a day facility in a way it would not restrict comparable coverage for medical/surgical care.

(a) Benefits provided under this subchapter shall be determined as if necessary care and treatment in a psychiatric day treatment facility were inpatient care and treatment in a hospital.
(b) For the purpose of determining policy benefits and benefit maximums, each full day of treatment in a psychiatric day treatment facility is the equivalent of one-half of one day of treatment of mental or emotional illness or disorder in a hospital or inpatient program. Insurance Code §1355.106 allows a plan to exclude or offer reduced coverage for treatment of mental or emotional illness in a psychiatric day treatment facility. (a) An insurer shall offer, and a policyholder is entitled to reject, coverage under a group insurance policy for treatment of mental or emotional illness or disorder when confined in a hospital or in a psychiatric day treatment facility. (b)
A policyholder may select an alternative level of benefits under the group insurance policy if the alternative level is offered by or negotiated with the insurer. (c) The alternative level of benefits must provide policy benefits and benefit maximums for treatment in a psychiatric day treatment facility equal to at least one-half of that provided for treatment in a hospital, except that benefits for treatment in a psychiatric day treatment facility may not exceed the usual and customary charges of the facility. 4 Insurance Code §1368.005(a)(2) requires that a plan's quantitative treatment limitations be “the same” as for physical illness. But providing an equivalent benefit may violate parity if the financial requirement or limit applied is more restrictive than the "substantially all" and "predominant" tests used to assess parity. §1368.005. (a) Except as provided by Subsection (b), coverage required under this chapter: (2) shall be subject to the same durational limits, dollar limits, deductibles, and coinsurance factors that apply to coverage provided for physical illness generally under the plan

Insurance Code §1368.005(b) allows a plan to apply less favorable dollar and durational limits if they are "sufficient." (b) A group health benefit plan may set dollar or durational limits for coverage required under this chapter that are less favorable than for coverage provided for physical illness generally under the plan if those limits are sufficient to provide appropriate care and treatment under the guidelines and standards adopted under Section 1368.007. If guidelines and standards adopted under Section 1368.007 are not in effect, the dollar and durational limits may not be less favorable than for physical illness generally. Insurance Code §1368.006(b) allows a plan to impose a three-series lifetime limit on treatment for chemical dependency. (b) Notwithstanding Section 1368.005, coverage required under this chapter is limited to a lifetime maximum of three separate treatment series for each covered individual.

Questions/Answers/Comments
There were many rules around partial day treatment. Should we do something this session to get the ball rolling so we can do cleanup on this? TDI said they are neutral on legislation, but these statutes are not getting in the way of implementing parity.

The Workgroup has provided a statement of support for the TDI draft rules.

Mental Health Condition and Substance Use Disorder Parity Workgroup Statewide and Strategic Plan updates

Draft Outline appears below.

Contents

In summary.
The central purpose of House Bill (HB) 10, a statute enacted by the Texas Legislature in 2017, is to establish and ensure fundamental fairness for consumers of health insurance services in Texas. Historically, health insurance companies have only provided coverage of inferior treatment for mental health conditions and substance use disorders as compared with treatment for other types of medical conditions. In order to address this disparity, the Legislature passed HB 10 to require health insurance companies operating in Texas to provide coverage for mental health conditions and substance use disorders which is equal to the coverage they provide for other medical and surgical conditions. [include a footnote citing Section 1355.254 of the Insurance Code] As part of the statute, the Legislature created a Workgroup to develop a Strategic Plan and assist in promoting enforcement of the law.

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 other medical/surgical conditions. When a plan has "parity," it means that health insurance coverage of mental illness is equal to coverage for other illnesses or injuries. . For example, if an insurer provides unlimited doctor visits for a condition like diabetes, then the insurer should also provide unlimited doctor visits for SUDs or for MHCs like major 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 behavioral health care as compared with health care for other types of illnesses or injuries. For purposes of clarity, the Work Group has chosen to use "the Texas Mental Health Parity Act" or "the Act" as alternatives for "HB 10."

An important piece of the legislation includes bringing stakeholders together in a workgroup to develop a Texas strategy and common understanding for successful compliance with parity protections. [include a footnote citing Section 531.02252 of the Government Code] The Mental Health Condition and Substance Use Disorder Parity Work Group (the Workgroup k Group) 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 improvements to develop a strategic plan designed to improve enforcement of HB 10.

The legislation charges the Workgroup to study and make recommendations to:
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

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Department of Insurance (TDI) can obtain information on concerns relating to these laws and investigate potential violations based on deidentified 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.

Summary of findings/recommendations:
1. Proactive enforcement by the Texas Department of Insurance (TDI) and the Texas Human Services Commission (HHSC) is essential to the effective implementation of H.B. 10 ("the Texas Mental Health Parity Act").
2. In order to do their work properly, TDI and HHSC will need for health insurance companies to comply with their rules and regulations concerning the furnishing of information relating to their coverage for services with respect to MHC/SUD as compared with other medical/surgical conditions.
3. TDI and HHSC will also need information from health insurance companies concerning their denial of claims for coverage of MHC/SUD treatments and their denial of comparable claims for coverage of treatment for other medical/surgical conditions.
4. Another important requirement for successful enforcement of the Texas Mental Health Parity Act is the reporting of complaints by members of the public to the Ombudsman established under the statute to receive and handle these complaints. Texas citizens should be encouraged to notify the Ombudsman of situations in which health insurance companies have denied coverage for MHC/SUD treatments, and the insureds regard these denials to be in violation of the statute.
5. A critical shortcoming in the effectiveness of the Act is the fact that many, if not most people in Texas are not aware of the Act and their rights to receive MHC/SUD parity from health insurance companies. To address this problem, the office of the Ombudsman needs to continue their efforts toward publicizing the existence of the Texas Mental Health Parity Act and informing the public of the benefits that the statute provides.

Strategic Plan updates
Subcommittee 1: Compliance, Enforcement, and Oversight. The subcommittee met three times. They have addressed the Texas landscape provided by the legal action center. They are focusing on the strategic plan itself.

Subcommittee 2: Complaints, Concerns, and Investigations. They are reviewing the strategic plan with the goals, objectives, and strategies, and examining wording for uniformity. They are reviewing the second goal with the goals, objectives, and strategies. They will then look at the recommendation summary.

Subcommittee 3: Education and Awareness. They finalized the goals, objectives and strategies and looked at the different sections within the strategic plan related to education and awareness.

Public comment. No public comment was offered.

Planning for next meeting. They will want to review and approve the strategic plan. Next meeting is November 2nd.

Action items

- October 16th is the deadline for adding or changing content
- The ad hoc subcommittee will meet and make sure there is a clean document to review on November 2nd
- Use Google Docs to make changes
- Subcommittee One should address treatment limitations

Closing Remarks/Adjourn. There being no further business, the meeting was adjourned.

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