The Puzzle of Parity: Implementing Behavioral Health Parity

Welcome, Overview of the Conference, and Brief Parity Primer

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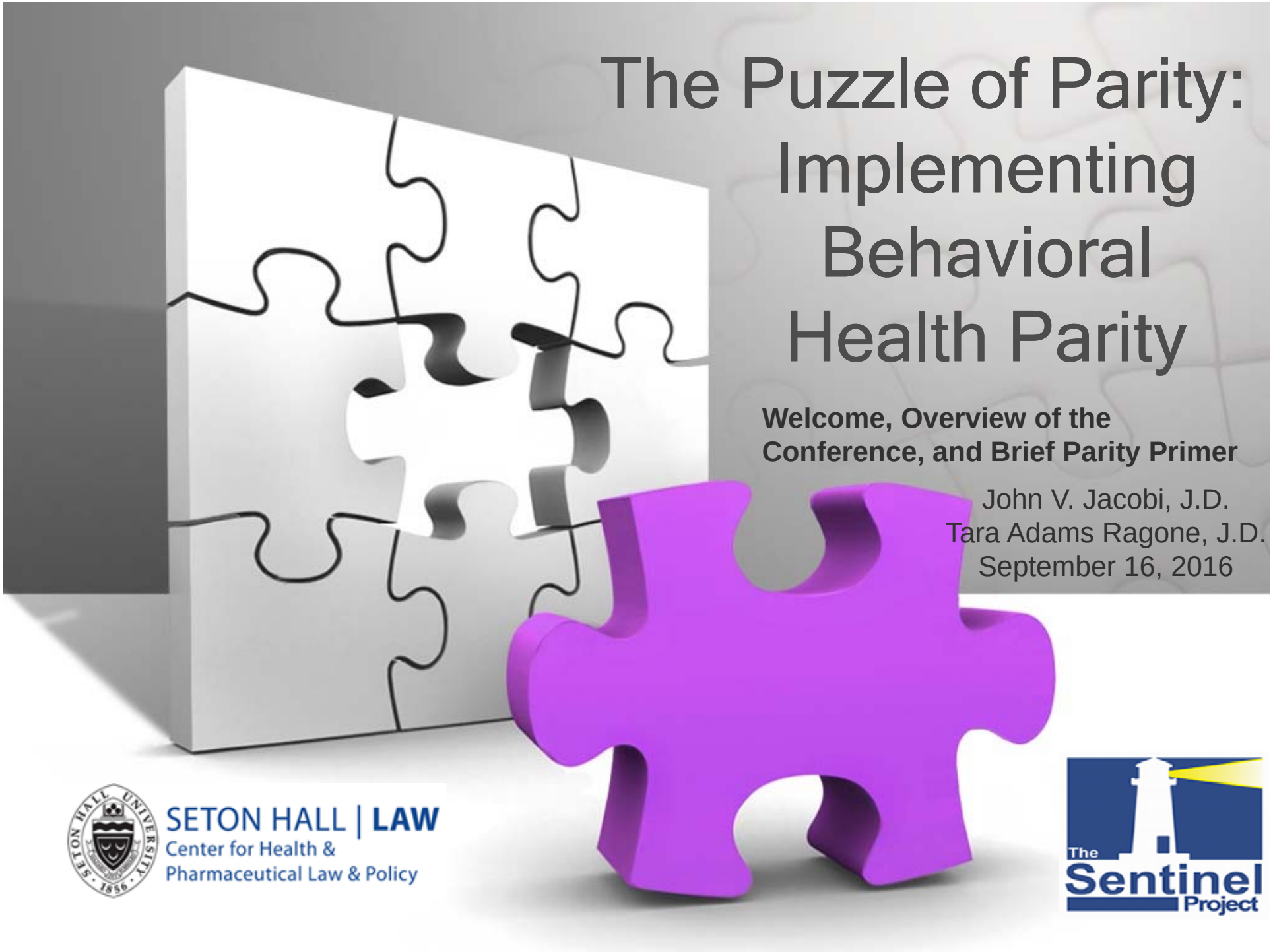

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Welcome and Overview

- Supported by a generous grant from the Robert Wood Johnson Foundation
- Folders
  - Agenda, Speaker Bios, List of Participants
  - CLE
    - Materials+ on conference web site
    - Evaluation
    - Sign in and out
  - Wi-Fi access
  - Parking Validation
  - Bathrooms
  - Lunch and afternoon panel at Newark Club
    - Case Study handouts
  - Cell phones on silent

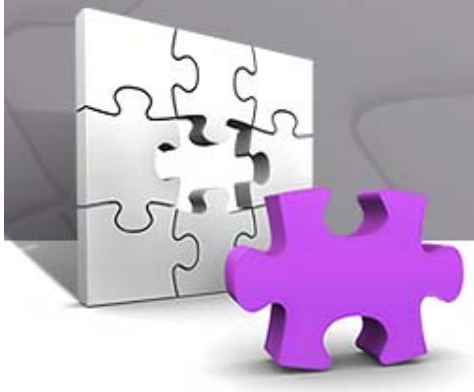
Introduction to Parity

- In the United States, 43.8 million adults experience mental illness in a given year, and 20.2 million adults have a substance use disorder (SUD) (about half of adults with a SUD also has a co-occurring mental illness).*
- The Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 helped ensure fairness in health insurance coverage of mental health (MH) and SUDs.
- The Affordable Care Act (ACA), through its central goal of improving access to appropriate, high quality health care, has led to a dramatic increase in access to health insurance in the U.S.
- The ACA, through its essential health benefits provision, has expanded insurance coverage of MH, SUD, and habilitative care.
- In March 2016, President Obama created an interagency Mental Health and Substance Use Disorder Parity Task Force.

*http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers

Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008

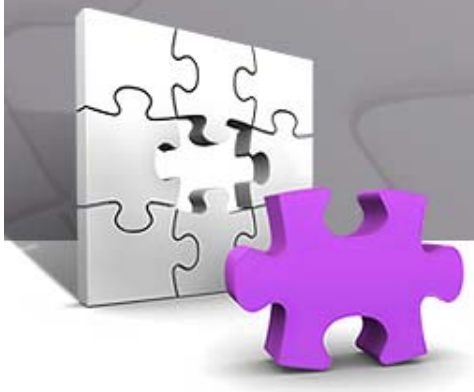
- Mental Health Parity Act of 1996 required parity of aggregate lifetime and annual dollar amounts for mental health benefits.
- MHPAEA extended parity requirements to SUDs.
- MHPAEA did not apply to issuers who sold health insurance to individuals or sold health insurance policies to employers with 50 or fewer employees.
- ACA extended reach to qualified health plans, *see* 42 U.S.C. § 18031(j).



Affordable Care Act (ACA) EHB's

- MHPAEA does not require plans to provide MH/SUD benefits.

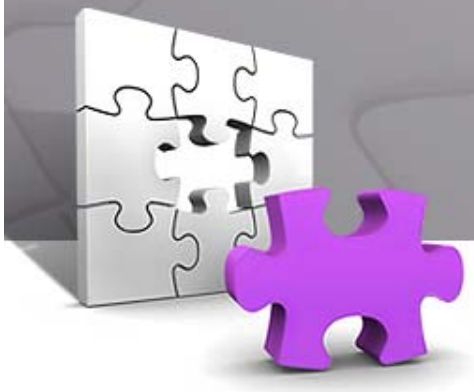
- *But* ...
  - ACA's Essential Health Benefits (EHB) provisions include Mental Health and Substance Use Disorder services, including Behavioral Health Treatment
  - Under the ACA, insurance plans in the individual and small group markets must comply with federal MH parity requirements to satisfy EHB requirements.



General Parity Requirement

"[M]ay not apply any **financial requirement** or **treatment limitation** to mental health or substance use disorder benefits in any **classification** that is **more restrictive** than the **predominant financial requirement** or **treatment limitation** of that **type** applied to **substantially all** medical/surgical benefits **in the same classification**."

-45 C.F.R. § 146.136(c)(2)(i)



Financial Requirements and Treatment Limitations

- **Examples of Financial Requirements:**
  - Deductibles, copayments, co-insurance, or out-of-pocket maximums
  - Excludes aggregate lifetime limits and annual limits

    -*See* 42 U.S.C. § 300gg-26(a)(3)(B)(i)

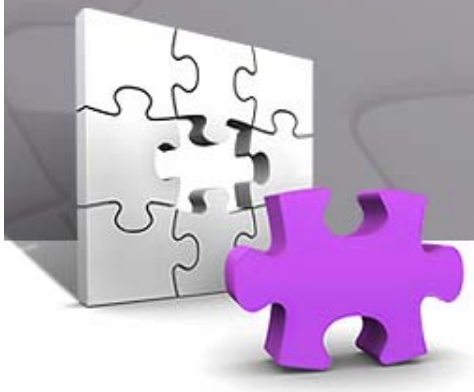
- **Treatment Limitations:**
  - "include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment."

    -45 C.F.R. § 146.136(a)

Treatment Limitations

- **2 Kinds of Treatment Limitations:**
  - **Quantitative Treatment Limitations (QTLs)**: numerical limitations, such as 50 outpatient visits per year
  - **Non-Quantitative Treatment Limitations (NQTLs)**: not expressed numerically but otherwise limit scope or duration of benefits for treatment under a plan or coverage.

-45 C.F.R. § 146.136(a)



Non-exhaustive List of NQTL's

- Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative
- Formulary design for prescription drugs
- For plans with multiple network tiers (such as preferred providers and participating providers), network tier design
- Standards for provider admission to participate in a network, including reimbursement rates
- Plan methods for determining usual, customary, and reasonable charges

Non-exhaustive List of NQTL's (cont'd)

- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols)
- Exclusions based on failure to complete a course of treatment
- Restrictions based on geographic location, facility type, provider specialty, **and other criteria that limit the scope or duration of benefits for services provided** under the plan or coverage

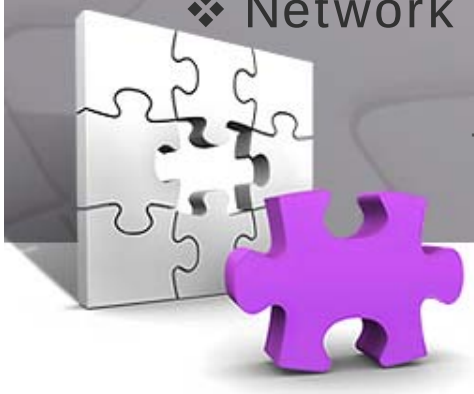
-45 C.F.R. 146.136(c)(4)(ii); 147.160(a)

Non-exhaustive List of NQTL's (cont'd)

Preamble:

- In- and out-of-network geographic limitations
- Limitations on inpatient services for situations where the participant is a threat to self or others
- Exclusions for court-ordered and involuntary holds
- Service coding
- Exclusions for services provided by clinical social workers
- Network adequacy

-78 Fed. Reg. at 68,246



Remember:

- Parity comparisons are performed within **each classification (or subclassification).**
- "Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately **for each type** of financial requirement or treatment limitation."

-45 C.F.R. § 146.136(c)(1)(ii)

6 Classifications of Benefits

(1) Inpatient, in-network

(2) Inpatient, out-of-network

(3) Outpatient, in-network*

(4) Outpatient, out-of-network*

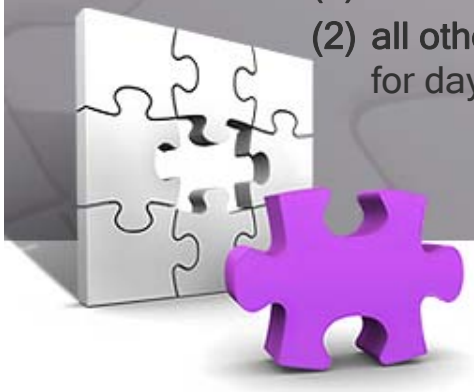
(5) Emergency care

(6) Prescription drugs

*May subdivide outpatient services into two subclassifications:

(1) **office visits**, such as physician visits; and

(2) **all other outpatient items and services**, such as outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items.



Financial Requirements & QTLs

- **Quantitative Parity Analysis**: Mathematical test to analyze what the most restrictive **level of a type** of financial requirement or QTL can be applied to MH/SUD benefits within **each classification**

Step One: Substantially All Analysis

- **Type** of financial requirement or QTL will be considered to apply to **substantially all** med./surg. benefits in a classification if it applies to **at least 2/3** of all med./surg. benefits in that **same classification**.
  - Plans must use a "reasonable method" to determine dollar amount of all plan payments for med./surg. benefits in a classification to be paid for the plan year (*but can't be based on the overall book of the business*).
- If **does not** apply to 2/3 of all med./surg. benefits in a classification, then **that type may not apply** to MH/SUD benefits in that same classification.

-45 C.F.R. 146.136(c)(3)(A); 147.160(a)

- If applies to "substantially all," **-> Step Two**

Financial Requirements & QTLs

Quantitative Parity Analysis (cont'd):

Step Two: Predominant analysis

- The plan may apply no more than the **predominant level of that type** of financial requirement or QTL that applies to med/surg benefits to MH or SUD treatment benefits in the **same classification**.
  - **"Predominant level"** is the level of the type that applies to **more than one-half** of medical/surgical benefits **in that classification** subject to the financial requirement or quantitative treatment limitation.

NQTLs

"[A plan] may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits **in any classification** unless, under the terms of the plan (or health insurance coverage) **as written and in operation**, any **processes, strategies, evidentiary standards, or other factors used in applying** the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification **are comparable to, and are applied no more stringently than**, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification."

-45 C.F.R. §§ 146.136(c)(4)(i) (emphasis added); 147.160(a)

Warning Signs When Assessing MH/SUD Parity Compliance

- **Preauthorization & Pre-service notification**
  - ❖ blanket preauthorization requirements
  - ❖ treatment facility admission preauthorization for MH/SUD
  - ❖ medical necessity review authority delegated for med/surg but not MH/SUD
  - ❖ prescription drug preauthorization
  - ❖ extensive pre-notification requirements
- **Fail-First Protocols**
  - ❖ Progress Requirements
  - ❖ Treatment Attempt Requirements
- **Probability of Improvement**
- **Written Treatment Plan requirement**
  - ❖ Requiring written treatment plan or such plan w/in certain timeframe or on regular basis
- **Other**
  - ❖ Geographical limitations
  - ❖ Residential treatment limits
  - ❖ Patient non-compliance conditions
  - ❖ Licensure requirements

Disclosure Requirements

- MHPAEA requires health insurance issuers to disclose the **criteria for medical necessity determinations** of MH/SUD benefits upon request to "**any current or potential** participant, beneficiary, or contracting provider."

- MHPAEA also requires that plans provide a **detailed explanation for any denial** of reimbursement or payment of services for MH/SUD benefits upon request by the participant or beneficiary.

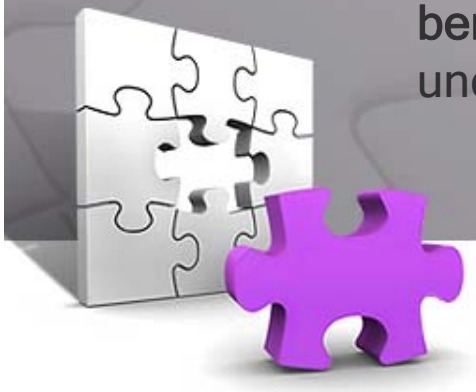
Disclosure Requirements

ERISA's general disclosure obligation in Section 104(b) generally requires plans to provide participants with the "**instruments** under which the plan is established or operated . . . within 30 days of request."

- Such instruments "include information on medical necessity criteria for both medical/surgical benefits and MH/SUD benefits, as well as the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical benefits and MH/SUD benefits under the plan."

Disclosure Requirements

- Individual or authorized representative filing **appeal** of adverse benefit determination has right to request and receive, free of charge, "reasonable access to and copies of all documents, records, and other information **relevant** to the claimant's claim for benefits."
  - "includes documents with information on **medical necessity criteria for both medical/surgical benefits and mental health and substance use disorder benefits**, as well as the **processes, strategies, evidentiary standards, and other factors used to apply a nonquantitative treatment limitation with respect to medical/surgical benefits and mental health or substance use disorder** benefits under the plan."

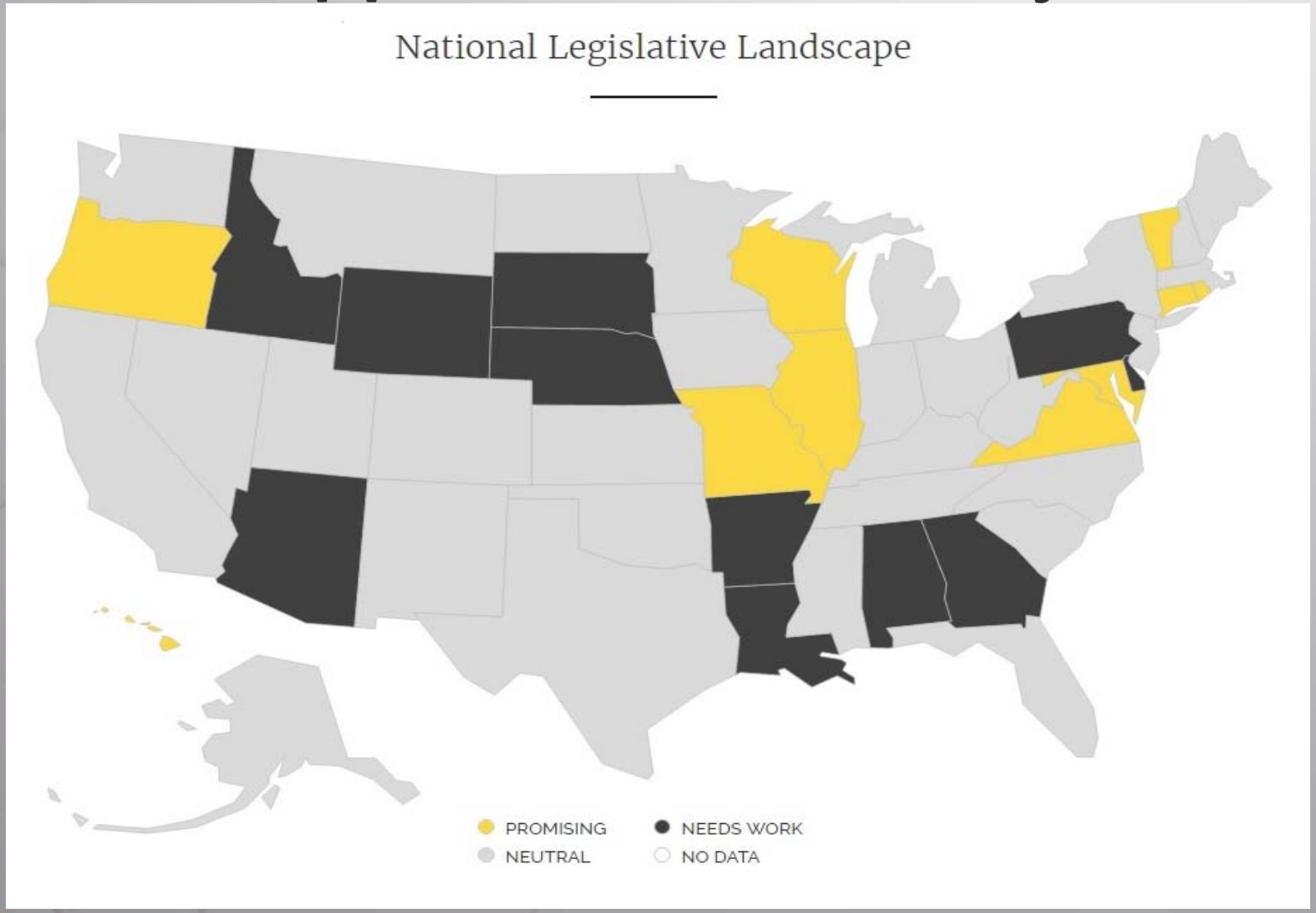


Disclosure Requirements

- "The **criteria** for making medical necessity determinations, as well as **any processes, strategies, evidentiary standards, or other factors used in developing the underlying NQTL and in applying it**, must be disclosed with respect **to both MH/SUD benefits and medical/surgical benefits**, **regardless** of any assertions as to the **proprietary nature or commercial value** of the information."
  - even in cases where the source of the information is a third party commercial vendor

-MH Parity FAQs Part 29, Q.12

State Approaches to Parity



ParityTrack (www.paritytrack.org/reports)

Samples of State Approaches

- Legislation - IL, OR, SD
- Regulations – SD, WA
- Subregulatory guidance - OR
- Complaints/Appeals
  - MD
  - IL statute requires establishment of parity hotline

Samples of State Approaches

- Investigations – NY AG
- Plan Certifications – AL, CT, MA
- Compliance Filings - CA, CT, IL, MA, PA (pending), VA
- Market Conduct Exams/Audits/Plan Surveys - CA, MD

Samples of State Approaches

- Coverage of BH Services
  - DSM-IV or DSM – OR, PA (pending)
  - Identifies 25 specific treatments - CT
  - ≥ 60 days partial hospitalization for BH - MD
  - Autism – AK, NH, OR
  - gender dysphoria – NY, VT, WA
  - Eating disorder treatment - MO
  - SUD prescriptions - RI
  - Robust benchmark - CA

Samples of State Approaches

- UM/medical necessity review criteria
  - SUD treatment:
    - ASAM – CT*, IL, NH, PA (pending), RI
    - Prior authorization – NH
    - Medical necessity review must be by SUD specialists - NY

Samples of State Approaches

- UM/medical necessity review criteria
  - MH treatment:
    - Adults: Association for Ambulatory Behavioral Healthcare – CT
    - Children: American Academy of Child and Adolescent Psychiatry's Child and Adolescent Service Intensity Instrument – CT*
    - American Psychiatric Association's Practice Guidelines for the Treatment of Patients with Eating Disorders – MO
- Distinguishing specialist from primary BH services - VT

Samples of State Approaches

- Requiring regulator to:
  - Establish a parity education program for consumers and providers - IL
  - Report annually on efforts to comply with parity requirements - CT

References

Seton Hall Law Center for Health & Pharmaceutical Law & Policy & The Sentinel Project, Access to Behavioral Health Plans in New Jersey: The Puzzle of Parity, https://issuu.com/seton-hall-law-school/docs/sentinel-project-report-july2016

Affordable Care Act (ACA) Section 1302, 42 U.S.C. 18022(b), Essential Health Benefits

U.S. Dep't of Labor, Employee Benefits Security Administration, MHPAEA Fact Sheet, https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/fsmhpaea.pdf

U.S. Dep'ts of Treasury, Labor, & Health & Human Servcs., Final Rules under the Paul Wellstone and Pete Domenici MHPAEA of 2008; Technical Amendment to External Review for Multi-State Plan Program; Final Rule, 78 Fed. Reg. 68,240, 68,243 (Nov. 13, 2013)

U.S. Dep'ts of Treasury, Labor, & Health & Human Servcs., "FAQs about Affordable Care Act Implementation Part 31, Mental Health Parity Implementation, and Women's Health and Cancer Rights Act Implementation," Q.8-11 (Apr. 20, 2016), *available at* https://www.dol.gov/ebsa/faqs/faq-aca31.html

U.S. Dep't of Labor , Warning Signs – Plan or Policy Non-Quantitative Treatment Limitations (NQTLs) that Require Additional Analysis to Determine Mental Health Parity Compliance, at 1, 2 (undated), *available at* https://www.dol.gov/ebsa/pdf/warning-signs-plan-or-policy-nqtls-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf

Parity Track, Parity Implementation National Survey, www.paritytrack.org/reports

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