

A View from the States: Parity Act Implementation in Maryland

The Puzzle of Parity
Implementing Behavioral Health Parity
Seton Hall University School of Law
September 16, 2016

Parity Act Implementation Maryland

- Strategies
 - Legislation
 - Market Conduct Examinations
 - Individual Complaints
- Challenges
 - Carrier: Historical Insurance Practices + Current Noncompliance
 - Insurance Department: Capacity + Regulatory Role
 - Consumer and Provider: Capacity + Role
- Future Initiatives
 - Robust Prospective Plan Review

Legislative Initiatives

- Parity Compliance Report (SB 586/HB 1010) 2015 Session
 - Prospective plan review bill: 2nd attempt bolstered by 2014 review and identification of information gaps in 85 individual qualified health plans
 - Insurance Commissioner to designate plans (all market and all products) required to submit reports
 - Reporting Requirements
 - Identify individual responsible for plan review and report
 - Covered benefits and standards for benefit exclusions
 - Prescription drugs and standards for placement in tiers
 - Explanation of variations in financial requirements and quantitative treatment limitations
 - Identification of all non-quantitative treatment limitations (NQTLs)
 - Description of process and evidentiary standards for developing and applying all NQTLs
 - Report is Public Information
 - Penalties for non-compliance

Market Conduct Examinations

- Maryland Insurance Administration must conduct 3 annual surveys
 - 2015 General Assembly mandate
- 2014 Survey – 17 month process
 - 7 Major Carriers – 6 administrative orders identifying parity violations in network and reimbursement standards
 - 1 rescinded; 3 not contested; 2 negotiated plan corrections
 - Key findings
 - No or limited methadone treatment providers in network (2 carriers)
 - No or limited network psychologists, psychiatrists, licensed professional counselors in one or more counties (2 carriers)
 - More burdensome credentialing requirements for providers of mental health and substance use disorders (1 carrier)
 - Failure to meet stated goals for neuropsychological doctors and geriatric psychiatrists (1 carrier)

Market Conduct Examination 2015

- Consumer Advocate Recommendations
 - Data driven – recommended use of Maryland Claims Data Base and model after NY State AG investigations
- Focus
 - Number of network providers – licensed practitioners and facilities – and identification of providers getting reimbursement
 - Reimbursement rates for in-network and out-of-network care
 - Network admission: number seeking and response
 - Utilization management: standards; authorization practices (assess fail first); lengths of stay (particularly residential)
 - Total paid claims and utilization review savings generated
 - Adverse decisions and external review results

Market Conduct Survey 2015

- MIA Survey (Oct. 2015) Limited NQTL focus
 - Network panel standards
 - Prescription drug: fail first requirements (opioid overdose epidemic)
 - Inpatient and residential treatment: data-driven examination of admissions, length of stay, utilization management, and fail first requirements
 - Comparison of benefits for opioid use disorders, bipolar disorder, diabetes and stroke

Individual Complaints

Recent Examples

- **Medication Assisted Treatment**
 - Exclusion of methadone maintenance treatment – commercial and self-insured plans (new practice for carrier)
 - Discriminatory utilization management (notification and prior authorization)
- **Lessons Learned**
 - States should closely review major carrier plans for compliance related to methadone maintenance treatment – exclusions, utilization review standards, reimbursement coding problems, provider networks
 - Carrier enforces standards through provider contracts, not member contracts, and provides no information or conflicting standards in member contracts.
 - NQTL evidentiary standards – pro forma and no evidence of how standards are applied; non-responsive to insurance department requests

Enforcement Challenges

- **Carriers**
 - Law has changed but “discrimination” continues
 - More limited experience with non-physician providers in substance use disorder field → skepticism about capacity/quality
 - Unresponsive to data/information requests
- **Insurance Department**
 - Knows what information to request but more limited ability to evaluate Parity Act compliance
 - Regulatory role as opposed to “policy” role
 - Resolve individual complaint versus systemic review/overhaul based on feedback loop
- **Consumers and Providers**
 - Traditional publicly-funded providers – limited experience with private carriers and infrastructure limitations for some
 - Recognize potential problems but limited resources to pursue

Enforcement Strategy

Prospective Plan Review

- Carriers present all evidence of compliance as a condition of plan approval, including documentation of all NQTLs and compliance
 - Standardized templates/uniform data requests
 - Parity Compliance Officer maintains all plan documents with relevant data and evidence of testing
 - Documents available to members and insurance departments for filing, adjudicating and resolving complaints

Prospective Plan Review

- Rationale
 - Carriers possess all information and should have conducted detailed parity analysis to ensure compliance prior to offering plan.
 - Regulators need uniform and complete data to make prompt and accurate plan certification decisions. Existing forms do not contain necessary information.
 - Consumers do not have access to or capacity to evaluate plan information, particularly for NQTLs.

Prospective Plan Review

- **Value for Stakeholders**
 - Standardization of carrier disclosures
 - Greater uniformity for carriers across states
 - More expeditious complaint review and resolution
 - Enhanced access to care for consumers - “get what you pay for”
- **Challenges**
 - Development of standardized templates that capture essential data
 - Insurance department capacity to review and respond to deficiencies in timely manner
 - Carrier compliance

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