



SUMMARY OF THE WHITE HOUSE PARITY TASK FORCE REPORT AND ACCOMPANYING ACTION ITEMS

OVERVIEW

On October 27, 2016, the White House Parity Task Force released their recommendations to President Obama. Along with the report, the Departments issued sub-regulatory guidance in the form of Frequently Asked Questions and Answers (FAQs) and materials for assisting consumers with navigating the Mental Health Parity and Addiction Equity Act (MHPAEA).

The report contains both immediate action steps and long term recommendations. While helpful, the report and guidance do not change that obtaining mental health/substance use disorder (MH/SUD) coverage at parity is a complaint-driven process that puts consumers and families in the position of having to file a complaint rather than regulators holding plans accountable for specific rules for how the law must be operationalized.

Some of the long-term recommendations require Congressional approval (noted below as appropriate). A summary of the key action steps and recommendations is below.

The report and accompanying materials are available [here](#).

REQUEST FOR COMMENTS

The Departments are [soliciting comments](#) on how the disclosure document request process can be improved. Specifically, the Departments have asked for comments on model forms for reporting non-quantitative treatment limitation (NQTL) information, steps the Departments can take to improve the scope and quality of disclosures or otherwise improve the process and specific actions that could be taken to improve state market conduct and/or federal oversight of compliance. Email comments to e-ohpsca-mhpaea-disclosure@dol.gov.

The Departments are also [soliciting comments](#) on smoking cessation for non-pregnant adults. The US Preventive Services Task Force (USPSTF) extended its recommendation of tobacco cessation for non-pregnant adults to an "A" rating and suggests that clinicians advise, treat and provide FDA-approved pharmacotherapy for smoking cessation that could be used alone or in combination with behavioral therapy by a health provider for a 90-day regimen without prior authorization. The Departments seek comments on whether all of the FDA approved cessation drugs should be covered without cost sharing and whether medical management techniques can be applied to these interventions. Email comments to marketreform@cms.hhs.gov.

All comments on the above are due January 3, 2017.

Comments may also be submitted [online](#) on the [beta website](#) intended to assist consumers with finding federal and state agencies to assist with their parity complaints, appeals and other actions. No deadline for submitting comments on the website was announced.

IMMEDIATE ACTION ITEMS

- A \$9.3 million award to states by the Centers for Medicare and Medicaid Services (CMS) to help fund work by state insurance regulators to ensure issuer compliance with MHPAEA.
- Establishment of a [website](#) to assist consumers with finding federal and state agencies to assist with their parity complaints, appeals and other actions.
- Release of Substance Abuse and Mental Health Services Administration (SAMHSA) [Consumer Guide to Disclosure Rights](#). Of particular note, the guide includes an important list of documents health plans must disclose to consumers (page 7).
- The Department of Labor (DOL) announced it will annually release public information on closed Federal parity investigations and will report on the findings, including the violations cited to ensure parity compliance and inform future policymaking efforts. (This effort builds on the 1,515 investigations related to MHPAEA and 171 violations cited by DOL since October 2010.)
- CMS has added MHPAEA compliance to its review of plans subject to the essential health benefits requirements under the Affordable Care Act (ACA) and said it expects state regulators to do so as well.
- Issuance of FAQ on plan MHPAEA compliance analyses for financial requirements and quantitative treatment limitations: The Departments urged plans and their actuaries to issue health plan level claims data to perform the “predominant” and “substantially all” tests. If an actuary attests that there is no sufficient claims data available to complete the parity tests, then plans must use a “reasonable” method including using data from similarly structured plans customized to the characteristics of which the parity tests may be applied. **(Q3)**
- Issuance of FAQs on Nonquantitative Treatment Limitations:
 - A plan cannot require in-person prior authorization for inpatient MH/SUD treatment while permitting authorization over the phone for inpatient medical/surgical treatment. While some differences in prior authorization may be allowed based on recognized clinically appropriate standards of care, a plan cannot apply a stricter prior authorization NQTL to all MH/SUD benefits in a classification than applied to all medical/surgical benefits in the same classification. **(Q4)**
 - A plan cannot include a “fail-first” or “step therapy” requirement that applies to both MH/SUD and medical/surgical when the requirements cannot reasonably be satisfied under the MH/SUD benefit. In the FAQ, the requirement to first attempt an intensive outpatient program in order to qualify for coverage of inpatient treatment when there are no intensive outpatient programs available under the SUD benefit resulted in the requirement being applied more stringently in operation under the MH/SUD benefit. **(Q5)**

Because the Departments' prior guidance did not address the application of fail-first requirements in situations involving lack of access and may have reasonably been interpreted in an alternative manner, the Departments will apply this clarifying guidance for plan years beginning on or after March 1, 2017.
- Issuance of FAQs on Medication Assisted Treatment for Opioid Use Disorder:

- Prior authorization requirements for buprenorphine based on safety concerns may not be applied if the plan does not impose prior authorization requirements on other medications with similar safety risks. **(Q6)**
- If a plan applies a non-pharmacological fail-first requirement on buprenorphine, and comparable factors and evidentiary standards show that the same requirement could be appropriate for other medications, but is not being imposed, then the plan violates MHPAEA. **(Q7)**
- If a plan's stated process for setting pre-authorization requirements on prescription drugs is that it follows nationally-recognized treatment guidelines, while in fact, the plan deviates from such guidelines in setting requirements for buprenorphine while following such guidelines for other medications, the plan is in violation of MHPAEA (e.g., the plan's 30-day prior authorization requirement for buprenorphine was inconsistent with nationally recognized guidelines for medications for chronic medical/surgical conditions). **(Q8)**
- Issuance of FAQ on court-ordered treatment.
 - A plan cannot exclude court-ordered treatment for substance use disorders if it does not exclude court-ordered treatment for medical/surgical conditions. **(Q9)**
- SAMHSA will hold 2 State Policy Academies on parity implementation for state officials in Fiscal Year 2017. One session will focus on the commercial market and the other on parity in Medicaid.
- CMS will undertake a review of MH/SUD benefits in Medicare Advantage plans and identify any necessary improvements to advance parity protections.
- The Departments have issued a [Parity Compliance Assistance Materials Index](#). The Index combines all of the 44 Frequently Asked Questions (FAQs) that have been released on parity, generally as part of larger documents, into one place.

THE REPORT'S RECOMMENDATIONS FOR FUTURE ACTION

- Create a consumer web portal to help consumers navigate parity. The site will be built out of the [beta website](#) announced on October 27, 2016, and should help consumers solve coverage issues, file a complaint or submit an appeal.
- Increase tri department federal Agency funding so the Departments can expand audit capacity. The report states the Agencies' capacity to expand enforcement activities including random audits is currently limited by staffing resources. (The appropriation of additional funds requires Congressional approval.)
- Undertake a detailed review of the NQTLs applicable to SUD benefits in the Federal Employees Health Benefits Program (FEHBP). The Office of Personnel Management (OPM) has agreed to conduct the review over the coming year and take corrective actions as indicated by their findings. This includes the consistency of definitions of terms relating to residential treatment for greater transparency to consumers.
- Allow DOL to impose civil monetary fines for parity violations (requires legislation and Congressional approval.)
- Develop examples of parity compliance best practices and potential warning signs of non-compliance. The Task Force recommended the development of a "Warning Signs 2.0" document to address additional potentially problematic NQTLs and well as the

development of a similar document illustrating appropriate application of comparable NQTLs and other actions that would reflect best practices in compliance with parity. The Task Force recommended the Departments consider the inclusion of network adequacy issues in the development of these documents.

- Provide federal support to state efforts to enforce parity through trainings, resources and new implementation tools, including model compliance templates. The Task Force recommended that federal regulators work with the National Association of Insurance Commissioners (NAIC) and states to develop a standardized template that states might use to help assess parity compliance. The Task Force also encouraged federal regulators, the NAIC, and other stakeholders to consider a joint effort to develop a model prior authorization form and other model forms.
- Develop, in coordination with the NAIC, templates and other sample standardized tools be developed to improve consumer access to plan information.
- Continue and expand work to educate consumers about parity and partner with consumer groups to increase consumer awareness and understanding of parity protections.
- Extend health plan disclosure requirements for medical/surgical benefits to non-ERISA plans. Disclosure of the processes, strategies, evidentiary standards, and other factors used to apply limitations to medical and surgical services is currently required for ERISA plans.
- Develop a parity analysis toolkit to help states assess compliance with the final rules on Medicaid managed care parity. The toolkit should review key considerations for defining and classifying MH/SUD (including intermediate and long term supports and services), conducting claims-based analyses for quantitative treatment limits, identifying and analyzing non-quantitative treatment limits, and considerations for Alternative Benefit Plans and Children's Health Insurance Plans (CHIP).
- Issue and regularly update additional "guidance clarifying the application of parity to opioid use disorder treatment benefits."
- In the coming year, the Department of Defense will publish additional TRICARE contract modifications to advance implementation of the Final Rule published on September 2, 2016, which brought the TRICARE benefit into compliance with parity.
- Eliminate the Medicare 190-day lifetime limit on Medicare Part A treatment in psychiatric hospitals via the President's 2017 budget request to Congress (requires Congressional approval).
- Eliminate the parity opt-out process for self-funded non-federal governmental plans (requires Congressional approval).