

2024 FINAL PARITY RULES

CHANGES TO THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT FOR PRIVATE INSURANCE

Background on the Parity Act and the New Rules

The Mental Health Parity and Addiction Equity Act (Parity Act) is an anti-discrimination law that requires health insurance coverage of mental health (MH) and substance use disorder (SUD) benefits be comparable to and no more restrictive than coverage of medical and surgical benefits. MH conditions and SUDs are health conditions, so it is critical that insurance plans cover them in a way equitable to how they cover other health conditions. LAC's [Parity for All](#) initiative seeks to improve enforcement of and compliance with this law at the federal and state levels to ensure consumers have access to the MH and SUD care they need.

In September 2024, the Departments of Labor, Health & Human Services, and Treasury finalized new [regulations](#) under the Parity Act for private health insurance plans, implementing the Consolidated Appropriations Act of 2021 and strengthening these consumer protections.

Note: The Parity Act also applies to Medicaid managed care plans, the Medicaid expansion population (alternative benefit plans), and the Children's Health Insurance Program (CHIP). However, these final rules only apply to private insurance plans.

PURPOSE

There is a new "Purpose" section in the regulations that highlights the overall goals of the Parity Act to ensure that individuals with group or individual health insurance coverage who seek treatment for covered MH conditions and SUD do not face greater burdens on access to benefits than those who seek treatment for medical conditions or surgical procedures. This section emphasizes that the Parity Act regulations should be interpreted in light of this goal.

DEFINITIONS

When plans decide what is considered an MH or SUD benefit, they must use the most current version of the International Classification of Diseases (ICD) and Diagnostic and Statistical Manual of Mental Diseases (DSM) to determine if the condition being treated is an MH condition or SUD, consistent with generally recognized independent standards of current medical practice. Accordingly, autism spectrum disorders, eating disorders, and gender dysphoria are MH conditions that must be analyzed for parity compliance.

Additionally, the regulations added new definitions to provide greater clarity on the difference between processes, strategies, evidentiary standards, and other factors, which will make it easier for plans to conduct a Parity Act comparative analysis.

MEANINGFUL BENEFITS

Comparisons under the Parity Act are based on classifications of benefits: inpatient (in-network and out-of-network), outpatient (in-network and out-of-network), emergency services, and prescription drugs. At a minimum, if a plan covers MH or SUD benefits in one classification, it must cover benefits for that condition in all classifications in which it covers medical or surgical benefits. The new regulations further require such coverage to be “meaningful,” to the extent that the plan covers meaningful benefits for medical or surgical care. For example, a plan could not provide just screening or an ancillary benefit for an MH or SUD condition, it would have to cover a “core treatment” for that condition, as indicated by generally recognized independent standards of current medical practice. Such treatment, course of treatment, therapy, service, or intervention could span multiple classifications, such as medications for opioid use disorder (MOUD) and counseling services.

NON-QUANTITATIVE TREATMENT LIMITATIONS (NQTLs)

The regulations contain an updated illustrative, non-exhaustive list of non-quantitative treatment limitations (NQTLs) that plans must apply to MH and SUD benefits in a way comparable to and no more restrictive than medical and surgical benefits. The list now includes prior authorizations, standards related to network composition (including how they determine reimbursement rates, credentialing standards, and procedures for ensuring an adequate network), and methods for determining out-of-network rates.

NQTL TESTS

There is a new two-part test for determining Parity Act compliance for NQTLs:

(1) Design & Application: First, plans have to show that the way they design and apply NQTLs is comparable and no more stringent for MH and SUD benefits compared to medical and surgical benefits. In designing NQTLs, plans may not use discriminatory factors or evidentiary standards – those that are biased or not objective in a way that systematically disfavors access or are designed to disfavor access to MH and SUD benefits as compared to medical and surgical benefits – unless the plan takes steps to correct, cure, or supplement them. Plans also cannot rely on historical data or information from before the Parity Act was enacted or from a time when the plan was not complying with the Parity Act.

(2) Outcomes Data: Second, plans must collect and evaluate relevant outcomes data to assess the impact of all NQTLs on access to benefits. While the rules do not specify the types of data plans must use, they give some examples (such as claims data, in- and out-of-network use, and reimbursement rates), and do not allow plans to disregard data they know or should reasonably know suggest a material difference in access. A material difference in access to MH or SUD benefits compared to medical and surgical benefits is a strong indicator of non-compliance, and plans must take reasonable actions to correct such disparities when they are caused by the NQTL. Regulators may also request additional data from plans.

EXCEPTIONS

There are two minor exceptions in these tests: (1) Generally recognized independent professional medical or clinical standards, and (2) Carefully circumscribed measures reasonably and appropriately designed to detect, prevent, or prove fraud and abuse. Use of these standards would not be considered biased or not objective for the design and application test. Additionally, if plans attribute differences in outcomes data to these standards, then those differences would not be considered material. While the use of these standards – when truly independent and unbiased – can help to promote high-quality care, they must still comply with the Parity Act. Accordingly, plans need to show that their use of these standards is comparable for MH and SUD benefits as compared to medical and surgical benefits.

NQTL COMPARATIVE ANALYSES

As required by law, plans must perform and document an analysis showing that they are designing and applying NQTLs in a comparable way. This analysis must include, at least:

1. A description of the NQTL and which benefits are subject to the NQTL;
2. Identification and definition of the factors and evidentiary standards used to design or apply the NQTL;
3. A description of how factors are used in the design or application of the NQTL;
4. A demonstration that the NQTL for MH and SUD benefits is comparable to and no more stringent than for medical and surgical benefits *as written* (i.e. in documents);
5. A demonstration that the NQTL for MH and SUD benefits is comparable to and no more stringent than for medical and surgical benefits *in operation*, including the outcomes data and their evaluation, an explanation of any material differences in access, and a description of reasonable actions taken to address such differences; and
6. Findings and conclusions.

ENFORCEMENT

Federal and state regulators may request these comparative analyses at any time, and the federal agencies must request this information from no fewer than 20 plans every year. Many states require plans to submit their analyses on a regular basis. Upon a request from the regulators, plans must submit these comparative analyses or any additional information within 10 business days. Upon an initial finding of non-compliance, plans must identify actions they will take to comply and provide updated analyses within 45 days. Upon a final determination of non-compliance, plans must notify enrollees within 7 business days and include information about opportunities to have affected claims reprocessed or newly submitted.

Regulators may require a plan to stop using an NQTL if it does not comply with the Parity Act, or if the plan's analysis was incomplete or insufficient to show it complied with the law. Regulators may also take any other enforcement actions available to them.

TRANSPARENCY

Consumers or their authorized representatives may request their plan's comparative analysis when they receive an adverse coverage determination, such as a denial or partial denial.

Consumers in ERISA plans (employer-sponsored plans regulated by the Department of Labor) or their authorized representatives may request these analyses at any time.

Plans may not withhold information from consumers in these analyses by claiming they are proprietary or commercially protected.

KEY TAKEAWAYS FOR CONSUMERS

1. You have a federal right to non-discriminatory coverage of MH and SUD benefits. Many states have similar if not stronger protections.
2. Watch for [parity warning signs](#), including additional red flags related to the new rules:
 - Limitations on autism spectrum disorder, eating disorder, or gender dysphoria (or any other MH or SUD) treatment that seem more restrictive than for other health conditions;
 - Exclusions of core treatments for MH or SUD, when the plan covers other treatment or screenings for that condition;
 - Coverage criteria that are biased or disfavor access to MH or SUD benefits;
 - Reliance on historical data or information like past claims data, outdated evidence for deciding what to cover, or old reimbursement rate structures;
 - Few or no providers in your plan's network who can provide a covered benefit or prescribe a medication for MH or SUD that meets your needs (i.e., if you have to go out-of-network because you cannot find an in-network provider);
 - Reimbursement for MH or SUD providers is lower than for medical or surgical providers for the same service or code; and
 - Failure to send you the comparative analysis upon request, or refusing to share "proprietary" information.
3. If you are having trouble accessing MH or SUD care through your insurance – including difficulty finding an appropriate provider, delays in getting the care you need, treatment denials or coverage exclusions, etc. – you have [options](#):
 - You can request the Parity Act comparative analysis from your health plan;
 - You, or someone you authorize to act on your behalf, can file a complaint or appeal with your health plan; and/or
 - You, or someone you authorize to act on your behalf, can also file a complaint with the federal or [state department of insurance](#) that oversees your health plan.

You should identify that there may be a Parity Act violation even if you do not have all of the information to compare MH and SUD benefits to medical and surgical benefits. Your plan is responsible for sending you the analysis and proving they comply with the Parity Act and these regulations.

Learn more at www.lac.org.