

# ADDICTION SOLUTIONS CAMPAIGN

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## THE PARITY ACT TRACKING PROJECT: MAKING PARITY A REALITY

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### BACKGROUND AND SIGNIFICANCE

The Mental Health Parity and Addiction Equity Act of 2008 (Parity Act) requires equitable and comprehensive coverage of substance use disorder (SUD) and mental health benefits in both the public and private health insurance markets. With vigorous enforcement, the Parity Act should effectively prevent discriminatory insurance coverage for persons with mental health and substance use disorders by regulating virtually every health plan feature, including:

- the scope of substance use disorder and mental health benefits and medications
- out-of-pocket costs that consumers must pay for their care
- limitations on the duration of treatment
- medical management standards that determine when an individual will receive specific substance use disorder services, the length and intensity of services, and the setting of care delivery; and
- admission of providers to plan networks, reimbursement rate standards and network adequacy.

Simply stated, the Parity Act requires a health plan's standards for substance use and mental health benefits to be comparable to – and no more restrictive than – the standards for other medical benefits.

But it is clear today – as the United States struggles to address an unprecedented epidemic of opioid use disorders and overdose deaths – that improving access to care is critical. Unfortunately, the data suggest that the enactment of the Parity Act, which targets the very discriminatory standards that have fueled gaps in coverage of and access to benefits and prescription drugs, has not put an end to restrictive coverage and limited reimbursement for substance use treatment in either private insurance or Medicaid. These payers shift the cost of care to state and local governments and deny many consumers the health care benefits that they pay for in private health plans or are entitled to receive through their Medicaid managed care plan. Investment of all health care dollars is needed now more than ever to address the nation's opioid epidemic and the high rates of untreated alcohol and other substance misuse.

Since the law went into effect in 2009, addiction and mental health treatment rates and spending have not increased significantly, even in the face of the worst heroin/opioid epidemic

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in our nation's history.<sup>i</sup> It is evident that the Parity Act, absent vigorous enforcement, will not facilitate access to treatment for those most in need of treatment.

## STUDY DESIGN AND QUESTIONS

To assess whether parity compliance could, or could not, be evaluated by review of plan documents, a team of highly qualified researchers completed an exhaustive review of representative documents in two states, New York and Maryland.

The study team was comprised of senior staff from three organizations (the Legal Action Center, The National Center on Addiction and Substance Abuse, and the Treatment Research Institute) with substantive expertise in the Parity Act, specifically, and treatment of substance use disorders broadly. In addition to reviewing the plan documents provided to state insurance regulators, the study team sought to obtain additional information from publicly available documents via simple internet searches (i.e., medical necessity criteria/medical policies).

The enforcement of the Parity Act currently depends on two groups to identify potential violations: state insurance regulators and consumers. Thus, this study sought to assess these groups' ability to flag and report instances of non-compliance as necessary to spur enforcement. Our study questions were:

1. Can a state regulator identify potential violations of the Parity Act for substance use disorder services through form review?
2. Can a consumer readily identify benefit and formulary coverage, out-of-pocket costs and any restrictions on accessing substance use care from plan documents and identify plan design features that raise "red flags" for Parity Act violations?

In order to obtain quantitative and qualitative data related to the key study questions, the research team designed a data gathering template that tracks all plan design features that are regulated by the Parity Act, including financial requirements, quantitative treatment limitations and non-quantitative treatment limitations, with the exception of network admission standards, reimbursement rates and network adequacy, which were outside the scope of this review.<sup>ii</sup> The template is designed to go beyond a state insurance department's form review checklist, which, at best, describes the relevant Parity Act standards and requires the insurer to identify a contract provision that purportedly satisfies the legal requirement. The template produced by the study team seeks detailed information about benefit and formulary coverage, as well as utilization management requirements. It poses questions that probe for evidence of comparability across substance use disorder and medical standards, and evaluates plan notification of Parity Act protections.

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The team then evaluated the template by performing an analysis of publicly available documents for seven health plans offered in the small and large group markets in New York or Maryland.

## KEY STUDY FINDINGS

Based on our review of publicly available plans documents and subsequent analysis, the study concludes that:

1. Regulators cannot conduct a complete assessment of parity compliance through form review with even a comprehensive data-gathering template because required information is not available in these documents;
2. Consumers cannot ascertain all standards that will determine access to substance use treatment, and are not informed of their rights under the Parity Act;
3. Neither consumers nor regulators can identify Parity Act violations from plan documents routinely reviewed for plan approval.
4. Prescription drug formularies include wide discrepancies in the coverage of, and restrictions on, medications for the treatment of addiction.

In order to answer the major study question “*Can a state regulator identify potential violations of the Parity Act for substance use disorder services through form review?*” researchers developed a robust data collection template to support regulators’ review of plan documents for parity compliance. The review of publicly available plan documents for the seven plans revealed that even with a comprehensive data-gathering template, regulators would still not be able to accurately assess whether a plan is parity-compliant because required information is not available in the plan documents that regulators receive from insurers prior to approving plans for sale. For example:

- Form review provides no information about non-quantitative treatment limitations, with the exception of pre-authorization requirements for specific levels of care.
- Form review is also insufficient to determine the scope of benefits. Based solely on the description of benefits provided in plan documents, there is no way for regulators to determine if plans are offering a comparable scope of benefits for substance use disorders (SUD’s).
- The study team reviewed the plans to determine whether SUD medications (e.g., Suboxone® or naltrexone) are covered on par with medications for Type 2 diabetes (which was selected as an example of a chronic disease typically covered by insurance) and placed on tiers with a consistent approach based on clinical efficacy and cost. Some significant discrepancies on coverage and authorization requirements were uncovered that should raise red flags for regulators.

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In order to answer the second major question “*Can a consumer readily identify benefit and formulary coverage, out-of-pocket costs and any restrictions on accessing substance use care from plan documents and identify plan design features that raise “red flags” for Parity Act violations?*” researchers conducted in-depth reviews and analyses of publicly available plan documents.

The team identified numerous inconsistencies within the plan documents and found that, for the most part, plan documents were not transparent about benefit coverage, or about restrictions on accessing substance use care, including utilization management requirements. It would be challenging, if not impossible, for an average consumer to identify plan design features that raise “red flags” for Parity Act violations based on publicly available documents.

The team’s specific findings about the transparency of the plan documents and consumer access to, and awareness of, their rights under the Parity Act include:

- Lack of transparency in plan documents about covered substance use disorder benefits in plan documents;
- The plans reviewed do not inform consumers about their rights and protections under the Parity Act. The Parity Act’s non-discrimination protections are not explained in plan documents, and information about filing a complaint does not specifically reference how to file a parity complaint. Our review identified few mentions of the Parity Act or the rights it affords consumers seeking mental health or SUD treatment.
- The lack of transparency in plan documents and the lack of clear processes/instructions for filing a Parity Act complaint put the consumer at a severe disadvantage for being able to assert her rights under the Parity Act.

Further, an individual complaint-driven process is simply insufficient for resolving parity violations which generally occur systemically, not just individually. Individuals do not have access to data necessary to show a violation that occurs at the systems level. Further, without regulatory oversight, an insurer may resolve a problem for one consumer but not correct the underlying Parity Act violation for all members. In sum, a consumer cannot readily identify information about the coverage of SUD benefits by her health plan nor can she readily identify a parity violation or know how to assert her parity rights. All of this is further complicated by the fact that parity violations occur during times of crisis for a consumer – when time is of the essence and resources are strained. It is not evident that asserting a parity complaint will provide the resolution the consumer needs – immediate coverage of desperately needed services to treat a life-threatening illness.

## MAJOR RECOMMENDATIONS

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The study highlights significant barriers to front-line enforcement of the Parity Act. To achieve better compliance, regulators must obtain complete plan information that is responsive to the Parity Act's standards so that they may conduct comprehensive plan review prior to approving the plan for sale to consumers. Consumers must be better informed of the Parity Act protections, have assistance in identifying potential problems in their plan's benefits, and have easy access to information that is needed to pursue a complaint. In order to address the barriers identified in this study, the following recommendations should be considered:

- Regulatory agencies should require insurers to submit their internal analyses for ensuring that plans are parity compliant.
  - The Parity Act stipulates that insurers are responsible for ensuring compliance; regulators should put the burden of proof on insurers. Plans are already required to conduct analyses of parity compliance to offer a plan for sale, but regulators do not routinely request this evidence for all plan features. We refer to the more robust requirement as a "Parity Act Transparency and Compliance Report", and recommend that this is required as part of form review. Regulatory agencies should use a parity compliance template to review the analyses provided by plans to ensure parity compliance
- Regulatory agencies should develop model contracts that fully describe substance use and mental health benefits, align standards with Parity Act requirements and inform consumers of their rights under the Act.
- Regulatory agencies should enhance the provider community's capacity to identify potential Parity Act violations and advocate for plan compliance in network adequacy and rate setting standards.

The proposed Parity Act Transparency and Compliance Report would give regulators the tools required to *prevent* the sale of a contract that illegally limits coverage of substance use disorder treatment or access to care. It would require the collection of plan documents that consumers and providers could readily obtain from state insurance departments if needed to challenge a denial of care.<sup>iii</sup> Improving provider knowledge of the Parity Act would further support consumers in understanding their rights and identifying potential violations in their plan benefits.

Adoption of the above recommendations for improved prospective regulatory review would relieve consumers of the nearly impossible burden of identifying Parity Act violations and asserting their right to care in the midst of a health crisis. The Parity Act standards are complex and require access to and comparison of standards for both substance use and medical services. Consumers face formidable roadblocks in navigating this process. Most of the relevant information is not in the plan documents provided to consumers, and consumers are not informed of their right to obtain plan information that is needed to identify a parity violation. Even if they were aware of their rights, consumers may be in crisis and lack the time and resources needed to pursue them.

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## CONCLUSION

The current enforcement framework raises important questions about whether it can effectively identify Parity Act violations. What regulators can learn from form review regarding a plan's compliance with the Parity Act is insufficient to ensure that consumers get the coverage they are entitled to under federal law. For consumers seeking substance use treatment, the plan documents reviewed do not fully identify the services that are covered and all requirements that may affect admission into care, and the information provided is often difficult to understand raising questions about transparency. Finally, the plan documents reviewed do not sufficiently inform consumers that they can request information to investigate whether an insurer's denial of recommended care violates the Parity Act or that the insurance plans must meet specific standards for the coverage of substance use and mental health disorders. This basic information is essential to determining whether a Parity Act violation exists. With better enforcement of the Parity Act, consumers will begin to receive the substance use services that they are paying for in their insurance coverage. Equitable insurance coverage of substance use services may also spur better integration of this care into general medical services.

At a time of national crisis arising from opioid misuse, abuse and overdose, it is difficult to overstate the urgency of the need for significant improvement in the equitable coverage of addiction treatment benefits, as *required by law*.

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<sup>i</sup> See for example: <http://news.yale.edu/2014/01/23/parity-law-has-little-effect-spending-substance-abuse-treatment>

<sup>ii</sup> Insurance Departments do not regulate reimbursement rates and generally review provider networks and network adequacy through regulatory activities not related to plan approval. Insurers that offer commercial plans in New York are required to submit information about provider networks during the form review process, including provider selection criteria, quality assurance procedures and a sample provider agreement. Network Adequacy Submission Instructions available at: [http://www.dfs.ny.gov/insurance/health/network\\_adeq\\_submission\\_instructions.pdf](http://www.dfs.ny.gov/insurance/health/network_adeq_submission_instructions.pdf). [Last reviewed 1/29/17]. The assessment generally evaluates whether the insurer meets the state's network adequacy standards and does not evaluate compliance with the Parity Act. Network Adequacy Standards and Guidance at 1 and 4, Pt. 9 available at [http://www.dfs.ny.gov/insurance/health/Network\\_Adeq\\_standards\\_guidance\\_Instructions\\_9.15\\_Final.pdf](http://www.dfs.ny.gov/insurance/health/Network_Adeq_standards_guidance_Instructions_9.15_Final.pdf). [Last reviewed 1/29/17].

<sup>iii</sup> The White House Parity Task Force report notes that stakeholder have observed that insurer response to parity disclosure requests vary. Task Force Report at 18.