



July 27, 2017

STATEMENT ON STRATEGIES FOR IMPROVING PARITY FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER COVERAGE

On behalf of the American Benefits Council, I appreciate the opportunity to share our thoughts with you and for the continued dialogue on mental health parity.

Our members are primarily large employers and other organizations that sponsor or administer health and retirement benefits covering more than 100 million Americans. They typically have employees in multiple states and often in all 50 states.

Today, I will focus my remarks on three main points:

1. Mental health benefits are a priority for employers.
2. Parity compliance is complex.
3. A flexible regulatory environment is necessary to allow for innovation.

Mental Health is a Priority for Employers.

Large employers have long recognized the value and importance of providing comprehensive coverage for mental health benefits. Employer surveys show nearly all large employers provide mental health benefits.

Federal law does *not* mandate coverage for mental health benefits for self-insured plans. However, employers voluntarily offer mental health benefits because they believe it is vital to the health and productivity of the workforce and for recruiting and retaining qualified workers. They also know that employees highly value this benefit.

The Mental Health Parity and Addiction Equity Act was bipartisan, the result of an inclusive process that balanced the interests of a diverse group of stakeholders. The Council supported that process and remains supportive of mental health parity.

Parity Compliance is Complex.

Large employers are very compliance-minded, and there is a continued focus on compliance with mental health parity.

In the parity task force report, the departments noted that employers and health plans have made progress in complying with mental health parity, particularly related to financial and quantitative treatment limitations.

While employers generally look to their service providers for design and administration of compliant plans, employers are ultimately the ones liable under the framework of mental health parity.

The “parity” requirements are *not* intuitive. “Parity” compliance requires a complex analysis. It is not a simple “cross walk” of the same co-pays or the same medical management standards. Because of this, parity is confusing to consumers and challenging for even the most sophisticated plan sponsors and insurers.

The departments have recognized this with outreach and education for all stakeholders, along with continued guidance. One area of ongoing concern is the non-quantitative treatment limitation (NQTL) rule. The rule continues to be a challenge for employers and health plans, particularly because of the vagueness and broad-reaching impact of the requirement.

For example, limitations on benefits for autism and applied behavioral analysis therapy and residential treatment are analyzed under the rule, but the departments have not provided clear guidance on the parity analysis for these benefits. Also, the NQTL for provider reimbursement continues to be a challenge with the limited guidance that has been provided by the departments. Clear standards are needed to support compliance and ensure that all entities, including both federal and state regulators, are operating under the same interpretation. Support for employers’ good faith efforts to comply with this complex mental health parity standard is vital.

It is critical the Departments engage with stakeholders *before* issuing guidance. Given the mature state of parity implementation, a regulatory process that provides *notice and comment* for proposed changes or new requirements will best serve federal and state regulators, the regulated community and consumers by facilitating smooth implementation and avoiding unintended consequences. Most importantly, any new changes, including those implemented through sub-regulatory guidance, such as FAQs, should be effective *prospectively* to provide plans and issuers an opportunity to make changes to come into compliance.

It is important that both state and federal regulators act consistently related to the enforcement of parity, so there is one standard that applies. Inconsistent interpretation of parity rules can be confusing and costly for employers and insurers.

A flexible regulatory environment is necessary to allow for innovation.

Employers are innovators – offering high performance networks, telehealth benefits, and on-site health centers. They are always looking for ways to increase employee satisfaction, improve quality and hold down costs.

However, employers face a challenging environment, with rising health care costs and increased regulation. Medical management, value-based design, and evidence-based care continue to be important tools for ensuring quality and keeping down the cost of benefits. It is imperative that the regulatory framework allows for flexibility to permit continued innovation. Specifically:

- **Evidence-based treatment:** Recent articles have described the impact of the lack of accreditation standards and evidence for the effectiveness of residential treatment for eating disorders. Federal and state regulators need to consider this when determining parity compliance.
- **Workforce:** There are simply not enough mental health providers. This stems from either a shortage of providers or an unwillingness to participate in networks, and this raises access and cost issues for employees and employers.

Conclusion

Again, thank you for the opportunity to share our views and for the continued dialogue. Employers value the importance of quality mental health coverage for their employees and appreciate the role The Council has had in shaping this important law.