10th Anniversary of Parity: Where Are We Now?

Tim Clement

Barb Johnston

Rebecca Swanson

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Allergan

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Neurocrine Biosciences

Otsuka

Takeda

Lundbeck

MHA Mental Health America

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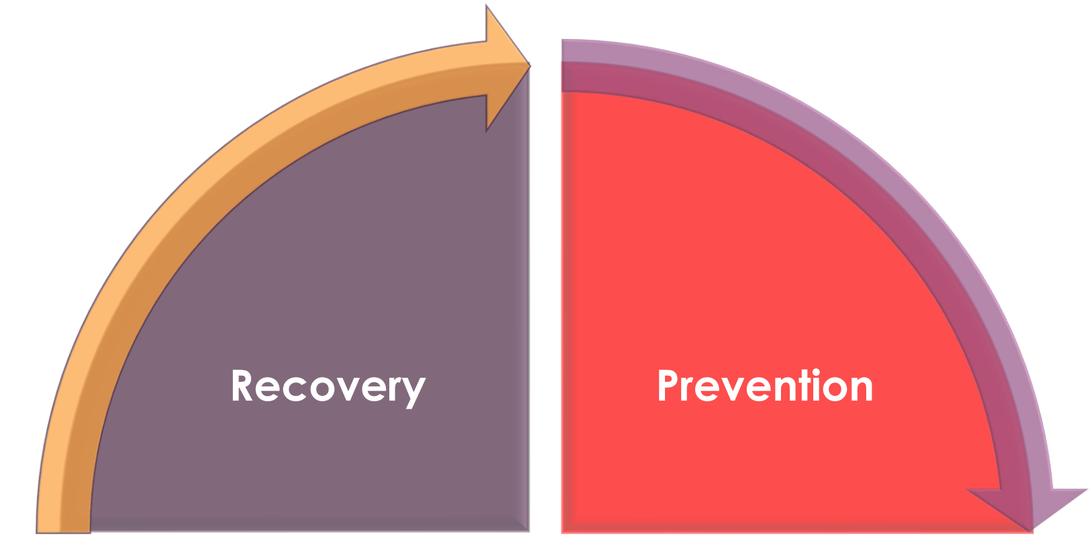
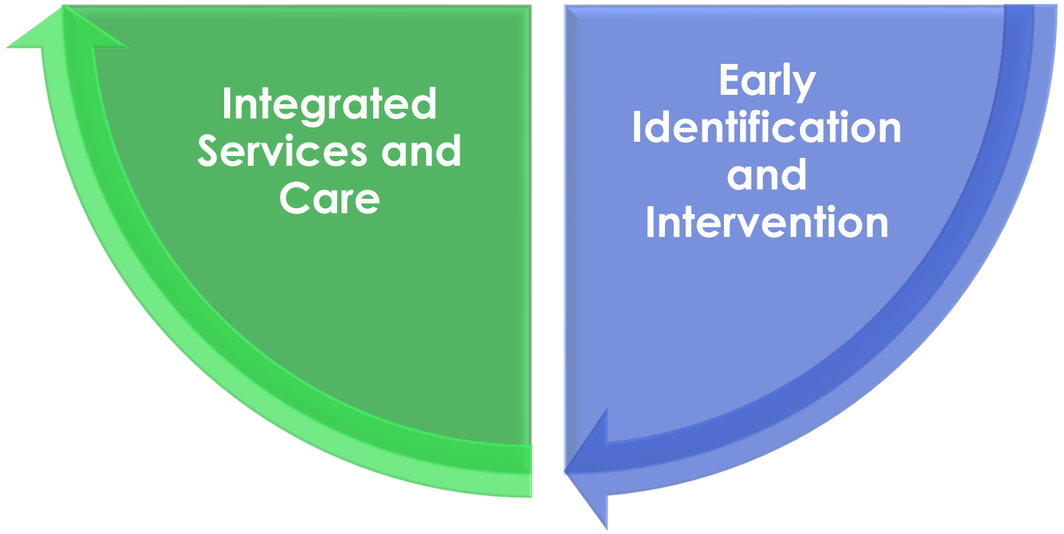
MHA's Mission

Mental Health America (MHA) - founded in 1909 - is the nation's leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and to promoting the overall mental health of all Americans.



Our work is driven by our commitment to promote mental health as a critical part of overall wellness, including prevention services for all; early identification and intervention for those at risk; integrated care, services, and supports for those who need them; with recovery as the goal.



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Federal Parity Law Background and Next Steps for States

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Mental Health Parity: The Basics

Simple concept: insurance coverage for mental health and substance use disorder treatment should be **no more restrictive** than coverage for other medical care

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Why did we need a federal law?

- Historically, insurance coverage for MH/SUD treatment was much more restrictive than coverage for other conditions
- Strict limits on inpatient care
  - Annual day limits (i.e., 30 days per year)
- Strict limits on outpatient care
  - Annual visit limits (i.e. 20 visits)
- Copays and coinsurance much more expensive than other care
- Separate deductibles for MH/SUD

State “parity” laws were inadequate

- Most state laws that governed MH/SUD insurance explicitly codified discriminatory coverage

- State laws specified that coverage limitations for MH/SUD could and SHOULD be less generous

- Only certain MH conditions included (schizophrenia, bipolar, panic disorder)

- SUD treatment was often explicitly excluded

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The Federal Parity Law: 2008

- The Mental Health Parity and Addiction Equity Act, enacted in October, 2008

- Sponsored by a Kennedy (Patrick J.), signed by a Bush (George W.)…**BIPARTISAN**

- The Federal Parity Law originally just applied to large group plans (51+ employees) and Medicaid managed care plans

ACA extended parity

- The Affordable Care Act (ACA) extended parity to the individual and small group markets and also applied it to Medicaid alternative benefit plans (benchmark equivalent)

- ACA amended the Federal Parity Law so it explicitly applies to individual plans

- Essential health benefit (EHB) regulations extended parity to small group plans

- Repeal and replace dead for at least two years and maybe forever

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Enforcement: state and federal balance

- States insurance departments enforce for individual plans and group insurance policies sold to employers

- U.S. Department of Labor (DOL) has sole enforcement for group plans that "self insure"; **states cannot regulate these plans**

- CMS and state Medicaid agencies have dual responsibility for Medicaid coverage

- Center for Consumer Information and Insurance Oversight (CCIIO) and IRS have some enforcement authority too

Why are we still talking about this 10 years later?

- Insurers and health plans are not fully compliant with the law

- State and federal regulators have been slow to implement

- While the concept of parity is simple, the Federal Parity Law is **INCREDIBLY COMPLICATED**

- And, the law has to be complex and nuanced because of the complicated nature of health insurance

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Avert your eyes!

A group health plan (or health insurance coverage) may not impose a nonquantitative treatment limitation with respect to mental health or substance use disorder benefits in any classification unless, under the terms of the plan (or health insurance coverage) as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the nonquantitative treatment limitation to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the classification.

What is that complicated "sentence" saying?

- Insurers managed care practices can't be stricter for MH/SUD than for other medical care
  - Prior authorization
  - Step therapy
  - Reimbursement rate setting
  - Establishing and maintaining provider networks
  - Many, many more

- This is where most of the current parity problems reside

- But, sadly we are finding that there are still basic compliance problems (higher copays, visit limits, etc.

How do we know there are problems?

- State and federal regulators consistently find problems with how insurers design and apply their managed care practices

- Insurers are not intentionally violating the law, but are generally not doing their due diligence to ensure compliance

- Insurers must internally compare how they design and apply MH/SUD benefits with how they do so for other medical benefits

- Impossible to know if there is compliance without comparative analysis

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Solutions

- 2017-18 legislative session saw multiple states introduce legislation to require insurer transparency and state regulator accountability

- Legislation passed in CO, DE, IL, MN, TN
  - Pending bills in DC and NJ likely to pass before 12/31

- Most bills bipartisan sponsorship and all bills passed with unanimous or close to unanimous consent

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Tennessee Case Study

- Requires insurers to report on how they design and apply managed care practices

- Requires state regulators to implement federal parity law and report on their activities

- Sponsored by:
  - Senator Briggs: very conservative
  - Representative Clemmons: very liberal

- Bill passed Senate 32-0 passed House 89-0 signed into law by Governor Haslam

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Parity legislation for all 50 states

https://www.psychiatry.org/psychiatrists/advocacy/state-affairs/model-parity-legislation

Comprehensive State Model Parity Legislation for Each State

This is the comprehensive version of the state model parity legislation, which includes provisions for insurer reporting requirements, commissioner implementation requirements, and addressing MAT coverage provisions.

– Find your state's comprehensive model parity legislation

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
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2019 Approach

- Working with MHA and other partners

- Messaging will frame parity implementation as an important tool for solving the opioid crisis and rising suicide rates

- Stories and testimony from consumers, family members, providers, and nontraditional stakeholders:
  - Faith community
  - Criminal justice (explain the exorbitant cost of providing care in jails and prisons)
  - Business community

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NJ Parity Transparency Bill: Advocacy Steps in Implementing Parity Legislation

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NJ Parity and Bill (S1339/A2031)

Enhances enforcement and oversight of behavioral health parity laws.

Focuses on the non-quantitative treatment limitation (NQTL) requirements of MHPAEA.

Holds Department of Banking and Insurance (DOBI) accountable for collecting data from the plans, analyzing the data, following up with the Plans regarding their compliance with parity, and making the aggregated findings available to the public.

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Advocacy Steps in Implementing Parity Legislation

Opportunities

Educate legislators on behavioral health including MH, SUD and co-occurring conditions

Work with BH colleagues across all segments (public, private, providers, peers, MH, SUD, payers, pharma, etc)

Create public awareness around access issues for BH services

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Advocacy and Support

Create a Parity Coalition and/or become active in an existing one.

- Encourage a broad list of persons/organizations participating

Solicit and Engage Bill Sponsors

- Bi Partisan/influential
- They hear about access issues and denials in their D.Os and often feel helpless

Meet with the Payers

- Work closely with the Plans. We made many amendments along the way but were able to retain the guts of the bill.

Advocacy and Support

Cover Your Bases with Administration, Policy Makers and Legislators

- This includes meeting with DOBI, Governor's office, MH and SUD Departments so they are informed
- Meet with Committee Chairs and Members who will be early 'reviewers' of the bill; both sides of the aisle! This is a non-partisan issue
- Look for opportunities to present and educate at conferences, meetings.

Work Your Grassroots Networks

- Share personal stories in newsletters and in testimony
- Calls, emails, faxes to legislators from constituents to support bills
- Stories make the biggest impact!

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A Lesson from Colorado

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Mental Health Colorado

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Mental Health Colorado's Work

- Working with partners including: Colorado Psychiatric Society, Colorado Hospital Association, Colorado Coalition for Parity, NAMI Colorado, Colorado Behavioral Health Council, American Psychiatric Association, the Kennedy Forum and many others.
- Mental Health Colorado proposed and helped pass bipartisan legislation (CO HB18-1357) to address concerns that were brought to our attention from numerous sources re: implementation and enforcement of MPHAEA and state parity laws:
    - Our parity survey, along with community conversations and input from our grassroots network of providers and consumers.
    - The Milliman Study, released last November, which showed Coloradans with private insurance going out of network for behavioral health care 7x more than for physical health care—and behavioral health providers being reimbursed 40% less.
    - On-the-ground work (both by our partners and ourselves) to try to connect people with health care: Colorado Springs example.

Colorado HB18-1357:

- HB18-1357, signed into law in May of 2018, does three things:
- Creates a state ombuds office for all Coloradans—whether privately insured, publicly insured, or not insured—to call with questions or complaints about parity, coverage and network issues. Importantly, we also ensured that providers and institutions can call with complaints. Our hope is that this becomes a "One-Stop Shop."
- Requires the ombuds office to track complaints and report annually to the Governor, the legislature and the public.
- Requires the state's Division of Insurance to report on methodology and corrective actions for parity compliance.

Mental Health Colorado's Next Steps

- We were invited to work with the State and community partners to interview and select an Ombudsperson. Kate Harris was appointed to serve in this role by Governor Hickenlooper on Nov 1st, and will begin her work in December.
- We have started discussions with state agencies and with the federal Department of Labor re: how to best help the Ombuds office navigate and resolve calls and re: recommendations regarding data collection goals.
- We are also working with the state's Division of Insurance to follow up on the transparency component, including making recommendations on parity compliance regulations and ensuring public release of Market Conduct Survey results.

2019 Colorado Parity Modernization Act

- There is still much work to be done. We've started stakeholder outreach for our proposed 2019 legislation.
- We are bringing in essential components from the model 50-state legislation and adding components that we believe vital to Colorado:
    - Modernizing outdated parity language, for example - updating/improving language that currently refers to "biologically-based mental illness" and lists out specific disorders while leaving out others.
    - Increasing transparency/reporting requirements both for private insurers and for Medicaid.
    - Clarifying and strengthening requirements regarding NQTLs—for example, network adequacy/access requirements.
    - Clarifying and strengthening preventative care requirements—ensuring that consumers have greater choice when it comes to mental health screenings.
    - Increasing consumer rights education.
    - …and more.

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Thank you for joining!

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