# Mental Health Parity: Making It Work

Seth A. Mendelsohn, Esq.

*Executive Deputy Insurance Commissioner*

Sandra L. Ykema, Esq.

*Health Insurance Counsel*

Richard L. Hendrickson, Esq.

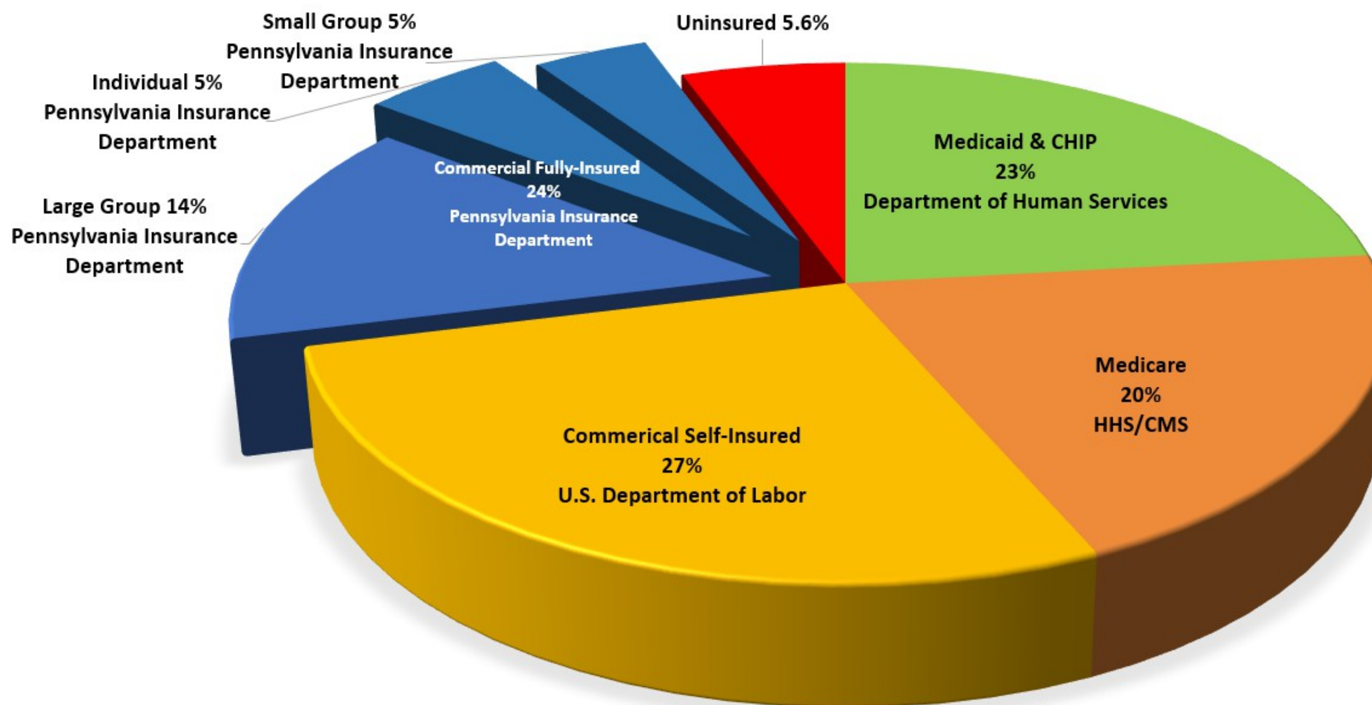
*Department Counsel*

# Questions We'll Address

- What do we mean by Pennsylvania's Health Insurance Market?
- What laws and regulations govern parity in MH/SUD coverage?
- Who must comply with parity standards?
- What is parity and how is it recognized?
- How does parity work in practice?

pennsylvania
INSURANCE DEPARTMENT

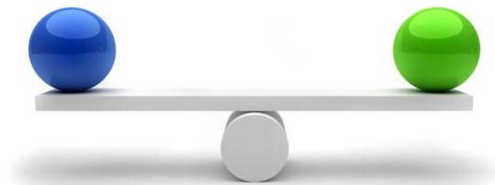
# Pennsylvania's Health Insurance Market




pennsylvania
INSURANCE DEPARTMENT

# Mental Health Parity: Federal Laws

- Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (42 U.S.C. § 300gg-26; 45 C.F.R. §§ 146.136, 147.160).
  - Aims to make certain that Insurers provide Mental Health/Substance Use Disorder (MH/SUD) benefits on an equal footing with Medical/Surgical (Med/Surg) benefits.
  - MHPAEA applies to Large and Small Group policies that provide MH/SUD benefits.
  - It also applies to both Individual and Small Group policies through the ACA.



# Mental Health Parity: State Laws

- MHPAEA was adopted into Pennsylvania state law as Act 14 of 2010 (40 P.S. §§ 908-11 *et seq.*).
- Pennsylvania also has minimum standards for Alcohol and Substance Use treatment in Act 106 of 1989 (40 P.S. §§ 908-1 – 908-8; 31 Pa. Code §§ 89.601 – 89.623).
  - Applicable to all group plans.
  - Must be provided in tandem with federal Essential Health Benefits requirements.

pennsylvania
INSURANCE DEPARTMENT

# Who Must Comply with Parity?

<u>Must Comply</u>

- Group health plans offering both med/surg and MH/SUD benefits.
- Issuers offering MH/SUD coverage in connection with a group health plan.
- Issuers offering individual health insurance (via the ACA's EHB requirement).
- Issuers offering small group health insurance (via the ACA's EHB requirement).

<u>Exempt</u>

- Small employers (fewer than 50 employees)?
- Non-federal plans with 100 or fewer employees.
- Self-funded non-federal plans that opt out.
- Plans that have claimed an increased cost exemption.

# What Effect Should Parity Have?

Generally, your benefits must be the same or equivalent in terms of:

- What you pay.
- How much treatment you can get.
- Prior Authorization and Care Management tools.
- Provider Access.
- Medical Necessity.
- Rx.

pennsylvania
INSURANCE DEPARTMENT

# Parity Red Flags

- If the answer to any of the following illustrative examples is "yes", there may be parity violations:
  - Higher co-pay for behavioral health services than for physical health services?
  - Limits on number of behavioral health provider visits and different limits for physical health provider?
  - Prior authorization for behavioral health services but not physical health services?
  - Out-of-network access for physical health services but not behavioral health services?

pennsylvania
INSURANCE DEPARTMENT

# Parity Red Flags

- If the answer to any of the following illustrative examples is “yes”, there may be parity violations:
  - Denial of behavioral health services?
  - Denial of behavioral health services in a residential treatment facility for lack of “medical necessity”?
  - Required to try outpatient behavioral health services before accessing inpatient behavioral health services?

pennsylvania
INSURANCE DEPARTMENT

# How Do We Find Violations?

- Three Enforcement Mechanisms
  - Consumer complaints.
  - Policy form review.
  - Market conduct examinations.

pennsylvania
INSURANCE DEPARTMENT

# How Do We Determine MHPAEA Violations?

- MH/SUD benefits must be *no more restrictive* than Med/Surg benefits in three areas:
  1. Financial Requirements.
  2. Quantitative Treatment Limitations (QTLs).
  3. Nonquantitative Treatment Limitations (NQTLs).

- If MH/SUD benefits are provided in any benefit classification, they must be provided in every classification in which Med/Surg benefits are offered.

pennsylvania
INSURANCE DEPARTMENT

# Financial Requirements & Quantitative Treatment Limitations

## Substantially All / Predominant Test

- The Rule:
  - Plans that provide both MH/SUD benefits and Med/Surg benefits may not apply any financial requirements or quantitative treatment limitations to MH/SUD benefits that are more restrictive than the "*predominant*" financial requirements or treatment limitations applied to "*substantially all*" Med/Surg benefits.

pennsylvania
INSURANCE DEPARTMENT

# Substantially All / Predominant Test

- Steps in the analysis:
  1. Is there a financial requirement or QTL?
  2. What is the benefit's classification?
  3. Does the financial requirement or QTL apply to 2/3 (substantially all) of the benefits in the classification?
     - If no, then no financial requirement or QTL may be applied to MH/SUD.
     - If yes, determine predominant level.

pennsylvania
INSURANCE DEPARTMENT

# Substantially All / Predominant Test

- Steps in the analysis:
  4. Is the level of the financial requirement (e.g. co-pay, co-insurance) or QTL (e.g. visit limit) that is applied to substantially all benefits in the classification applicable to more than half (50%) (predominant) of the benefits?
     - If no, then no financial requirement or QTL may be applied to MH/SUD
     - If yes, any financial requirement or QTL applied to MH/SUD benefits may not be higher than the predominant level.

pennsylvania
INSURANCE DEPARTMENT

# Example: Substantially All

| Services - OUTPT INN OTHER | Expected Claim $ | Co-pay | Co-insurance |
|---|---|---|---|
| Urgent Care | $1.20 PMPM | $50 | N |
| Surgery Facility | $45.20 PMPM | $65 | N |
| Therapeutics | $5.55 PMPM | N | 20% AFTER DED |
| Facility PT/ST/OT | $2.20 PMPM | $25 | N |
| Major Diagnostics | $6.04 PMPM | $50 | N |
| Surgery (including Scopic) | $2.04 PMPM | N | 20% AFTER DED |
| Prosthetics | $1.01 PMPM | N | 35% AFTER DED |
| Home Health | $1.96 PMPM | $50 | N |
| TOTALS: | $65.20 PMPM | $56.60 PMPM | $8.60 PMPM |
| | | 86.8% | 13.2% |

1. Sum the expected claims dollars to which a co-pay is applicable.
2. Divide by total expected claim dollars

Is the sum greater than 2/3?

1.20
45.20
2.20
6.04
\+ 1.96
----------
56.60
÷ 65.20
----------
86.8

# Example: Predominant

| Services - OUTPT INN OTHER | Expected Claim $ | Co-pay |
|---|---|---|
| Urgent Care | $10.00 PMPM | $50 |
| Surgery Facility | $20.20 PMPM | $65 |
| Therapeutics | $5.55 PMPM | N |
| Facility PT/ST/OT | $2.20 PMPM | $25 |
| Major Diagnostics | $16.00 PMPM | $50 |
| Surgery (including Scopic) | $2.04 PMPM | N |
| Prosthetics | $1.01 PMPM | N |
| Home Health | $3.20 PMPM | $50 |
| TOTALS: | 51.60 PMPM | |

1. Add expected claim dollars associated with each co-pay level.
2. Divide the total expected claim dollar amount for each level by the total expected claim dollars.
3. The predominant level must be greater than 50%.
4. In this case, MH/SUD co-pays could not be >$50.

| Co-pay levels | Expected Claim $ | % |
|---|---|---|
| $25 | $2.20 | 3.8% |
| $50 | $29.20 | 56.6% |
| $65 | $20.20 | 31.1% |

pennsylvania
INSURANCE DEPARTMENT

# Example: Substantially All

| Services - OUTPT INN OTHER | Expected Claim $ | Co-pay | Co-insurance |
|---|---|---|---|
| Urgent Care | $1.20 PMPM | $50 | N |
| Surgery Facility | $45.20 PMPM | $65 | N |
| Therapeutics | $5.55 PMPM | N | 20% AFTER DED |
| Facility PT/ST/OT | $2.20 PMPM | $25 | N |
| Major Diagnostics | $6.04 PMPM | $50 | N |
| Surgery (including Scopic) | $2.04 PMPM | N | 20% AFTER DED |
| Prosthetics | $1.01 PMPM | N | 35% AFTER DED |
| Home Health | $1.96 PMPM | $50 | N |
| TOTALS: | $65.20 PMPM | $56.60 PMPM | $8.60 PMPM |
| | | 86.8% | 13.2% |

1. Sum the expected claims dollars to which a co-ins is applicable.
2. Divide by total expected claim dollars

Is the sum greater than 2/3?

5.55
2.04
1.01
----------
8.60
÷ 65.20
----------
13.2

# Example: Predominant

| Services - OUTPT INN OTHER | Expected Claim $ | Co-insurance |
|---|---|---|
| Urgent Care | $5.51 PMPM | 20% |
| Surgery Facility | $10.02 PMPM | 20% |
| Therapeutics | $5.55 PMPM | N |
| Facility PT/ST/OT | $7.85 PMPM | 30% |
| Major Diagnostics | $25.34 PMPM | 10% |
| Surgery (including Scopic) | $2.04 PMPM | N |
| Prosthetics | $1.01 PMPM | N |
| Home Health | $5.18 PMPM | 30% |
| TOTALS: | 62.50 PMPM | |

1. Add expected claim dollars associated with each co-insurance level.
2. Divide the dollars associated with each co-insurance level by the total expected claim dollars.
3. The predominant level must be greater than 50%.***
4. In this case, MH/SUD co-pays could not be >10%.

| Co-ins levels | Expected Claim $ | % |
|---|---|---|
| 10% | $25.34 | 40.5% |
| 20% | $15.53 | 24.8% |
| 30% | $13.03 | 20.8% |

pennsylvania
INSURANCE DEPARTMENT

# Non-Quantitative Treatment Limitations

- Examples: network tier design, step therapy protocols, and medical management standards.
- NQTLs are non-numerical limits on the scope or duration of benefits for treatment.
- Warning signs include:
  - Blanket preauthorization requirements.
  - Progress requirements.
  - Geographical limitations.
  - Licensure requirements.

pennsylvania
INSURANCE DEPARTMENT

# NQTLs: How Do We Evaluate?

- Plans that provide MH/SUD and Med/Surg benefits may not apply NQTLs to MH/SUD benefits in any classification unless under the terms of the plan, *as written and in operation*, *any processes, strategies, evidentiary standards, or other factors* used in applying the NQTL to MH/SUD benefits in the classification are ***comparable to, and are applied no more stringently than***, the processes, strategies, evidentiary standards, or other facts used in applying the limitation with respect to the Med/Surg benefits in the classification.

pennsylvania
INSURANCE DEPARTMENT

# NQTLs: How Do We Evaluate?

- As written and in operation
  - An NQTL must be comparable both on paper and in practice.
  - For example, as written, periodic re-authorization for Med/Surg and MH/SUD benefits may be in parity.
  - However, if the re-authorizations are routinely denied for MH/SUD but always accepted for Med/Surg, there may be a parity violation in operation.
- Processes, strategies, evidentiary standards, or other factors
  - What sources did the plan consult when developing the NQTL?
  - Were the sources comparable for both MH/SUD and Med/Surg?
- Comparable to and applied no more stringently than
  - Is the NQTL for Med/Surg and MH/SUD equivalent in development and practice?
  - The standard is “equivalent” not “equal”.

pennsylvania
INSURANCE DEPARTMENT

# NQTLs: How Do We Evaluate?

- Compliance requires that the underlying standards supporting the NQTL are developed in comparable ways for Med/Surg and MH/SUD.
- Some questions to ask:
  - What sources are cited as justifying the limitation?
  - Are the sources comparable for MH/SUD and Med/Surg?
  - Is there still comparability all the way back to the genesis of the NQTL?

pennsylvania
INSURANCE DEPARTMENT

# NQTLs: Example 1 – Step Therapy

- Plan requires qualitative lab testing before reimbursing quantitative lab testing for MH/SUD claims.

- Questions to Ask:
  - Is the requirement comparable as written and in operation?
    - Does this or a similar requirement apply to Med/Surg claims as well?
    - Were Med/Surg claims denied based on this requirement?
  - What standards were consulted to develop the requirement?
  - With what stringency is the requirement applied?
    - Is it equivalent?

pennsylvania
INSURANCE DEPARTMENT

# NQTLs: Example 2 – Authorization / Concurrent Review

- For inpatient MH/SUD treatment, a patient is allotted 2 days and then 1-2 days per extension based on medical necessity.

- Some questions to ask:
  - Is there a similar extension request requirement for inpatient Med/Surg treatment?
  - If the requirement for Med/Surg is not the same, does the plan have documentation supporting the policy creating different standards?
  - Were comparable sources consulted in developing the requirements for the MH/SUD requirement and the Med/Surg requirement?
  - Is the company able to produce its documentation in a concise and well organized way?

pennsylvania
INSURANCE DEPARTMENT

# NQTLs: Example 3 – Prior Authorization

- A plan requires prior authorization for extended outpatient visits more than 45-50 minutes for MH/SUD treatment.
- Some questions to ask:
  - Is prior authorization required for Med/Surg outpatient visits?
  - Does the plan have documentation setting out how it developed the prior authorization requirement for outpatient MH/SUD treatment?
  - What documentation does the plan have?
    - Were similar sources used?
    - Can the company point to the specific standards on which it relied?

pennsylvania
INSURANCE DEPARTMENT

# NQTLs: Example 4 – Credentialing Standards

- Plan requires a provider to meet the highest licensing requirement related to supervised clinical experience under applicable State law in order to participate in the plan's provider network. State law requires behavior specialists providing mental health autism services to have 1000 hours of clinical experience. The State law does not require licensed physicians providing either mental health or med/surg autism services to have any particular clinical experience.
- Some questions to ask:
  - Are the credentialing requirements comparable?
  - Did the company apply comparable standards in determining the requirement?
  - How are the requirements comparable in operation?

pennsylvania
INSURANCE DEPARTMENT

# Who Can You Call If You Need Assistance?

**If you have individual, small group employer, or large group employer coverage:**
The Pennsylvania Insurance Department
Web: www.insurance.pa.gov
Phone: 1-877-881-6388 or 717-783-3898

**If you have employer self-insured coverage:**
The United States Department of Labor
Web: www.dol.gov/EBSA
Phone: 1-866-275-7922

**If you have Medicare coverage:**
Medicare
Web: www.medicare.gov
Phone: 1-800-MEDICARE

**If you have Pennsylvania Medical Assistance (Medicaid):**
The Pennsylvania Department of Human Services
Web: www.healthchoicespa.com
Phone: 1-866-550-4355

**If you have Children's Health Insurance Program (CHIP) coverage:**
Pennsylvania's Children's Health Insurance Program
Web: www.chipcoverspakids.com
Phone: 1-800-986-KIDS (5437)

# Mental Health Parity: Making It Work

# Questions?

The Pennsylvania Insurance Department

1326 Strawberry Square

Harrisburg, PA 17120

www.insurance.pa.gov