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Assessment #6b

Parity Implementation: A State Best Practices Guide

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MENTAL HEALTH & ADDICTION PARITY

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OVERVIEW

The purpose of parity is to equalize the treatment of mental health and addiction with other medical conditions. Based on a non-scientific survey of stakeholders from around the country, please find below sample best practices intended to help state mental health directors capitalize on provisions in the Mental Health Parity and Addiction Equity Act (MHPAEA) and relevant parity provisions under the Affordable Care Act (ACA).

Stakeholders included state officials, state trade group representatives, state consumer group representatives and other state advocates.

While recognizing that there is considerable variation from state to state, this guide is intended to illustrate best practices that other states can use as a guide for parity and ACA implementation and enforcement.

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EXAMPLES OF KEY BEST PRACTICES

As we will discuss in more details below, some of the key best practices stakeholders reported on included:

- ✓ **Convening a coalition of mental health and addiction consumer and provider organizations with a common agenda on MHPAEA on implementation**
- ✓ **Hosting parity forums on implementation and enforcement**
- ✓ **Developing a toolkit to educate providers, consumers and other stakeholders about MHAEA and the behavioral health components of the ACA**
- ✓ **Enacting state legislation to bring state law into compliance with federal law**
- ✓ **Advocating for annual MHPAEA audits of health plans**
- ✓ **Pairing local mental health and addiction consumer and provider organizations with a law school to assist with appealing denied claims**
- ✓ **Identifying sources of funding to assist with parity implementation and enforcement efforts**
- ✓ **Pursuing litigation on behalf of consumers and providers**

KEY BEST PRACTICES IN DETAIL

Best Practice: Work in a Coalition with Other Advocates

To help organize and advance efforts on state parity implementation, mental health and addiction consumer and provider stakeholders in Massachusetts, Colorado, Illinois, California, formed coalitions to work together on parity, often for the first time in some states. Some examples are below:

- Maryland advocates reported partnerships with other parity advocates have been one of the most useful resources for them as the laws have been implemented. Their state coalition includes organizations representing a wide array of constituencies ranging from the Catholic Charities Child and Family Services Division to the Maryland Nurses Association to several state affiliates of the National Alliance on Mental Illness. They also credited a small coalition for being successful in enacting two bills intended to allow Maryland to fully enforce parity.

  In terms of workflow, they said they created a large coalition and then a smaller workgroup from within the larger group to manage the day-to-day staffing of the coalition.

  They added that including organizations representing consumers in their coalition and using consumer stories to "put a face" on advocacy work has been invaluable.

- Connecticut also reported working in coalitions is essential to their advocacy efforts and said the coalition should include both mental health and addiction consumer and provider organizations because "**there is strength in numbers**." Additionally, a coalition comprised of advocacy organizations representing a variety of constituencies limits the abilities of separate groups to be pitted against each other.

- In Illinois, stakeholders credited a coalition with the successful enactment of a bill to align state law with the federal parity law.

Best Practice: Host parity forums on implementation

Stakeholders reported that hosting parity field hearings has been a successful strategy to raise awareness about parity, identify problems that require a legislative or regulatory remedy and engage stakeholders.

Advocates and policymakers can use this best practice to draw attention to remaining issues with parity implementation and enforcement in your state. Invite individuals and family members, providers, state agency officials, and state legislator champions to testify. In a difficult policy environment, focusing first on a specific population such as children/youth or veterans may help narrow the focus and limit controversy.

Examples of this best practice include:

- In 2007, former Congressmen Jim Ramstad (R-MI) and Patrick Kennedy (D-RI) held field hearings across the country prior to the introduction of MHPAEA.

  Those field hearings were part of the successful advocacy effort that led to the enactment of MHPAEA. The field hearings drew attention to the need for the parity law and testimony at the field hearings shaped the content of the statute. For example, consumer protection provisions such as parity for out-of-network benefits was included after family members and patients testified around the country about the lack of in-network mental health and addiction treatment services and the limits placed on plans for out-of-network behavioral health services that were not placed on out-of-network medical/surgical treatment services.

- In 2012 - 2013, with assistance of the Parity Implementation Coalition, state advocates and state agencies hosted parity field hearings around the country to drive the need for federal final parity regulations, and the state enforcement of parity laws.

  These field hearings were closely modeled after the 2007 field hearings Patrick Kennedy and Jim Ramstad convened prior to the introduction of MHPAEA. The field hearings generally consisted of 3 panels representing an array of stakeholders. At all of the field hearings patients and family members comprised a panel; other panelists ranged from providers, academic experts, law enforcement, state, to local and federal government officials.

Mrs. Illinois Lisa Sonnenberg testifying at the August 2012 Chicago field hearing

- In Connecticut, stakeholders reported that holding a parity field hearing ultimately brought their state agency additional dollars through the state legislature, which deemed them a behavioral health clearinghouse, as the parity field hearing garnered local and national media attention, thereby raising their profile and identifying them as a fundable resource. Additionally, in Connecticut, stakeholders prepared a report following the field hearing, which they said they were later able to cite during the legislative process and assisted with the enactment of state legislation.

Best Practice: Develop a toolkit to educate providers, consumers and other stakeholders about MHPAEA and the behavioral health components of the ACA

While the premise of MHPAEA is simple – equality between mental health and addiction treatment and medical/surgical treatment – implementation of the law has proven complicated.

Survey respondents reported that educating all stakeholders - consumers, providers, health plans operating in a state, state and local officials - about the law is critical to making the law's simple premise a reality. At a minimum, all stakeholders must be trained to identify potential parity violations. Absent such education, the changes to mental health and addiction treatment benefits the law requires are unlikely to be realized.

At least 2 models exist that states can look to as they develop their own toolkits:

1. The Parity Implementation Coalition has a toolkit on the law.

2. Through private grants, the University of Maryland Law School developed a parity resource guide for individuals, families, and providers. Maryland's guide is a particularly valuable model for states because it shows how to explain the interaction between the state and federal laws.

Surveyed stakeholders reported that online parity resources that can be used by advocates around the country with common messaging is invaluable for them, particularly when resources are limited:

- Colorado stakeholders said materials for individuals and families with mental health and substance use disorders that clearly define what parity is and provide them with instructions on where to go and what to do if they have a parity complaint would be a useful resource.
- Texas advocates reported that they are considering establishing a website similar to Maryland's.

However, one concern they raised was the cost associated with maintaining a website. One stakeholder advocated for the development and staffing of national websites that can be utilized by advocates across the country.

Best Practice: Enact state legislation to bring state law into compliance with federal law

Some states may have to enact legislation in order to bring their existing state parity statute into compliance with the federal law. This means that on a state by state basis, stakeholders must be aware of how their state laws interact with the federal parity law and advocate for enactment of state legislation, where necessary.

Surveyed stakeholders said one tool that would be useful to them to assist with this process would be state-by-state guidance on how individual state laws interface with MHPAEA.

Once stakeholders identify that state legislation is necessary, they must survey the climate of their state to understand the key players and messages that will be most effective for accomplishing the enactment of legislation. Survey responses from stakeholders in Connecticut and New York demonstrated the variability from state to state regarding the political environment for enactment of parity legislation. For example, in Connecticut the tragedy in Newtown spurred action by the legislature. In contrast, in New York, legislation (attached) was passed under more technical circumstances as Timothy's Law, the state mental health parity law enacted prior to the enactment of MHPAEA, excluded substance use disorders and the new legislation eliminated that exclusion.

Best Practice: Advocate for annual audits of health plans

Stakeholders reported that annual audits or market conduct surveys of plans to confirm parity compliance is essential to identifying non-compliance and creating incentives for full compliance with the law.

Some of the examples of this best practice include:

- Connecticut stakeholders reported that they learned that plan attestations of parity compliance alone are insufficient. The Department of Insurance or another state agency with jurisdiction must perform annual parity compliance audits and post results on a user friendly website. Connecticut is currently only requiring health plans to self-attest in an annual survey regarding compliance.
- New York stakeholders reported the Department of Insurance and Finance Regulations was conducting "secret shopper" surveillance to determine if plans were properly complying with the law when marketing the plans. The stakeholder reported that problems were found as part of this surveillance effort and $2.7 million in fines were levied on 15 health insurers that were not marketing the optional supplemental mental health benefit for small group plans.
- The Nebraska Department of Insurance developed a parity checklist for plans.
- Colorado stakeholders also reported the state is auditing plans for parity compliance.

Best Practice: Pair Local Advocacy Organizations with a Law School

A best practice reported by Maryland was to pair local advocacy organizations with a law school. Advocates reported that being able to tap into the skilled labor associated with law students was invaluable for pursuing denials of parity claims.

Best Practice: Identify Funding

Most, if not all, stakeholders will need to identify funding to assist staffing parity enforcement and implementation efforts. The stakeholders in Maryland and Connecticut provided examples of best practices for obtaining funding for parity advocacy work both within and outside of state government that allowed the law school to appeal denied claims for consumers and providers:

- In Maryland, a project was funded at the University of Maryland through private foundation grant dollars.
- In Connecticut, a fee levied on health insurers paid for the Office of the Healthcare Advocate, a state government office that handles all reported behavioral health appeals for individuals and families. The office also received federal Consumer Assistance Program funding through the Affordable Care Act and other state appropriations.

Best Practice: Pursue Litigation

Stakeholders reported that litigation may be necessary if parity compliance cannot be reached through other means. For example:

- In New York, the Attorney General has pursued cases against MVP, Cigna and, most recently, Emblem. Stakeholders should encourage state regulatory bodies to pursue parity compliance violations.
- In Connecticut, provider litigation is pending against Anthem/WellPoint.
- In California, Psych Appeal, a law firm specializing in behavioral health appeals and litigation, has brought successful suits on behalf of providers and consumers.