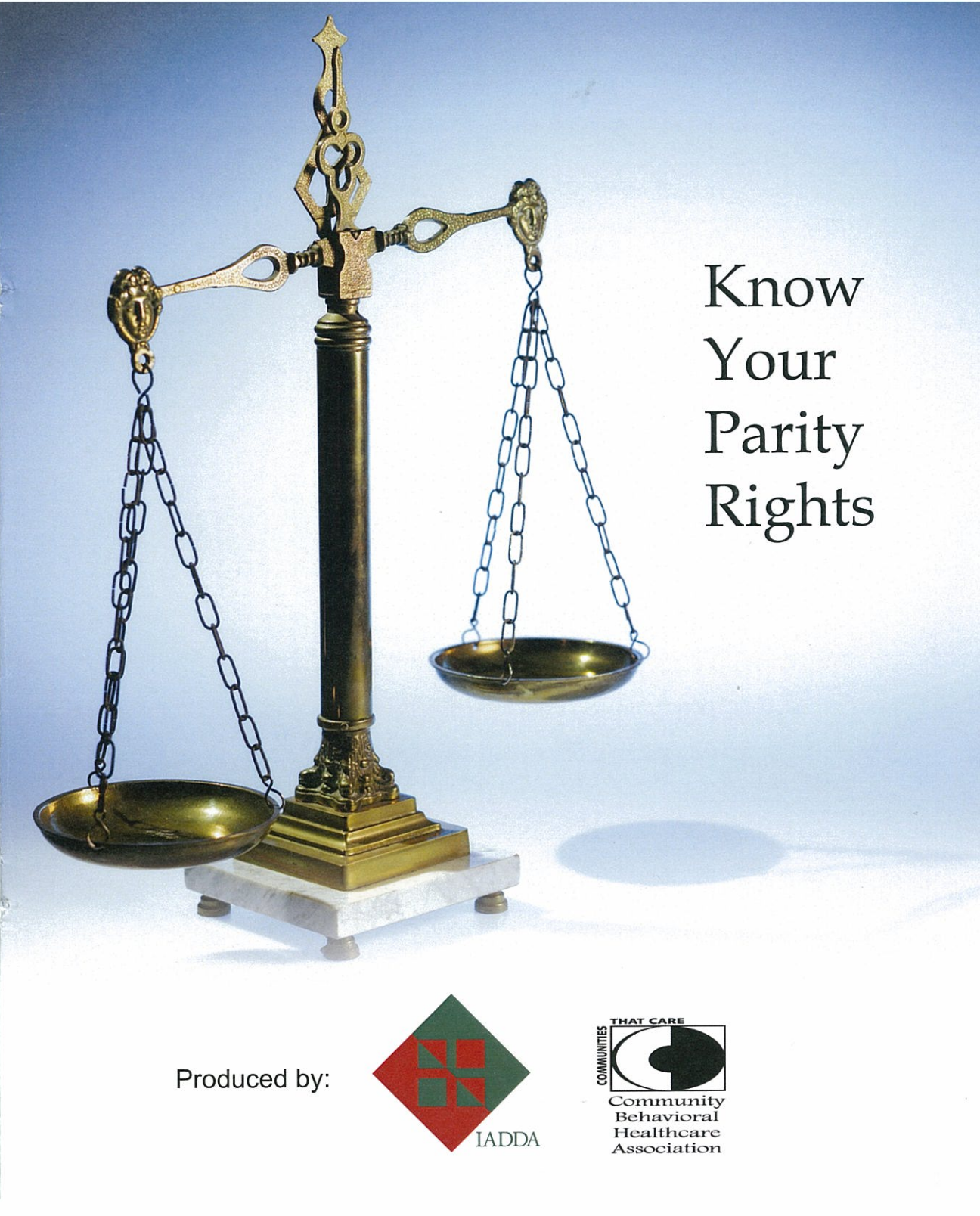

Know Your Parity Rights

Produced by:

IADDA

COMMUNITIES THAT CARE

Community Behavioral Healthcare Association

Federal Parity

1. What is mental health parity?

Mental health parity generally refers to the concept that insurers must offer the same coverage for mental health/substance use disorder (MH/SUD) treatment as they do for general medical and surgical treatment.

2. What federal laws govern mental health parity?

In 2008, the federal Wellstone-Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) was passed to address parity. Federal interim final regulations were published on February 2, 2010 to provide additional guidance on implementing the MHPAEA. No final regulations were published, but affected plans are required to comply with the interim final regulations. Together, MHPAEA and these regulations constitute the most significant federal parity laws and regulations (Federal Parity).

3. When were plans required to comply with Federal Parity?

Plans were required to comply with Federal Parity beginning in plan years starting on/after July 1, 2010 (i.e., if a plan year started Jan. 1, 2011, the plan had until that date to be compliant). All affected plans should be compliant now.

4. Does Federal Parity apply to all health plans?

No. Federal Parity applies to plans sponsored by private and public sector employers with 51 or more employees, including self-insured and fully insured arrangements. Federal Parity also applies to health insurance issuers who sell coverage to employers with 51 or more employees.

In addition, under The Patient Protection and Affordable Care Act, effective in 2014, all insurance plans sold inside and outside the state exchanges—available to individuals and smaller companies with 50 or fewer employees — will be required to comply with parity.

5. Does Federal Parity apply to Medicaid?

Medicaid managed care organizations, as well as state Children's Health Insurance Program (CHIP) plans, must comply with Federal Parity.

The Affordable Care Act also requires Medicaid benchmark and benchmark-equivalent plans (also known as Medicaid Alternative Benefit plans) to comply with Federal Parity, regardless of whether services are delivered in a managed care arrangement. All newly eligible Medicaid recipients will be enrolled in a benchmark or benchmark-equivalent plan.

6. What are examples of financial requirements?

- Deductibles
- Co-pays
- Co-insurance
- Out-of-pocket maximums

7. What are examples of treatment limitations?

- Annual, episode, lifetime, day and visit limits
- Medical management standards limiting benefits based on medical necessity, medical appropriateness, or whether treatment is experimental
- Formulary design
- First-fail or step therapy policies
- Standards for provider admission to participate in a network
- Plan methods for determining usual, customary and reasonable charges
- Exclusions based on failure to complete course of treatment

8. Can individual states have their own mental health parity laws?

Yes. Federal Parity creates a "floor" for states to build on as the states feel is appropriate. In other words, states can create additional restrictions on insurers through their own state parity laws. State laws are only preempted if they prevent the application of MHPAEA.

Illinois Parity Law

1. Does Illinois have a State Parity law?

Yes. Governor Quinn signed the Illinois Mental Health Parity Bill into law on August 18, 2011 (Illinois Parity). Illinois Parity brings Illinois into compliance with Federal Parity and establishes new requirements for affected health plans.

2. When do plans need to comply with Illinois Parity?

Every insurer that amends, delivers, issues, or renews a large (50 + employees) group policy of accident and health insurance in Illinois on and after August 18, 2011 must cover serious mental illness and substance use disorder treatments, as defined by the latest version of DSM. In addition, this coverage must comply with Illinois and Federal Parity. In addition, every insurer that amends, delivers, issues, or renews a group policy, *of any size group*, of accident and health insurance in Illinois on and after August 18, 2011 must *offer* mental health (MH) and substance use disorder (SUD) benefits to the employer of each group. It is then up to the employer (of a small group) to choose whether to cover some or all of the MH/SUD benefits. Any MH/SUD benefits that the employer *chooses* to cover must be covered at parity.

3. How exactly does Illinois Parity relate to Federal Parity?

Illinois Parity *exceeds* the requirements of Federal Parity.

For example, Federal Parity does not impose any positive requirement on insurers to cover substance use disorder benefits. Under Illinois Parity, however, employer plans covering 51 or more employees *must* cover treatment for substance use disorders.

4. Does Illinois Parity apply to individual insurance policies?

Before January 1, 2014:

Illinois Parity only applies to group health plans. Moreover, the coverage mandates (described below) in Illinois Parity do not apply to plans that cover 50 or fewer employees. However, ***HMO*** individual policies are required to provide the following benefits in accordance with 50 Illinois Administrative Code 5421.130(h):

- Ten days inpatient mental health care per year. Care in a day hospital, residential non-hospital or intensive outpatient mode may be substituted on a two-to-one basis for inpatient hospital services as deemed appropriate by the primary care physician.

- Twenty individual outpatient mental health care visits per enrollee per year, as appropriate for evaluation, short-term treatment and crisis intervention services. Group outpatient mental health care visits may be substituted on a two-to-one basis for individual mental health care visits as deemed appropriate by the primary care physician.

After January 1, 2014:

The Patient Protection and Affordable Care Act specifically extends Federal Parity to the small group and individual markets. All such plans must include coverage for mental health (MH) and substance use disorder (SUD) services, including behavioral health treatment, consistent with parity laws.

Because the Illinois benchmark plan covers these benefits, carriers will have to cover them or substitute in benefits of equal value within the category in a nondiscriminatory way.

5. What substance use disorders are covered by Illinois Parity?

Illinois Parity defines "substance use disorder" as the following disorders:

- Substance use disorders
- Substance dependence disorders
- Substance induced disorders

Before January 1, 2014:

Unless exempt, Illinois group plans employing 51 or more employees *must* cover treatment for all three of these diagnoses.

After January 1, 2014:

As mentioned above, the Patient Protection and Affordable Care Act specifically extends Federal Parity to the small group and individual markets. All such plans must include coverage for substance use disorder (SUD) services, consistent with parity laws.

In addition, because the Illinois benchmark plan covers these benefits, carriers will have to cover them or substitute in benefits of equal value within the category in a nondiscriminatory way.

6. Is there a mandate in Illinois Parity?

Yes. Under Illinois Parity, unless a plan is exempt (i.e., because the plan is self-insured or was written out-of-state), large employer plans (covering 51 or more employees) are *required* to cover the following for mental illness and substance use disorders in each calendar year:

- 45 days of inpatient treatment; *and*
- 60 visits for outpatient treatment, including group and individual outpatient treatment

7. I understand there are coverage mandates for inpatient and outpatient substance use disorder treatment under Illinois Parity, but are insurers required to cover *residential* treatment for substance use disorders?

Yes. To the extent insurers are required to cover inpatient substance use disorder treatment, they are also required to cover residential treatment. Illinois Parity states that for substance use disorders, treatment at a residential treatment center that is licensed by the Department of Public Health or the Department of Human Services, Division of Alcoholism and Substance Abuse *is considered inpatient treatment* for purposes of mandated coverage under Illinois Parity.

8. Can my insurer refuse to cover services rendered by certain professionals or facilities?

No. Illinois Parity provides that insurers must cover treatment by the licensed health care professional of the insured's choice – including any licensed or certified professional at a program licensed pursuant to the Illinois Alcoholism and Other Drug Abuse and Dependency Act provided that the disorder or condition treated is covered by the policy and the licensed health care professional is authorized to provide said services under the Illinois Statutes and in accordance with accepted principles of his profession.

9. Under Illinois Parity are insurers permitted to impose lifetime limits on the number of days of treatment covered?

No. An Illinois insurer may not include a lifetime limit on the number of days of inpatient treatment or the number of days of outpatient visits covered under the plan. Medication management visits do not count as outpatient visits for purposes of this calculation.

10. My insurer only covers treatments that are "medically necessary." How will medical necessity be determined for substance use disorders under Illinois Parity?

Under Illinois Parity, medical necessity determinations for substance use disorders *must* be made in accordance with appropriate placement criteria established by the American Society of Addiction Medicine (ASAM). These objective criteria match the intensity of service to severity of illness in a continuum of care, prescribe a treatment level that can accomplish the objectives safely, and provide a framework in which clinical outcomes and cost benefit may be assessed. Separate criteria are used for adults and children.

11. If ASAM criteria are the medical necessity criteria for substance use disorders, what are the medical necessity criteria for serious mental illness?

Serious mental illness is defined under Illinois Parity to include the following psychiatric illnesses defined in the most current edition of the Diagnostic and Statistical Manual (DSM) published by the American Psychiatric Association:

- schizophrenia,
- paranoid and other psychotic disorders,
- bipolar disorders (hypomanic, manic, depressive, and mixed),
- major depressive disorders (single episode or recurrent),
- schizoaffective disorders (bipolar or depressive),
- pervasive developmental disorders,
- obsessive-compulsive disorders,
- depression in children and adolescence,
- panic disorder,
- post-traumatic stress disorders (acute, chronic, or with delayed onset), and
- anorexia nervosa and bulimia nervosa.

Illinois Parity also provides that when making a determination of the medical necessity for a treatment modality for serious mental illness, an insurer must make the determination in a manner that is consistent with the manner used to make that determination with respect to other diseases or illnesses covered under the policy, including an appeals process.

Access to Care Questions under Parity

1. **I have already met my deductible for the year under my insurance plan. Now my insurer is telling me that I have to pay another deductible for my SUD treatment. Is this allowed?**

   No. Under Federal Parity and Illinois Parity, affected insurers may not require insureds to pay separate deductibles for medical/surgical treatment and MH/SUD treatment.

2. **Can my insurer refuse to cover my SUD treatment because I have not completed a lower level of treatment first?**

   No. Under Federal Parity and Illinois Parity, requiring participants to fail at one form of therapy before authorizing another level of therapy, or imposing a "first-fail policy," would be a prohibited treatment limitation (unless the same condition is imposed on medical/surgical benefits in the same classification – not likely).

3. **Can my insurer refuse to cover my substance use disorder treatment because I previously failed to complete a course of treatment?**

   No. Refusing to cover care because a patient has previously failed to complete a course of treatment would be a prohibited treatment limitation under Federal Parity and Illinois Parity (unless the same condition is imposed on medical/surgical benefits in the same classification – not likely).

4. **My insurer is refusing to cover my MH/SUD treatment because I have not exhausted all of my EAP benefits. Is this permissible?**

   No. Under Federal Parity and Illinois Parity, a plan cannot require a beneficiary to exhaust all of his/her EAP benefits before accessing the major medical program's MH/SUD.

5. **My insurer requires pre-authorization for ALL of my MH/SUD benefits. Is this permissible?**

   Maybe. Under Federal Parity, a plan cannot require pre-authorization for a MH/SUD benefit unless the plan requires pre-authorization for most of the medical/surgical benefits in the same classification. For example, a plan cannot require pre-authorization for in-network residential treatment for a SUD unless the plan also requires pre-authorization for in-network inpatient medical/surgical services. Remember, under Illinois Parity, residential treatment is considered inpatient treatment.

6. **What if my plan says it only covers hospital treatment, not residential treatment? What questions should I ask?**

   As described above, Illinois Parity requires most plans to cover a minimum of 45 days of inpatient treatment. Coverage for inpatient treatment is defined to include coverage for treatment in a licensed residential treatment center.

To determine whether your plan is exempt from this requirement, start by asking whether the plan was written in Illinois. If yes, confirm the plan covers 51 or more insureds, is not a self-insured plan and is not a Medicaid Managed Care Plan. If the plan answers yes to all of these questions, it is required by Illinois Parity to cover residential treatment for a SUD in a residential facility in the same manner that it covers hospital treatment.

If the answer to any of the questions above is no, the plan is not required to cover residential treatment based on the mandate in Illinois Parity. However, Federal Parity prohibits impermissible treatment limitations and you should ask whether your plan covers residential treatment for SUD in the same manner as inpatient treatment for medical/surgical disorders.

7. Do I have to go to detox first at a hospital to be approved for residential treatment?

Under Illinois Parity, residential treatment is considered inpatient treatment. Accordingly, a plan cannot impose a limitation on residential treatment for SUD that it does not impose on inpatient treatment for medical/surgical services. Since plans do not impose any requirement that is analogous to detox on insureds before they are admitted for inpatient treatment for medical/surgical services, plans cannot impose this requirement on insureds before they are admitted to residential treatment.

Even if Illinois Parity does not apply, Federal Parity prohibits plans from imposing conditions on access to residential treatment if they do not impose the same or similar conditions on access to inpatient treatment for medical/surgical disorders. Such a condition may constitute an impermissible treatment limitation.

8. What if my rights have been violated? Who do I complain to?

If you believe your rights have been violated, you should initiate an appeal to your health plan that complies with your plan's policies and procedures for appeals. If your plan is new (came into existence after March 23, 2010 or has made significant changes to the plan's costs of benefits on or after March 23, 2010), your health plan is required to provide you with an internal appeals process that meets certain minimum requirements set forth in the Affordable Care Act. The specific requirements can be viewed here:
http://www.healthcare.gov/law/features/rights/appealing-decisions/index.html.

If you are not satisfied with your health plan's decision after completing the plan's internal review process, you may file a Request for External Review with the Illinois Department of Insurance. For more information, please visit:
http://insurance.illinois.gov/ExternalReview/default.asp.

9. Should I notify the Illinois Department of Insurance of my complaint?

Yes. Complaints regarding fully insured plans that are written in Illinois (i.e., plans that are regulated by the Illinois Insurance Code) should be made to the Illinois Department of Insurance.

- If you are a consumer, a consumer complaint form can be completed online here: https://insurance.illinois.gov/applications/ComplaintForms/default.aspx.

- If you are a health care provider, you must complete a health care provider complaint form which can be found here: https://insurance.illinois.gov/applications/ComplaintForms/FormProvider.aspx.

9. What if my plan is self-insured? Who do I complain to?

Self-insured plans usually have an internal process for reviewing claim denials. Members should refer to their member handbook for proper appeal procedures.

Complaints regarding self-insured plans can also be directed to your member of Congress and/or the US Department of Labor.

10. Should I report the violation to my company?

If you work for a company, you may also want to consider reaching out to your Human Resources Department. Your company may offer assistance in dealing with your plan and it is important to make your company aware when the plan is not meeting your needs.

Although we do not respond to Parity violation complaints, IADDA is actively monitoring Parity violations that occur in Illinois. If you feel your Parity rights have been violated, please email IADDA at iadda@iadda.org including a summary of the situation. Please put "Parity Violation" in the subject line of your email. In addition, please refer to pages 7-8 for details on how to file a complaint with those federal and state agencies that address Parity violations. By submitting your information to IADDA, you agree that it may be used or disclosed by IADDA and will not be protected under HIPAA, 42 CFR Part 2, or other state or federal confidentiality laws.

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