

Mental Health and Substance Use Disorder Parity in the 2017 Texas Legislative Session

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During the 2017 Texas Regular Legislative Session, lawmakers passed an important bill related to mental health parity (House Bill 10). The new law, signed by Governor Abbott, aims to address ongoing challenges with mental health and substance use disorder “parity” protections. The goal is to ensure more insured Texans have equal access to both physical health care and care for mental health and substance use disorder needs. The new law takes effect September 1, 2017, though full implementation will take more time. This policy brief looks at why Texas needed HB 10, and how the new law will help improve access to care for people in need of mental health and substance use disorder services.

Parity: Definition, Need and History

In health care, “parity” describes the equal treatment of mental health conditions and substance use disorders in insurance plans, when compared to coverage for physical health care. When a plan has “parity” it means that health insurance coverage of mental health is equal to coverage for physical health. For example, if an insurer provides unlimited doctor visits for a condition like diabetes, then the insurer should also provide unlimited doctor’s visits for mental health conditions like depression or schizophrenia. It is important to note that “parity” requires *equal* coverage, not necessarily *good* or *comprehensive* coverage.

The idea behind mental health parity is simple: insurance companies should treat mental health and substance use disorder (MH/SUD) coverage the same way they treat coverage of medical and surgical (M/S) care. Coverage should be just as extensive and care should be just as accessible, whether there is a need for inpatient care to treat addiction or cancer.

There are many effective treatments that can help people with MH/SUD care needs achieve recovery. Simply having health insurance, whether public or private, is not necessarily sufficient when people are seeking access to needed treatment. People also need an adequate scope of benefits covered in their plan and access to care that is not inappropriately hindered by insurer policies and practices.

Before parity laws were enacted, people in need of MH/SUD care were often subject to discrimination in health insurance. If health plans included MH/SUD benefits at all, they were often more expensive for the insured person and more limited than M/S benefits, and accessing MH/SUD benefits often required overcoming more significant administrative barriers compared to M/S services.

In 2008, Congress passed the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) with the goal of fixing the disparities in health insurance coverage for MH/SUD services. However, MHPAEA as passed only applied to health plans offered by large employers (those with 51 or more employees). In 2010, the Affordable Care Act (ACA) expanded mental health parity protections to apply to most private health insurance plans. In 2016, federal rules extended federal parity protections to Medicaid Managed Care plans and the Children's Health Insurance Program (CHIP).

Key federal parity protections:

- Financial requirements – like deductibles and copayments, as well as treatment limitations like the number of office visits allowed – that apply to MH/SUD benefits cannot be more restrictive than those that apply to M/S benefits. These types of limits are also known as **quantitative treatment limitations** (QTLs).
- The type of treatment, treatment settings and duration of treatment covered by a health plan (determining medical necessity, limiting or excluding benefits, or the formulary design for prescription drugs that apply to MH/SUD benefits) cannot be more restrictive than those for M/S benefits. These treatment limitations are also known as **non-quantitative treatment limitations** (NQTLs).
- MH/SUD benefits cannot be subject to separate cost-sharing requirements or limitations that only apply to these benefits (and do not apply to M/S benefits).
- If a health plan provides for out-of-network M/S benefits it must provide the same access for MH/SUD benefits.
- Standards for medical necessity determinations and reasons for any denial of benefits relating to MH/SUD care must be disclosed to patients upon request.

Parity in Texas

The Texas Department of Insurance (TDI) adopted mental health parity rules in 2011 to implement MHPAEA as it was passed in 2008 by applying parity protection to only large employer plans and only for QTLs. TDI has not updated its parity rules since then to reflect the further evolution of federal parity protections in law and rules. As a result, TDI has only overseen MH/SUD parity for large employer plans and QTLs, and compliance with parity protections beyond the current state rules is enforced by the federal government.

Legislative Context

House Speaker Joe Straus appointed the House Select Committee on Mental Health in November 2015 with instructions to holistically study and make recommendations on issues affecting mental health, including substance use disorder, in Texas. The Speaker named Representative Four Price (R-Amarillo) as chair. The committee was tasked with exploring major components of mental health, including:

- the identification of mental health conditions in both children and adults;
- access to care; and
- the effective and timely delivery of services.

The committee was also asked to specifically “identify obstacles to adequate insurance coverage for mental health services.”

One of the Select Committee hearings focused on health coverage and parity protections of MH/SUD services by health insurance plans ([hearing video](#)). The committee heard testimony from Texans and service providers who believe that MH/SUD services are not being covered at parity under insurance plans. Texans reported having to pay cash for services or not receiving services, and providers reported frustration with the many administrative barriers they face to get needed services approved.

TDI provided testimony to the Select Committee with an overview of the state’s parity protection enforcement and regulatory authority. In the [presentation](#) TDI clarified that its authority is limited to only overseeing large employer plans and QTLs, and that any other plan or treatment limitation oversight (including NQTLs) falls to the federal government. Many parity complaints and suspected violations fall outside of the scope overseen by TDI. In its report to the 85th Legislature, the Select Committee recommended legislative action to give TDI specific authority to ensure all types of health plans regulated by the state, and any treatment limitations within those plans are subject to parity protections.

HB 10: The Mental Health and Substance Use Disorder Parity Bill

Representative Four Price authored HB 10 and Senator Judith Zaffirini (D-Laredo) sponsored the bill in the Senate. HB 10 addresses mental health and substance use disorder parity from four angles:

- 1. Regulation and enforcement:** TDI currently does not have authority to regulate or enforce parity protections beyond large employer plans and QTLs, yet a significant number of MH/SUD service consumer and provider complaints of violations fall outside this jurisdiction. HB 10 expands TDI’s authority to enforce the requirements of the federal parity law and regulations for all health insurance plans regulated by the state, making sure to include both quantitative treatment limitations, like visit limits and copays, and non-quantitative limitations, like reviews for medical necessity. TDI’s expanded authority to oversee mental health parity protections takes effect for plans issued or renewed on or after January 1, 2018.

- 2. Collecting Data:** Determining whether a plan is compliant with parity in QTLs is relatively straightforward. Visit limits and copayment amounts, for example, are easy to identify and compare. It is much more challenging to detect parity violations involving NQTLs. Consumers and providers of MH/SUD services continue to identify barriers in access to care from NQTLs, often encountering treatment limits or receiving service denials that they believe are in violation of parity protections. HB 10 calls for collecting data related to certain potential NQTLs to help all stakeholders better understand consumers' experiences with accessing health care. Having data in hand will help all parties—insurers, agencies, legislators, and other stakeholders—make more informed decisions as work continues. HB 10 charges TDI with collecting NQTL-related data for both MH/SUD services and M/S services from all health insurance plans regulated by the state. The Health and Human Services Commission (HHSC) is instructed to collect similar data for Medicaid Managed Care plans. Both agencies must release reports with their findings by September 1, 2018.
- 3. Stakeholder workgroup:** Successful parity protection implementation can only be achieved with a common understanding and communication across all the different stakeholder groups. HB 10 brings stakeholders together for dialog about mental health parity and cross-agency collaboration, using a workgroup to develop a Texas strategy and common understanding for successful compliance with parity. HHSC will staff and facilitate the stakeholder workgroup. Once the stakeholder work group is established, it will convene quarterly with a sunset date of September 1, 2021.
- 4. Consumer assistance:** Identifying an MH/SUD service denial as a parity violation is not easy, and when an individual needs access to services they are more interested in getting care than in filing the correct complaint with the correct state agency. HB 10 creates a central location with designated staff to help and improve consumer assistance to Texans who encounter obstacles when trying to access MH/SUD services, including consumers who encounter mental health parity violations. HHSC will create a new position (or positions) within the agency's Office of the Ombudsman to serve as the Behavioral Health Access to Care Ombudsman for both Medicaid-CHIP and for private insurance.

HB 10 Implementation

The implementation process for HB 10 will have several moving parts as the different components of the legislation take shape. As noted above, some of the pieces of the law fall under the authority of TDI, while others fall under the HHSC. The bill takes effect on September 1, 2017, but the process to fully implement the law will likely take a couple of years.

Conclusion

Mental health parity laws hold great promise in helping Texans access needed health care to achieve recovery, but that promise of parity has not yet been fully realized. HB 10 helps to address ongoing challenges with oversight, data collection, cross-agency collaboration, and consumer assistance. All of these pieces working together will help ensure that more Texans have equal access to mental health and other health care services through their health insurance plans.