



AMERICAN FOUNDATION FOR
Suicide Prevention



COMMUNITY CATALYST



Depression and Bipolar
Support Alliance



Model State Parity Legislation

The purpose of this model legislation is to facilitate implementation and enforcement of the Mental Health Parity and Addiction Equity Act (MHPAEA) and strengthen parity provisions within state law. Each section of this model legislation targets critical areas that must be addressed to ensure that coverage for mental health conditions and substance use disorders is equal to coverage for other medical conditions.

For further information or to have the model crafted to incorporate your state's terminology, appropriate sections of state code, and formatting, contact The Kennedy Forum Senior Policy Advisor, Tim Clement at tim@thekennedyforum.org.

(Words in italics indicate terms that will vary by state or dates that must be added)

TITLE I: Implementing and Enforcing the Federal Parity Law

Sec. 101. All *insurers* providing health coverage pursuant to *relevant sections of state law* must meet the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and any amendments to, and any federal guidance or regulations relevant to, that act, including 45 CFR 146.136, 45 CFR 147.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3)

Sec. 102. All *insurers* providing health coverage pursuant to *relevant sections of state law* must submit an annual report to the *regulatory agency* on or before *insert date* that contains the following information:

- a. A description of the process used to develop or select the medical necessity criteria for *mental health and substance use disorder* and the process used to develop or select the medical necessity criteria for medical and surgical benefits.
- b. Identification of all non-quantitative treatment limitations (NQTLs) that are applied to both *mental health and substance use disorder* benefits and medical and surgical benefits; there may be no separate NQTLs that apply to *mental health and substance use disorder* benefits but do not apply to medical and surgical benefits within any classification of benefits.
- c. The results of an analysis that demonstrates that for the medical necessity criteria described in item (a) and for each NQTL identified in item (b), as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to *mental health and substance use disorder* benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to medical and surgical benefits; at a minimum, the results of the analysis shall:

- i. Identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected
- ii. Identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL
- iii. Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, for *mental health and substance use disorder* benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, for medical and surgical benefits
- iv. Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for *mental health and substance use disorder* benefits are comparable to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits
- v. Disclose the specific findings and conclusions reached by the *insurer* that the results of the analyses above indicate that the *insurer* is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing regulations, which includes 45 CFR 146.136 and any other related federal regulations found in the Code of Federal Regulations.

Sec. 103. The *regulatory agency* shall implement and enforce applicable provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, and any amendments to, and any federal guidance or regulations relevant to, that act, including 45 CFR 146.136, 45 CFR 147.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3), and *insert relevant sections of state law*, which includes:

- a. Proactively ensuring compliance by *insurers* that sell individual and group *policies*.
- b. Evaluating all consumer or provider complaints regarding *mental health and substance use disorder* coverage for possible parity violations.
- c. Performing parity compliance *market conduct examinations* of *insurers* that sell individual and group *policies*, particularly *market conduct examinations* that focus on nonquantitative treatment limitations such as prior authorization, concurrent review, retrospective review, step-therapy, network admission standards, reimbursement rates, and geographic restrictions, among other nonquantitative treatment limitations.

- d. Requesting that *insurers* submit comparative analyses during the form review process demonstrating how they design and apply nonquantitative treatment limitations, both as written and in operation, for *mental health and substance use disorder* benefits as compared to how they design and apply nonquantitative treatment limitations, as written and in operation, for medical and surgical benefits.
- e. The *Commissioner* shall adopt rules, under *insert relevant section of state law*, as may be necessary to effectuate any provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of insurance.

Sec. 104. Not later than *insert date*, the *regulatory agency* shall issue a report to *relevant committees and/or elected officials* and provide an educational presentation to said *relevant committees and/or elected officials*. Such report and presentation shall:

- a. Cover the methodology the *regulatory agency* is using to check for compliance with the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), and any federal regulations or guidance relating to the compliance and oversight of MHPAEA.
- b. Cover the methodology the *regulatory agency* is using to check for compliance with *relevant section(s) of state law*.
- c. Identify *market conduct examinations* conducted or completed during the preceding 12-month period regarding compliance with parity in *mental health and substance use disorder* benefits under state and federal laws and summarize the results of such *market conduct examinations*.
- d. Detail any educational or corrective actions the *regulatory agency* has taken to ensure *insurer* compliance with MHPAEA and *relevant section(s) of state law*.
- e. The report must be written in non-technical, readily understandable language and shall be made available to the public by, among such other means as the *regulatory agency* finds appropriate, posting the report on the *regulatory agency's* website.

TITLE II: Facilitating Access to Opioid Recovery Medications

Sec. 201. Each *insurer* that provides both medical and surgical prescription drug benefits and *mental health or substance use disorder* prescription drug benefits shall not impose any prior authorization requirements on any prescription medication approved by the FDA for the treatment of *substance use disorders*.

Sec. 202. Each *insurer* that provides both medical and surgical prescription drug benefits and *mental health or substance use disorder* prescription drug benefits shall not impose any step therapy requirements before the *insurer* will authorize coverage for a prescription medication approved by the FDA for the treatment of *substance use disorders*.

Sec. 203. Each *insurer* that provides both medical and surgical prescription drug benefits and *mental health or substance use disorder* prescription drug benefits shall place all prescription medications approved by the FDA for the treatment of *substance use disorders* on the lowest tier of the drug formulary developed and maintained by the *insurer*.

Sec. 204. Each *insurer* that provides both medical and surgical prescription drug benefits and *mental health or substance use disorder* prescription drug benefits shall not exclude coverage for any prescription medication approved by the FDA for the treatment of *substance use disorders* and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.