

Testimony of

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Before the

United State House of Representatives Committee on Energy and Commerce;
Subcommittee on Health

An Examination of Federal Mental Health Parity Laws and Regulations

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Chairman Pitts, Ranking Member Green and members of the Committee, thank you for the opportunity to appear before you today as you examine the parity law and regulations. I am grateful that you have convened this hearing.

Background

My name is Matt Selig and I am the Executive Director of Health Law Advocates (HLA). HLA is a non-profit, public interest law firm founded in 1996 with a mission to improve access to health care for low-income Massachusetts residents. We provide pro bono legal assistance to low-income clients who have been denied needed health care. We improve access to care primarily by addressing our clients' health insurance problems, including denials of coverage. We represent many clients who have commercial insurance through an employer or individual policy.¹

HLA has made mental health and substance use disorders parity a priority for more than a decade. We try to improve access to mental health and substance use disorders care by making the protections of the parity laws, both federal and state, a reality for those we represent.

HLA represents approximately 70 clients each year who have been denied coverage for treatment of mental illness or a substance use disorder. This work gives us an up-close look at

¹ It is critical that we offer these services for lower-income clients with commercial insurance because, in Massachusetts, more than sixty percent of those with household income between 138% and 299% of the federal poverty level (FPL) have commercial health insurance. In addition, more than thirty percent of those at or below 138% of the FPL have commercial health insurance. LAURA SKOPEC ET AL., CTR. FOR HEALTH INFO. & ANALYSIS, FINDINGS FROM THE 2015 MASSACHUSETTS HEALTH INSURANCE SURVEY 11 fig.4 (Dec. 2015), *available at* <http://www.chiamass.gov/assets/docs/r/survey/mhis-2015/2015-MHIS.pdf>.

the problems consumers have when trying to access treatment. We also see how current parity laws and regulations are implemented and enforced. HLA works closely with other advocates across the country with a strong interest in parity, particularly those that represent consumers and health care providers. As a result, we have a broader perspective on the insurance problems people face when they need treatment and how the parity laws are (or are not) addressing these problems.

While we and others believe there is much more important work still needed to achieve true parity, I want to express HLA's appreciation to you, as well as state legislators and regulators across the country, who have made significant gains achieving parity already. We are particularly gratified that parity has been very much a bipartisan issue in Congress and that the same has been true in Massachusetts.

Difficult to Access Treatment

In Health Law Advocates' experience with clients, individuals have more difficulty accessing mental health and substance use care than other types of care because of barriers created by many insurers. Our assessment corresponds with the findings of the National Alliance on Mental Illness report issued last year, which found that twice as many families reported that a member of their family was denied coverage for mental health care as for "general medical care."

Our lawyers have identified certain types of mental health and substance use treatment that are particularly susceptible to coverage denials. I will mention some, but this is not meant to be exhaustive: residential treatment for substance use disorders, eating disorders, and other severe mental illnesses; applied behavior analysis for autism spectrum disorder; medication assisted treatment; and outpatient psychotherapy more than once per week.

HLA represents clients of all ages, but we devote particular resources to helping children access mental health and substance use disorder care. Over the years we have seen families struggle to obtain coverage especially for neuropsychological evaluations, “wraparound” community-based care, autism services and step-down care from acute treatment.

Barriers to Treatment

In our work, we have witnessed many different ways insurance practices frustrate treatment for our clients that appear to run counter to the parity laws. For example, we have seen: repeated early terminations of coverage for residential substance use treatment regardless of the severity of our clients’ symptoms; doctors being required to titrate medication assisted treatment as a condition of coverage even when mandatory titration is not the standard of care; treatment providers subject to onerous requirements to justify care; and termination of services arbitrarily based on age or alleged lack of parental participation.

These examples involve clients who are fortunate enough to have at least connected with a provider. We also represent clients of all ages, but particularly children, who have great difficulty finding a qualified and appropriate provider in their insurer’s network.

Recommended Solutions

In closing, I wish to offer a few recommendations to improve on current parity laws and their implementation. We strongly support H.R. 4276, Congressman Kennedy’s Behavioral Health Coverage Transparency Act. There is no question that we need greater disclosure of information by insurers. Detailed information about how plans ensure that mental health and substance use disorder claims are treated equitably and the standards utilized to evaluate the medical necessity

of treatment should be made public and written in language consumers can comprehend. There should also be greater enforcement, including enhanced penalties, of requirements to provide detailed information to members about the basis for coverage denials and comparative information on medical management of physical conditions. When HLA requests this information on behalf of our clients, we rarely receive it. This prevents us from determining whether our clients' parity rights have been violated. An explicit private right of action in the parity law would allow consumers to enforce this right themselves.

Consumers should also have access to an easy-to-use process for filing complaints when their right to equitable mental health and substance use disorder coverage has been violated. This would help consumers access the treatment they need and identify trends in non-compliance. The complaint process and consumers' rights under the parity laws should be broadly promoted by government agencies.

The federal government should also assist carriers with compliance by publicizing and continually updating (in a de-identified fashion) its adjudication of parity complaints to create an administrative "common law" for what constitutes a violation of the parity law. Neither insurers nor their members should have to guess what treatment limitation practices are illegal.

Finally, we recommend that federal and state agencies conduct random audits of health plans to ensure parity compliance. These inquiries and other reforms will serve as a check on self-reporting by plans and identify problem areas where federal or state enforcement is needed. That targeted enforcement will ensure that parity is not only the law of the land but a reality for people suffering with mental illness and addiction.

Thank you again very much for the opportunity to testify.