



July 10, 2020

Texas Department of Insurance
P.O. Box 149104
Austin, TX 78714-9104

Re: Draft Rule on Mental Health Parity

To Whom It May Concern:

Thank you for the opportunity to submit comments on the Texas Department of Insurance's (TDI) draft rule on mental health and addiction parity. The Kennedy Forum was founded by former Congressman Patrick J. Kennedy, author of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), in 2014 and is focused on improving the lives of individuals living with mental health and substance use conditions and promoting health equity for all.

The Kennedy Forum strongly supports the draft rule and urges TDI to finalize it with minor revisions. This rule is particularly vital given the ongoing COVID-19 pandemic, which is rapidly increasing mental health and addiction needs around the country. For example, in Texas, U.S. Census Bureau data from late June shows that over 40% of adults report symptoms of depressive or anxiety disorders.¹ Thus, finalizing this rule is not only an important step towards making the promise of MHPAEA in Texas a reality, but also ensuring coverage of medically necessary mental health services in response to COVID.

The Kennedy Forum offers the following comments on the draft rule's provisions.

Division 1

The Kennedy Forum supports inclusion of the text of the rules for MHPAEA within Division 1 (with minor adjustments). While insurers have had to comply with these requirements since 2013, it is nonetheless important to include them in state law. We were also glad to see the inclusion of federal requirements on source-of-injury exclusions. Such exclusions, which most commonly result in denials of medically necessary care following a suicide attempt, must not be allowed.

¹ U.S. Census Bureau, Household Pulse Survey, 2020, <https://www.cdc.gov/nchs/covid19/pulse/mental-health.htm>.

Division 2

The Kennedy Forum supports the Data Collection Reporting Form and believes TDI should keep all the data measures currently contained in the tool. We further believe the form could be made even stronger by incorporating the recommendations of the Meadows Mental Health Policy Institute, including adding an “Out-of-Network Use” worksheet and a “Network Provider Directory Accuracy” worksheet that would determine actual use, based on claims data, of provider directories.

Division 3

The Kennedy Forum strongly supports TDI’s approach in incorporating best-practices to determine insurer compliance with MHPAEA requirements. With regard to the “Compliance Analysis for Quantitative Parity” spreadsheet, we urge you to adopt this tool as is. The federal MHPAEA rules for quantitative treatment limitations (QTLs) and financial requirements (FRs) are very clear, with the MHPAEA implementing regulations specifying the calculations that must be done to determine compliance.

Specifically, MHPAEA prohibits a plan or issuer from imposing a QTL or FR applicable to mental health or substance use disorder (MH/SUD) benefits in any classification that is more restrictive than the predominant QTL or FR of that type that is applied to substantially all medical/surgical benefits in the same classification. The regulations specify that a QTL or FR is considered to apply to “substantially all” medical/surgical benefits if it applies to at least two-thirds of the medical/surgical benefits in the classification. The regulations further specify that, if the type of QTL or FR meets the substantially all test, the level of a QTL or FR that is considered the “predominant” level of that type is the level that applies to more than half of the medical/surgical benefits in that classification subject to the QTL or FR.

Given these rules, it is impossible for a plan to demonstrate compliance for a QTL or FR without calculating the level of the QTL or FR and to which benefits it applies. The “Compliance Analysis for Quantitative Parity” spreadsheet captures this critical information. By adopting this spreadsheet, TDI will ensure it captures all the needed information and avoid duplicative and time-consuming work of evaluating and validating a variety of tools developed internally by insurers.

With regard to the “Compliance Analysis for Nonquantitative Parity” spreadsheet, we strongly urge you to adopt this tool without any modifications. Its requirements are directly from the federal nonquantitative treatment limitation (NQTL) rule and follow a stepwise that is inherent in testing the federal NQTL rule’s requirements, which is why The Kennedy Forum, American Psychiatric Association, and the Parity Implementation Coalition put forward this six-step analysis in 2017. These requirements have been codified in a wide variety of states across the country: Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Maryland, New Jersey, Oklahoma, Tennessee, West Virginia, and Washington DC. Regulators in Mississippi, New York, Pennsylvania, Virginia, and Washington have also adopted these steps.

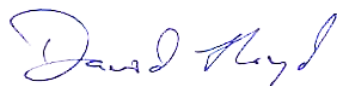
The U.S. Department of Labor (USDOL) has also adopted this basic stepwise approach in its MHPAEA Self-Compliance Tool in April 2018. And, in a recently released proposed revision to this Self-Compliance Tool, USDOL has maintained stepwise approach without any changes. As the Meadows Mental Health Policy Institute rightly notes, insurers' claims that this tool is not final are incorrect and deeply misleading. First, as noted, the current version is final and the proposed new version has no changes to the relevant sections. Second, given that the 21st Century Cures Act requires the tool to be updated biennially, under insurers' reasoning, the tool would never be final or in effect.

Ongoing violations of QTL, FR, and NQTL requirements make it all the more important for TDI to finalize the draft rule. Market conduct examinations across the country continue to routinely find violations. That this is the case with QTLs and FRs, which have a strict test, illustrate that oftentimes insurers are not conducting the necessary analysis for QTLs and FRs – let alone NQTLs. When patients are subject to impermissible QTLs, FRs, and NQTLs, it is not a mere inconvenience that is quickly rectified. Rather, the consequences can include bankruptcy, condition deterioration, disability, unemployment, homelessness, and even death. Of course, many of these costs are borne by taxpayers and society at large. Even if these impermissible barriers are later identified in a market conduct examination, it is often too late for the patient. Frequently, the only meaningful outcome for the patient is reimbursement of any out-of-pocket costs.

Claims by insurers that these requirements are too burdensome should respectfully be dismissed, particularly in light of the significant harm to patients when they experience illegal discrimination in mental health and addiction coverage. Insurers have had nearly seven years to comply with the final MHPAEA rule issued in November 2013. If demonstrating that compliance now is burdensome, it raises significant questions about insurers' compliance efforts to date.

Thank you again for the opportunity to submit comments. We thank TDI for this important draft rule. If you have questions, please do not hesitate to reach me at david@thekennedyforum.org.

Sincerely,

A handwritten signature in blue ink that reads "David Lloyd". The signature is written in a cursive, flowing style.

David Lloyd
Senior Policy Advisor