



February 8, 2022

The Honorable Sharon Bronson  
Chair, District 3  
Pima County Board of Supervisors  
33 N. Stone Ave., 11<sup>th</sup> Floor  
Tucson, AZ 85701

The Honorable Adelita Grijalva  
Vice Chair, District 5  
Pima County Board of Supervisors  
33 N. Stone Ave., 11<sup>th</sup> Floor  
Tucson, AZ 85701

The Honorable Rex Scott  
Supervisor, District 1  
Pima County Board of Supervisors  
33 N. Stone Ave., 11<sup>th</sup> Floor  
Tucson, AZ 85701

The Honorable Matt Heinz  
Supervisor, District 2  
Pima County Board of Supervisors  
33 N. Stone Ave., 11<sup>th</sup> Floor  
Tucson, AZ 85701

The Honorable Steve Christy  
Supervisor, District 4  
Pima County Board of Supervisors  
33 N. Stone Ave., 11<sup>th</sup> Floor  
Tucson, AZ 85701

**Re: Pima County's Opt Out of Federal Mental Health and Addiction Parity Requirements**

Dear Chair Bronson, Vice Chair Grijalva, and Supervisors Scott, Heinz, and Christy,

As national organizations dedicated to improving the lives of individuals with mental health and substance use disorders (MH/SUDs), we write to you about Pima County's regrettable decision to opt out of the requirements of the federal Mental Health Parity and Addiction Equity Act (Federal Parity Act), the landmark antidiscrimination law that requires equal coverage for these conditions.<sup>1</sup>

We have recently been made aware of a memorandum provided to the Pima County Board of Supervisors that makes claims about the supposed limited effect of Pima County's parity opt out. For the reasons described below, we strongly believe this memorandum's conclusions about the limited effect of the opt out are incorrect and urge you to end Pima County's opt out.

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<sup>1</sup> For a recent federal opt-out list, see: <https://www.cms.gov/files/document/hipaa-opt-outs.pdf>. Pima County is among an even smaller minority of plans in opting out of three other federal coverage requirements relating to mothers and newborns, reconstructive breast surgery after mastectomies, and dependent students on medically necessary leave of absences.

- **Plan Enrollees Have Been Stripped of Their Rights to Equal Coverage.** The memo makes it seem as if opting out of federal parity requirements has little impact on plan enrollees. This is untrue. Regardless of the provisions of Pima County’s plan policy, *individuals enrolled in Pima County’s plan have absolutely no rights under the Federal Parity Act.* If they believe that their coverage has been limited in a manner that would violate the Federal Parity Act, they have no ability to redress this injury. *Pima County has stripped its covered employees and family members of their federal rights under the most important anti-discrimination law governing mental health and addiction coverage.*
- **Memo Inadequately Covers Key Parity Act Provisions.** The memo does not fully describe the Federal Parity Act requirements. Of critical importance are the Federal Parity Act’s requirements for non-quantitative treatment limitations (NQTLs), which are non-numerical limits on the scope or direction of benefits for treatment (e.g. prior authorization and network admission standards). For each NQTL in each classification of care (e.g. in-network inpatient), the Federal Parity Act requires that any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits must be comparable to, and no more stringently applied than, those applied to medical/surgical benefits both *as written and in operation.*
- **Most Discriminatory Plan Elements Not Found in Plan Policy.** The memo emphasizes that *“Pima County’s health plan has always covered Mental Health and Addiction recovery services on par with, or in excess of, the Mental Health Parity Act and MHPAEA requirements”* (emphasis original). We believe that such a description represents a fundamental misunderstanding of the Federal Parity Act’s requirements, particularly with respect to NQTLs. It is impossible to determine parity compliance simply by looking at a plan’s covered benefits that are contained in the plan’s coverage documents. This is particularly true for determining compliance with regard to how an NQTL is applied in operation by the third-party administrator for a self-funded plan like Pima County’s.
- **Most Mental Health and Addiction Coverage Problems Are with Non-Quantitative Treatment Limitations.** The most profound and consequential barriers to mental health and addiction coverage occur in plans’ NQTLs (i.e. their managed care practices). While the covered MH/SUD benefits in a plan policy may look superficially compliant, deep inequities often exist in how benefits are administered in operation. *Pima County’s opt out from parity requirements removes any mechanism to determine whether its plan is ultimately providing equitable coverage in a manner consistent with the Federal Parity Act.*
- **Enrollees and Their Families Bear Burden of Being Stripped of Parity Rights.** Our organizations regularly help individuals and families who have been wrongly denied coverage due to discriminatory NQTLs, despite the services they seek being “covered benefits” under their plan. Using the Federal Parity Act to challenge these wrongful denials is frequently their only recourse to ensure coverage of lifesaving treatment for themselves or a family member. In such situations, Pima County has taken away any

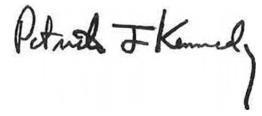
possibility of challenging parity violations. It is particularly disheartening that the memo, in an attempt to justify denying Pima County employees and their family members these important rights, cites “administrative and financial flexibility” and the desire “to be free of the burden of the reporting requirements and potentially costly federal audits.” In contrast, individuals denied needed mental health and addiction services due to non-compliant NQTLs, which are very common in plans nationwide, will likely bear significant health and financial burdens that often run into the tens of thousands of dollars. Given the high mortality rates for these illnesses, being unable to afford treatment can have devastating consequences.

- **Accountability Is Critical for Any Antidiscrimination Law.** Essentially, by opting out of federal parity requirements, Pima County wants to be free from regulatory oversight or giving plan enrollees the ability to challenge denials on the basis of parity. We cannot agree with the proposition that it is appropriate for a government entity to claim that, while it does not discriminate, it needs to opt into the right to discriminate. We can think of no other antidiscrimination law where such a position would be acceptable. It is also noteworthy that the overwhelming majority of self-funded non-federal government plans nationwide have not followed Pima County’s path in opting out. Thousands of other plans across the country have willingly accepted the “burden” of complying with federal parity requirements in order to improve mental health and addiction coverage for their employees and their families. Indeed, many of these plans welcome additional oversight of third-party administrators to ensure that they are upholding plan members’ rights under the Federal Parity Act.
- **First Responders and Public Workers Have Been Hard Hit by the Pandemic.** While the pandemic has harmed the mental health of communities nationwide, the effects on first responders and other public workers have been particularly dramatic. There have been large increases in stress, trauma, grief, and substance use, with corresponding increases in demand for mental health and substance use services. Pima County employees include nurses, public health professionals, and law enforcement personnel – all of whom have been particularly impacted. Additionally, youth mental health needs have recently skyrocketed, potentially affecting significant proportions of Pima County staff. To allow potential parity violations to go unchecked and to remove the ability of employees and their families to challenge denials on the basis of parity does not do justice to the sacrifices public employees have made during the pandemic.

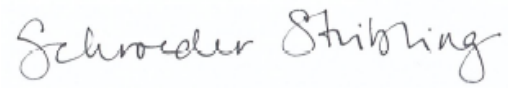
We would like to take Pima County at its word that it does not “intend to exclude or diminish the benefits being offered to employees or their dependents.” To turn this intention into a reality, Pima County should end its opt out to restore parity rights to its employees and their family members.

Thank you for your attention to this matter. If you have any questions, please contact David Lloyd, senior policy advisor at The Kennedy Forum, at [david@thekennedyforum.org](mailto:david@thekennedyforum.org).

Sincerely,

Handwritten signature of Patrick J. Kennedy in black ink.

Patrick J. Kennedy  
Former U.S. Representative (D-RI)  
Founder, The Kennedy Forum

Handwritten signature of Schroeder Stribling in black ink.

Schroeder Stribling  
President and CEO  
Mental Health America