



HEALTHY MINDS
POLICY INITIATIVE

Consumer Navigation of Insurance Parity

Potential pathways for providers and consumers in Oklahoma

SB 1718, passed in the 2020 Oklahoma Legislative session, requires insurers to treat illnesses of the brain the same way they treat illnesses of the body, with no greater restrictions on care. The bill aligns state law with the federal Mental Health Parity and Addiction Equity Act, signed by President George W. Bush in 2008. However, parity laws are difficult to implement and potential violations of parity laws are difficult or impossible to prove. Consumers and providers regularly report challenges in obtaining coverage, and current data indicate mental health parity is far from realized in Oklahoma. Other states can provide insight into how a navigation or investigation function within a state-level insurance regulatory agency can ensure appropriate enforcement of these laws.

Key points

- Mental health parity is the concept that mental health care is treated and funded fairly and equally compared to other medical care. Although parity is required for private insurance under state and federal law, data show it is far from realized in Oklahoma.
- It is difficult or impossible for consumers and providers to determine whether an insurer's actions are out of compliance, but consumers regularly report encountering hurdles and barriers to care.
- Models emerging in other states show how helping consumers navigate insurance hurdles or provide for grievance reporting can provide necessary accountability and improve access to care.

Background

Parity calls for insurers to provide fair and equal coverage of mental illness compared to other medical conditions. Historically, Oklahomans have struggled to access in-network behavioral health care, with provider reimbursements skewed against mental health. These low reimbursement rates restrict both access and availability of services.¹ Limits on in-network providers, delays in credentialing new providers, overly-intensive utilization-review processes, and lower reimbursement rates are common parity violations consumers and providers encounter.²

Frequently evolving obstacles to care burden consumers with bigger bills and longer waits.² Meanwhile, insurance consumers report difficulty working with their insurers to solve problems

or determining what recourse they have to appeal potential violations.³ Oklahomans must go out of network for mental health outpatient care nine times more often than for other health services, and seven times more often for inpatient care.¹ For children, the circumstances are even more dire, with disparities in out-of-network utilization being greater for children than for adults.¹

A lack of enforcement on the federal level leaves much of enforcing parity to the states.⁴ By mandating detailed reporting from insurance companies, such as was required in Oklahoma's SB 1718, states are in a better position to monitor compliance.⁵ Further methods of enforcement can include conducting investigations, the creation of an office to monitor compliance, a process for the reporting of potential violations and the ability to assist consumer navigation.² Oklahoma's statutory regulatory body for parity compliance and most private insurance issues is the Oklahoma Insurance Department.

Navigation and Investigation Functions

Programs to assist consumers in navigating complex issues and investigate credible grievances have emerged as a key tactic in ensuring mental health parity in multiple states. These include ombudsman programs, which are designed to investigate and help resolve potential parity violations, web portals assisting consumers in filing grievances, or simply requirements that insurance companies notify consumers of parity law and the appropriate places to file grievances. A common theme of these efforts is ensuring the neutrality of the investigative agency. In ombudsman offices, neutrality means the obligation of the ombudsman to act as an objective party in order to effectively and appropriately resolve complaints between consumers and insurers. Neutrality is central to the effectiveness of programs, and is included in the ombudsman legislation for Texas as well as the Colorado ombudsman office's agency values.^{6, 7, 10} Ensuring consumers are able to have an objective party independent from governmental agencies, insurance carriers, and behavioral health providers emphasizes the program goal to serve the citizens and guarantee patient rights are upheld.⁸ Oklahoma has the opportunity to glean knowledge from these states, particularly when examining the successes and challenges of other state programs to ensure a smooth implementation process.

The Substance Abuse and Mental Health Services Administration (SAMSHA) additionally provides a resource guide for states, listing five critical elements for successfully enforcing parity:

- ensuring open channels of communication
- standardizing materials
- creating templates, workbooks, and other tools
- implementing market conduct examinations and network adequacy assessments

- collaborating with multiple state and federal agencies, health insurance carriers, and stakeholder groups.⁹

Examples

Although behavioral health ombudsman offices differ in their funding sources and operation across the country, the roles and responsibilities remain consistent. Behavioral health ombudsman programs are designed to ensure that consumers have access to behavioral health services by answering questions about programs and providers, and assisting consumers with navigating their health plans and overcoming barriers to treatment. Patients' rights and empowerment are central to the values of ombudsman programs, with an emphasis on being an objective resource to resolve issues between consumers and insurers.¹⁰ The following states provide differing examples of how ombudsman programs can be implemented and operated:

Texas

In 2017, HB 10 established the Ombudsman for Behavioral Health (OBH) in the Texas Department of Medicaid to assist consumers regardless of insurance status navigate access to care for behavioral health or substance use disorder issues.¹¹ The office, which is connected to the Texas Department of Health and Human Services' larger ombudsman program, collects and publishes health insurer data relating to prior authorization utilization, denials, appeals and external reviews.¹² Consumers with questions or concerns can contact the ombudsman office through the online portal, phone, mail or fax.¹¹

Later, HB2595 (2021) mandated annual reporting on parity and implemented a parity complaint portal that allows for both reporting and tracking consumer complaints.¹³ The Texas behavioral health ombudsman office reports a marked rise in parity cases as more Texans learn more about patient rights and access to care.¹² Last year, OBH received nearly 600 inquiries, just under 700 complaints, and a handful of legislative referrals.¹⁴ Currently, the annual budget of the OBH is approximately \$300,000, which consists of both state tax revenue and federal grant funds.¹⁴ Texas allocates five positions to the OBH: three to assist patients at State (mental health) Hospitals and those receiving services through local mental health authorities, and two to assist consumers with parity concerns related to Medicaid or commercial health plans.¹⁴

New York

In New York, the ombudsman program is operated quite differently, and is known as the *Community Health Access to Addiction and Mental Healthcare Project (CHAMP)*.¹⁵ This resource is available to anyone with or without insurance seeking assistance in understanding their rights as a patient and navigating concerns with access to care and potential parity violations.¹⁶

CHAMP originated through the Mental Health and Substance Use Disorder Parity Reporting Act of 2018, with \$1.5 million appropriated for program implementation and coordination.¹⁶ Unlike the Texas and Colorado ombudsman offices with program delivery directly through the state agencies, New York's CHAMP is a joint program between the Office of Alcoholism and Substance Abuse Services and the New York State Office of Mental Health.¹⁶ Partnerships with 5 community-based organizations enable the daily operations of CHAMP in New York.¹⁶ New York state consumers seeking assistance can reach CHAMP representatives through their helpline or by email.¹⁷

Colorado

Colorado's HB 18-1357 (2018) created the Office of the Ombudsman for Behavioral Health Access.¹⁷ Much like Texas, Colorado's behavioral health ombudsman office assists consumers navigate their mental health care parity concerns and boosts access to care for both public and private insurance coverage.

Colorado consumers with questions or concerns can contact the office through phone or email, and the office maintains a web portal to assist consumer reporting.⁶ HB 18-1357 (2018) also mandates reporting by insurance companies on state and federal parity compliance. To fund the bill, the Colorado Legislature appropriated \$94,000 for the initial implementation.¹⁷ Currently, the Office of Behavioral Health Ombudsman of Colorado consists of two staff members.⁶

Parity Primer: A Brief Policy History

In 2008, President George W. Bush signed the Paul Wellstone and Pete Domenici Mental Health Parity Act (MHPAE) into law, aiming to guarantee that behavioral health and substance use treatments were covered equally to medical and surgical benefits.¹⁸ Two years later, the Affordable Care Act (ACA) (2010) categorized mental health and substance use treatment as part of "Essential Health Benefits," and prolonged federal parity protections.¹⁹ Showing the truly bipartisan nature of the issue, President Donald Trump's Opioid Commission later called for enhanced enforcement of parity as a key tactic against the opioid epidemic.²⁰

In 2019, The Oklahoma Attorney General's opioid commission endorsed parity transparency to help address the state's opioid crisis.²¹ The following year, the Oklahoma Legislature passed SB 1718 (2020), which allowed the state to enforce federal parity rules and regulations.²² Oklahoma's SB 1718 (2020) enshrined into state statute what was already federal law. This legislation to ensure the enforcement of parity laws and applies only to insurers regulated by state, excluding self-insured companies. SB 1718 allows for transparency and creates crucial data, ensuring compliance with existing law to actively reduce barriers to much-needed mental health treatment.

¹ Melek, S., Davenport, S., and Gray, T.J. (2019, November 19). Addiction and mental health vs. physical health: Widening disparities in network use and provider reimbursement. Milliman. <https://www.milliman.com/-/media/milliman/importedfiles/ektron/addictionandmentalhealthvsphysicalhealthwideningdisparitiesinnetworkuseandprovidereimbursement.ashx>

² Healthy Minds Policy Initiative (2020). Ensuring Parity in Oklahoma: Leveling the playing field for mental health. HMPI. <https://www.healthymindspolicy.org/parity/>

³ Kemp, A. (2020, March 1). Lack of Mental Health Parity Leaves Oklahoma Families Looking for Answers. <https://www.oklahoman.com/article/5656297/lack-of-mental-health-parity-leaves-oklahoma-families-looking-for-answers>

⁴ Melek SP, Davenport S. Recent Developments in Mental Health Parity. *Benefits Q.* 2017;33(1):23-27. PMID: 29465182. <https://pubmed.ncbi.nlm.nih.gov/29465182/>

⁵ Douglas, M., Wrenn, G., Bent-Weber, S., Tonti, L., Carneal, G., Keeton, T., Grillo, J. Rachel, S., Lloyd, D., Byrd, E., Miller, B., Lang, A., Manderscheid, R., Parks, J. (2018). Evaluating State Mental Health and Addiction Parity Laws: A Technical Report. The Kennedy Forum. <https://wellbeingtrust.org/wp-content/uploads/2019/06/evaluating-state-mental-health-report-wbt-for-web.pdf>

⁶ Colorado Behavioral Health Ombudsman (BhoCO) (2021). Mission and Values. BhoCO. <https://behavioralhealthombudsman.colorado.gov/missionvalues>

⁷ TEX. GOV'T CODE ANN. § 531.02251 (2018). https://texas.public.law/statutes/tex.gov%27t_code_section_531.02251

⁸ Office of the Behavioral Health Ombudsman of Colorado (2021). Annual Report FY 2020-2021. Office of the Behavioral Health Ombudsman of Colorado. <https://behavioralhealthombudsman.colorado.gov/sites/behavioralhealthombudsman/files/documents/2020%202021%20Annual%20Report.pdf>

⁹ Substance Abuse and Mental Health Services Administration. (2016). Approaches in Implementing the Mental Health Parity and Addiction Equity Act: Best Practices from the States (HHS Publication No. SMA-16-4983). Rockville, MD: U.S. Government Printing Office. <https://store.samhsa.gov/sites/default/files/d7/priv/sma16-4983.pdf>

¹⁰ New York Association of Psychiatric Rehabilitation Services (2018). NYS Behavioral Health Ombuds Program Releases New Flyer. NYAPRS. <https://www.nyaprs.org/e-news-bulletins/2018/11/21/nys-behavioral-health-ombuds-program-releases-new-flyer>

¹¹ TEX. GOV'T CODE ANN. § 531.02251 (2018). https://texas.public.law/statutes/tex.gov%27t_code_section_531.02251

¹² Texas Health and Human Services Department (2021). HHS Ombudsman Behavioral Health Help. Texas HHS. <https://www.hhs.texas.gov/about/your-rights/office-ombudsman/hhs-ombudsman-behavioral-health-help>

¹³ Texas Sections Subchapter D, 662.115, 1355.2571-2 (2021).

¹⁴ Jimmy Charney, Texas HHS (personal communication, December 7, 2021).

¹⁵ New York Office of Addiction Supports and Services (NY OASAS) (2019). CHAMP brochure. NY OASAS. <https://oasas.ny.gov/system/files/documents/2019/07/CHAMP-Brochure.pdf#:~:text=Legal%20assistance%20for%20insurance%20appeals,State%20Office%20of%20Mental%20Health.>

¹⁶ Sen. R.G. Orcutt (2018). S.1156-C NYS Mental Health and Substance Use Disorder Parity Reporting Act of 2018. New York State Senate. <https://www.nysenate.gov/legislation/bills/2017/S1156>

¹⁷ Rep. D. Michaelson Jenet, Sen. B. Gardner, Sen. A. Williams (2018). HB 18-1357. <https://leg.colorado.gov/bills/hb18-1357>

¹⁸ Centers for Medicare and Medicaid Services (n.d.). The Mental Health Parity and Addiction Equity Act (MHPAEA). CMS. https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/mhpaea_factsheet

¹⁹ Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010). <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf>

²⁰ Alemany, Jaqueline. White House Opioid Crisis Commission Releases Final Report (2017).

<https://www.cbsnews.com/news/white-house-opioid-crisis-commission-releases-final-report/>

²¹ Hunter, M. (2019). Oklahoma commission on opioid abuse final report. Oklahoma Attorney General's Office.

https://oag.ok.gov/sites/g/files/gmc766/f/documents/2020/opioid_report_2019_-_annual_report.pdf

²² Healthy Minds Policy Initiative (2020). Mental Health Parity Transparency and Accountability. SB 1718 by Sen. John Michael Montgomery, Haste and Rep. Jon Echols. HMPI. <https://www.healthymindspolicy.org/wp-content/uploads/2020/02/Parity-Info-Sheet-SB1718-2020.pdf>