



Mental Health Parity and Applied Behavior Analysis Insurance Coverage

Moderated by:
Lorri Unumb
Council of Autism Service Providers

Featured Speakers:

Kevin Costello Harvard Law School	Alison Roberts Harvard Law School and Harvard T.H. Chan School of Public Health
David Lloyd The Kennedy Forum	

1



Speaker Affiliations



Lorri Unumb
Council of Autism Service Providers



Kevin Costello
Harvard Law School -- Center for Health Law
and Policy Innovation



David Lloyd
The Kennedy Forum



Alison Roberts
Harvard Law School
T. H. Chan School of Public Health Class of 2022

2



The screenshot shows the CASP website's 'RECORDED WEBINARS' page. The top navigation bar includes 'ABOUT US', 'NEWS', 'MEMBERS', 'RESOURCES', 'EVENTS', 'CEU CENTER', and 'CONTACT'. A dropdown menu is open under 'EVENTS', with 'RECORDED WEBINARS' highlighted by a red arrow. The main content area features a large orange banner with the text: 'In partnership with ABA España, CASP presents the Spanish edition of ABA Practice Guidelines for Treatment of Autism Spectrum Disorder.' Below this is a 'LEARN MORE' button. The CASP logo and tagline 'The Council of Autism Service Providers' are in the top right corner.

3



The screenshot shows the CASP website's 'CEU CENTER' page. The top navigation bar includes 'ABOUT US', 'NEWS', 'MEMBERS', 'RESOURCES', 'EVENTS', 'CEU CENTER', 'CONTACT', and 'LOGIN/REGISTER'. The 'CEU CENTER' link is circled in red with a red arrow pointing to it. The main content area features a large image of a woman sitting on a ledge with a laptop. The text reads: 'CASP The Council of Autism Service Providers Online CEU Center. A repository of recorded CASP webinars offering Learning CEUs to BCBA and BCaBA certificants. To view our library of webinars and other educational material without receiving CEU, please return to the CASP website.' The ACE logo and the text 'CASP is a BACB Authorized Continuing Education (ACE) Provider' are in the bottom left corner. The CASP logo and tagline are in the top right corner.

4



Housekeeping

Please submit your questions and monitor for responses in the **Q&A box**

Please limit use of the **chat box** for comments

There are no CEUs for this webinar

5



**CENTER *for* HEALTH LAW
and POLICY INNOVATION**
HARVARD LAW SCHOOL

MENTAL HEALTH PARITY: TOOLS AND OPPORTUNITIES FOR AUTISM SERVICE PROVIDERS

Center for Health Law and Policy Innovation
Harvard Law School

The Kennedy Forum

October 28, 2021

6

MEET CHLPI AND THE KENNEDY FORUM



CENTER *for* HEALTH LAW
and POLICY INNOVATION
HARVARD LAW SCHOOL



THE
KENNEDY
FORUM

Center for Health Law and Policy Innovation

7

7

THE PROBLEM

Despite protections for people seeking behavioral healthcare, insurance plans often limit or deny coverage.

Center for Health Law and Policy Innovation

8

8

YOUR ROLE AS PROVIDERS

As providers you can...



Identify patterns you see in the system



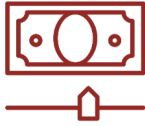
Provide information on non-quantitative treatment limit disclosure requests to CHLPI and The Kennedy Forum through our survey



Advocate for oversight with state, and federal policy makers with us!

WHAT IS MENTAL HEALTH PARITY?

BASICS OF MENTAL HEALTH PARITY



Mental health parity laws mean that insurers in covered plans may not limit mental and addiction coverage more than they limit medical and surgical coverage

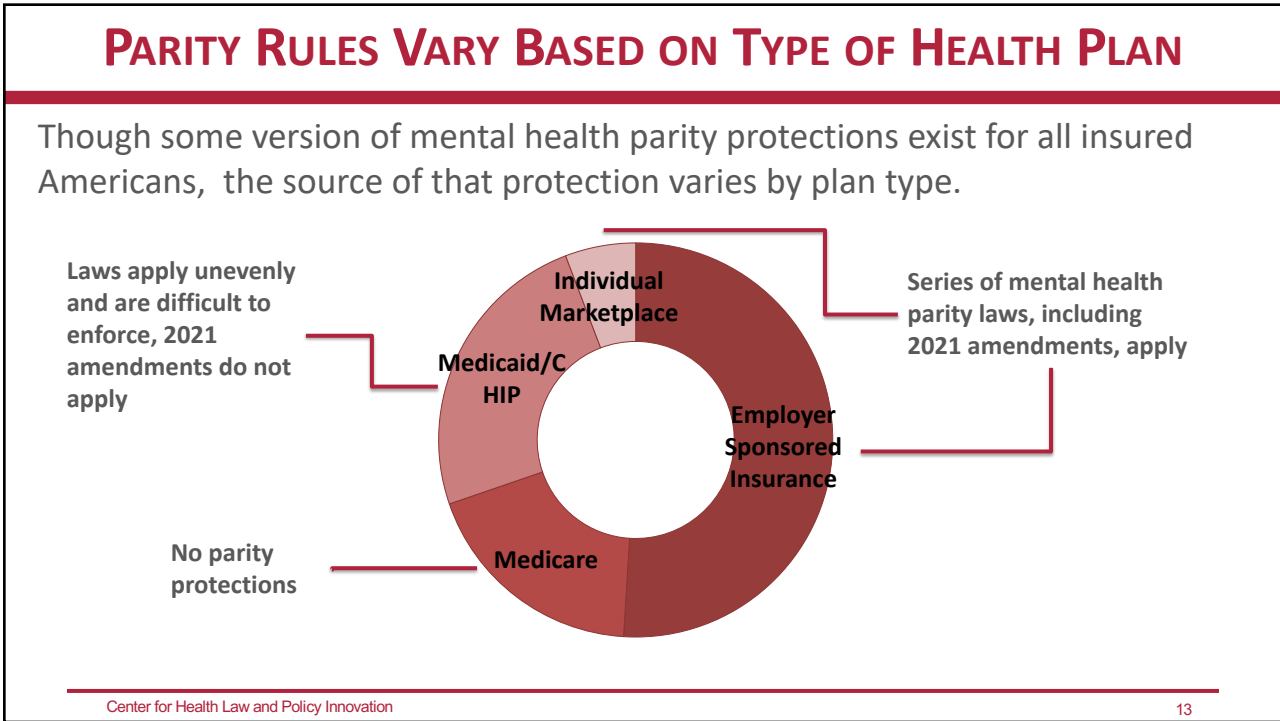


Because autism spectrum disorder is defined as a mental health condition, parity laws apply

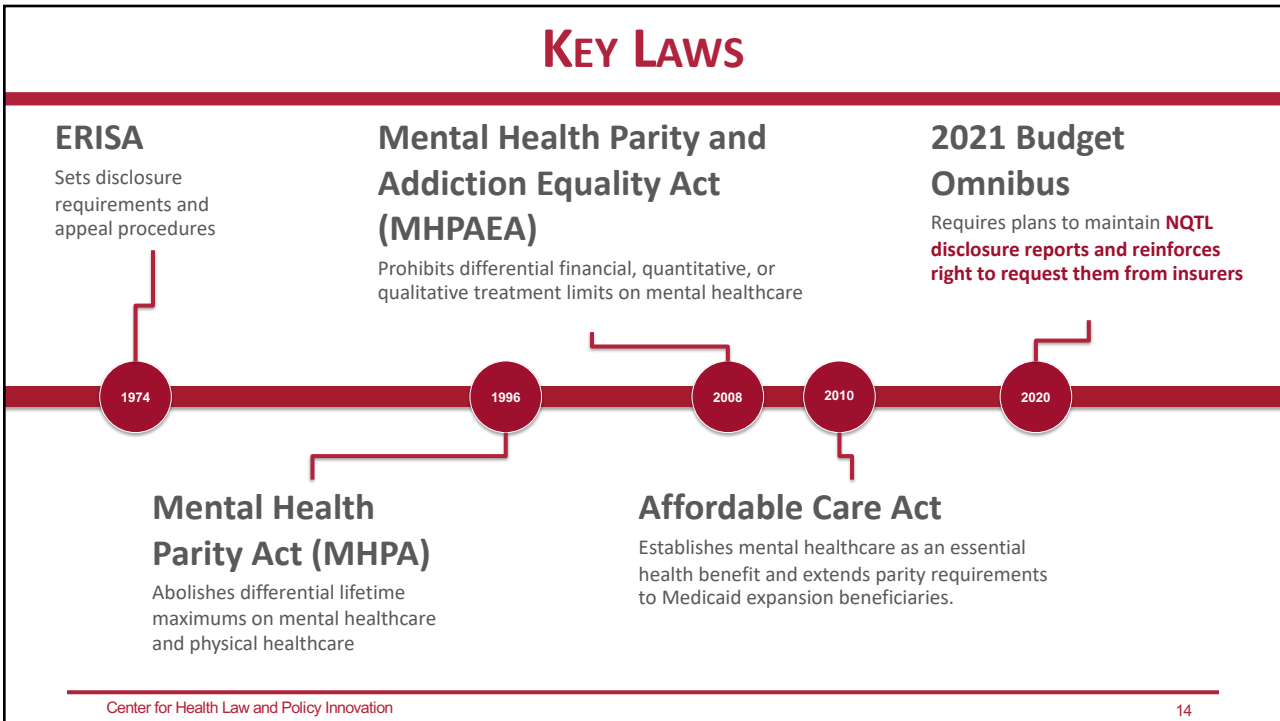
CURRENT PARITY REQUIREMENTS FOR COVERED PLANS

Private Insurers and Group Health Plans **must generally:**

- Not charge higher co-pays or out of pocket costs for mental health and addiction care than physical healthcare
- Not limit number of visits or number of days of mental health and addiction care more than they limit physical healthcare
- Not engage in managed care practices that are more restrictive for mental health and addiction care than for physical healthcare
- **Disclose their non-quantitative treatment limitations to patients or their authorized representatives upon request**




13



14


WHAT ARE NON-QUANTITATIVE TREATMENT LIMITS?



Financial Requirements

Financial limits involve the dollar amount of coverage. They include deductibles, co-insurance, or out-of-pocket-maximums. These are regulated separately from non-quantitative limitations.


Ex. A person with mental illness only has \$2000 worth of coverage per year but their physical health benefits are not limited.



Quantitative Limitations

Quantitative limits involve the amount of treatment given that are numerically expressed. They include annual, episode, and lifetime visit limits.

Ex. A person with depression can only visit a therapist 20 times per year



Non-Quantitative Treatment Limitations

Non-quantitative treatment limitations involve policies and practices that limit treatment that are not described numerically. Essentially everything that is **not** a QTL.

Ex. A person seeking inpatient therapy is only covered if they had two acute mental health episodes in the last six months

Center for Health Law and Policy Innovation
15

15

WHAT ARE NON-QUANTITATIVE TREATMENT LIMITS?

We are on the lookout for policies that limit mental health and addiction care coverage more than they limit of physical healthcare coverage

Example 1

A third party health plan administrator **refuses to cover ABA treatment** when it provides other behavioral health benefits and specifically says it covers autism.

From *Doe v. United Behavioral Health*

Example 2

A self-funded health plan **limits inpatient behavioral healthcare** with medical necessity criteria when it does not restrict similar medical benefits, like inpatient hospice care, with similar criteria.

From *M.S. v. Premera Blue Cross*

Center for Health Law and Policy Innovation
16

16

WHAT ARE NON-QUANTITATIVE TREATMENT LIMITS?

How will you know if your patient is denied coverage in violation of parity laws?

Health plans are often black boxes, making it difficult to define NQTLs, and many are not regularly performing required NQTL analysis.



Requesting NQTL Disclosure reports is the first step towards understanding NQTLs and challenging their application to your clients.

17

WHAT SHOULD NQTL DISCLOSURES INCLUDE?

- Analysis of **all** NQTLs imposed
- Description of limitations that the NQTL places on **all** related benefits
- Multiple other reporting requirements that constitute a **detailed, written, and reasoned explanation** of the NQTL's usage

For more information
visit our resource bank at
bit.ly/parity_resources

18

HOW DO PARITY LAWS SPECIFICALLY AFFECT YOUR PATIENTS?

19

HOW DOES THIS AFFECT YOU? ABA AND NQTLs

If plans cover mental health and substance use treatment, they should cover Applied Behavioral Analysis. If they do deny treatment it is likely for:



Medical Necessity

Is this treatment truly necessary based on the patient's condition?



Utilization Management

CHANGE THE LANGUAGE HERE

20

HOW DO PARITY LAWS AFFECT INSURANCE APPEALS?

- 1 Parity laws are a basis for appeal and can help make it successful
- 2 Appeals are an opportunity to request NQTL documentation
- 3 NQTL documentation, or a plan's failure to provide it, can help a patients' case in conversations with regulators or future litigation

YOUR PATIENTS' RIGHTS

For your patients, this means...

- Should not face restrictions on ABA coverage if there are not similar restrictions for medical and surgical benefits
- Should not be denied ABA if the plan provides other mental healthcare services specifically for people with autism
- Has a right to ask their health plan for disclosure of any NQTLs they have implemented

HERE'S WHAT YOU CAN DO!

OUR PARITY DISCLOSURE CAMPAIGN

CHLPI and The Kennedy Forum are collaborating on a nationwide campaign to increase NQTL disclosure and parity law enforcement.

We are asking providers to work with clients to request NQTL disclosures and share them with us so we can analyze the NQTLs health plans have in place.

Model Letter:

Health Plan or Plan Administrator
Address

Re: Request for Mental Health Parity Comparability Analysis via certified mail

To Whom It May Concern:

Because my health coverage is subject to the state and federal mental health parity protections, financial requirements or treatment limitations cannot be applied to mental health or substance use disorder benefits unless those limits are comparable to financial requirements or treatment limitations applied to medical and surgical benefits. Therefore, for the limitations or terms of the benefit plan related to _____ (type of denial/coverage) coverage, within thirty (30) calendar days from the date of receipt of this request, I request that the plan:

1. Provide the specific plan language regarding the limitation(s) and identify the medical/surgical and mental health or substance use disorder benefits to which it applies in the relevant benefit classification described in the regulations under the Mental Health Parity and Addiction Equity Act;
2. Identify the factors used in the development of the limitation(s) (examples of factors include, but are not limited to, excessive utilization, recent medical cost escalation, high variability in cost for each episode of care, and safety and effectiveness of treatment);
3. Identify the sources (including any processes, strategies, or evidentiary standards) used to evaluate the factors identified above;
4. Identify the methods and analysis used in the development of the limitation(s); and
5. Provide all evidence and documentation considered by the Plan to establish that the limitation(s) is applied no more stringently, as written and in operation, to mental health and substance use disorder benefits than to medical and surgical benefits.

If I do not receive a response to this letter, I will assume that the Plan has not undertaken the required NQTL analysis pursuant to 29 U.S.C. §1185a(a)(8).

Model letter to request parity compliance analyses

DENIAL CHECKLIST

If your client is denied coverage of the behavioral healthcare, including ABA, by their health plan here are the steps you should take to determine if the denial is the result of a mental health parity law violation.

- Appeal the Denial AND Request a Non-quantitative Treatment Limitation (NQTL) Disclosure using template letter**
- Complete [SurveyMonkey](#), even if no response**
- Periodically follow up on both your appeal and NQTL request**
- Send any NQTL reports you receive to CHLPI and The Kennedy Forum**

REGULAR REQUEST CHECKLIST

If a client has not been denied coverage but wants to be part of our campaign here are the steps you can take to request an NQTL

- Request a Non-quantitative Treatment Limitation (NQTL) Disclosure using template letter**
- Complete [SurveyMonkey](#), even if no response**
- Periodically follow up on your request**
- Send any NQTL reports you receive to CHLPI and the Kennedy Forum through our Survey Monkey Link**

IS THERE A RISK TO MY PATIENTS?

Potential Risks

- Retaliation or reprimand from employer if plan is self-funded.
- No response or refusal to provide analysis from health plan.



Mitigation

- Speak with patients before submitting NQTL requests to ensure they are comfortable with potential consequences. Connect with legal advocates if consequences are severe.
- Fill out SurveyMonkey so we can begin to track non-response across the country.

PATIENT CONVERSATION STARTERS

Tell patients about the new law that require maintenance of NQTL analyses and disclosure upon requests. See what they want to do!

Let your patients know their request can be part of a larger advocacy campaign to enforce parity laws and ensure access to mental healthcare across the country!

Make sure patients know that health plans may not comply with the request, but just asking can help their arguments for coverage in the future.

THANK YOU!
ANY QUESTIONS?