

# 3252



March 7, 2020

Via email to [briburke@pa.gov](mailto:briburke@pa.gov)

Bridget Burke, Regulatory Coordinator  
Pennsylvania Insurance Department  
1341 Strawberry Square  
Harrisburg, PA, 17120

Re: Proposed Rulemaking Relating to Mental Health Parity Analysis Documentation [31 PA. CODE CH. 168]

Dear Bridget,

Thank you to the Insurance Department (The Department) for proposing this important piece of rulemaking in the continued effort to ensure compliance with federal and state parity laws. URAC greatly appreciates the opportunity to provide comments about the need for uniformity in any state-wide mental health parity analysis and our role to support your efforts.

For background, URAC is an independent, non-profit national health care organization focused on improving the care delivered to patients through accreditation, certification, and measurement. Now in our 30<sup>th</sup> year, we offer more than two dozen accreditation and certification programs addressing numerous segments of the health care market including health plans, utilization management, pharmacy operations, drug benefit management, medical management, clinical integration, telehealth and mental health parity.

URAC has unique insight given our 30 years of history accrediting managed care organizations managing medical, behavioral health and pharmacy benefits. We have taken our three decades of knowledge and created our Mental Health and Substance Use Disorder Parity Program (Parity Program) to support employers, insurers and regulators efforts to comply with the Mental Health Parity and Addiction Equity Act (MHPAEA) and deliver better care to patients. As you consider how to best grapple with ensuring insurers operating in the Commonwealth comply with MHPAEA and accompanying state parity requirements through documented parity analyses, we encourage you to ensure that there is consistency in the analysis and disclosure documentation proposed in § 168.4. As detailed in our comments below, we look forward to working with you on this important issue. Please do not hesitate to contact our Health Policy Specialist, Brittany McCullough at [bmccullough@urac.org](mailto:bmccullough@urac.org) should you have any questions or want to discuss anything in detail.

Sincerely,

*Aaron Turner-Phifer*

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Vice President, Government Relations and Policy

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- America's Health Insurance Plans
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- American Association of Preferred Provider Organizations
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## Ensuring Compliance with Parity Laws

Congress, the U.S. Department of Labor (DoL), the U.S. Department of Health and Human Services (HHS), the National Association of Insurance Commissioners, and nearly every state in the country are keenly focused on increasing compliance with MHPAEA. URAC is supportive of these enforcement efforts as they are a vital component in increasing access to much needed behavioral healthcare. We believe that regulators must provide clear expectations and parameters for data reporting to ensure parity compliance is not an undue burden and barrier.

Given the complexity of the federal law and the myriad of federal and state regulations that preceded its passage, has resulted in confusion among patients, advocates, and health plans. This confusion has resulted in mental health and substance use disorder parity compliance being a barrier to better care for patients.

We believe that health plans must be held accountable to the provisions of MHPAEA and state requirements. We also believe the most effective way to evaluate compliance is for regulators to periodically evaluate compliance via market conduct examinations. However, absent clear guidance regarding data structure in advance of the start of any enrollment period the state will be unable to objectively hold plans to account for past performance. Further, it will be difficult for the state to compare compliance across plans thus limiting a state's ability to understand the impact to its broader population.

In addition, we want to make sure that health plans have reasonable expectations regarding what specific reporting requirements they will be subject to in hopes of not only minimizing their administrative burden but also ensuring the Department is gathering meaningful data to guide their oversight efforts. Given our role as an independent third-party health care validator and developer of the nations' first parity compliance accreditation, URAC is happy to work with the Department to support their efforts in any way we can.

## URAC's Recommended Approach

We know there is confusion amongst stakeholders regarding how to properly organize data to assess parity compliance and we are encouraged by the Department's proposal to require insurers to perform a comprehensive parity analysis as proposed in § 168.4(a) – (c). In response to the disparate approaches among health plans and behavioral health benefit administrators, URAC developed a framework for all stakeholders to organize data to comply with federal and state parity requirements.

URAC's framework includes an organized set of mental health and substance use disorder standards that health plans or benefit administrators must meet in order to comply with parity requirements. URAC's ParityManager™ enterprise software tool allows health plans and benefit administrators to efficiently use our framework to organize and analyze their own compliance. URAC's ParityManager™ also allows organizations to produce reports as

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evidence of their compliance efforts.

As you know, there has been guidance issued by DoL and HHS in addition to frameworks offered by other states to help plans perform parity analyses. While helpful, we have still seen major insurers and managed behavioral health organizations be subject to penalties due to their continued noncompliance with MHPAEA. While some organizations have blatantly not complied with parity requirements, others merely have failed to properly document their efforts to comply. Rather than leaving it up to insurers to perform their own parity analyses, we recommend that the Department clearly define key terminology and outline the specific elements that must be included in the proposed documented parity analysis that health plans must generate. Furthermore, our existing Parity Program can help augment your oversight and save precious resources.

The Department’s proposed parity analysis should focus on NQTLs as this area is the most nebulous in shared understanding and the most diverse in its implementation. Health plans should be required to complete a detailed analysis comparing NQTLs “as written” versus “in operation” including identifying all of the factors that were considered when determining whether or not to apply the limitation which mirrors the language proposed at § 168.4(b)(3) – (4). As part of the “in operation” comparative analysis, insurers should be required to perform operational audits and identify their operations measures for all NQTL types. This NQTL analysis should include documentation to support/assure the insurer applies NQTLs to mental health and substance use disorder (MH/SUD) benefits in a comparable and no more stringent manner than limitations that are applied to medical and surgical benefits. Additionally, insurers should submit policies and procedures associated with required disclosures relating to medical necessity criteria, denials, and parity compliance analyses for ERISA-governed third-party administrators. Lastly, they should be required to submit a copy of this disclosure documentation. This NQTL analysis is the foundation of ParityManager™ and is considered the most important functionality by insurers that are currently using the software.

Furthermore, the functionality of ParityManager™ allows for individuals across an insurer and their benefit administrators, if applicable, to upload information into a web-based platform and share documents across various departments to help facilitate seamless communication. Based on our experience in talking with insurers, having a central location to maintain documentation associated with their parity analysis is a critical component for success. ParityManager™ is also structured in a manner in which insurers are prompted to identify all required information to conduct a comprehensive parity analysis as it is mapped to federal parity regulations and accompanying guidance to allow for a true apples to apples comparison.

Less than a year after the launch of our ParityManager™ software, over a dozen commercial and Medicaid insurers are using the platform to organize their parity compliance. In fact, the state of Maryland is utilizing ParityManager™ to generate a report on the state’s parity compliance among their Medicaid insurers.

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As you continue to work on efforts to hold health insurers accountable for their efforts to comply with parity requirements, please do not hesitate to call on URAC as a resource. We would be happy to provide a demonstration of our ParityManager™ tool for the Department and work with you going forward to support your goals. In addition, we welcome the opportunity to provide our knowledge and expertise as it relates to parity and what we have seen in the market.

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