

Mental Health Parity under California and Federal Laws

December 2018, Publication #CM24.01

What is mental health parity?

Mental health parity means equal coverage for health care. Health care service plans cannot limit mental health care more than physical health care. For example, parity bans a cap on the number of outpatient mental health visits per year if there is no such cap for outpatient physical health care. In California, mental health parity is required by the California Mental Health Parity Act.ⁱ Federal laws also require mental health parity.ⁱⁱ

Mental Health Parity under California Laws

What does the California Mental Health Parity Act require?

Health care service plans or insurance plans must cover care for persons with “severe mental illnesses” as they do for other people with other health conditions or illnesses.

Does California parity law apply to all health plans?

No. It only applies to state regulated health care service plans and health insurance plans that are state regulated. This does not include “self-funded” plans that many large employers and unions have. It does not include federal

health care programs such as Medicare, Veterans Administration programs, or Medi-Cal. Federal parity laws may apply to some health plans or programs not covered by California parity laws, discussed further below.

Do California parity laws apply to individual and small employer health plans?

Yes, if the health care service plan or insurance plan is regulated by California. This includes individual health care service plans and small health care service group plans with less than 50 members.

What are “severe mental illnesses” under California law?

The California parity law includes a list of “severe mental illnesses”. This includes “serious emotional disturbances of a child,” as defined in the law. It also lists the following diagnoses as “severe mental illnesses”:

- a. Schizophrenia;
- b. Schizoaffective disorder;
- c. Bipolar disorder;
- d. Major depressive disorders;
- e. Panic disorder;
- f. Obsessive-compulsive disorder;
- g. Pervasive developmental disorder or autism;
- h. Anorexia nervosa; and
- i. Bulimia nervosa.

What terms and conditions must be equal under California parity laws?

The terms and conditions that must be equal for mental and physical health care include, but are not limited to:

- a. Maximum lifetime benefits;
- b. Copayments; and
- c. Deductibles.

Do California parity laws mandate mental health coverage?

Yes. The state laws require state regulated health care service plans and insurance plans to include the following mental health benefits:

- a. Outpatient services;
- b. Inpatient hospital services;
- c. Partial hospitalization services; and
- d. Prescription drugs, if the plan covers other prescriptions.

Do California parity laws mandate all needed care?

Yes. California laws require that state regulated health care service plans and insurance plans “provide coverage for...medically necessary treatment of severe mental illnesses.” The Ninth Circuit Court of Appeals found that the California parity laws required a health insurance plan to pay for residential treatment. (*Harlick v. Blue Shield of California*, 686 F.3d 699 (9th Cir. 2012), *cert. denied* 133 S.Ct. 1492 (2013)). The Second Court of Appeals affirmed that parity “requires treatment of mental illnesses sufficient to reach the same quality of care afforded physical illness.” (*Rea v. Blue Shield of California*, 226 Cal.App.4th 1209 (2014)).

Can I complain if I disagree with a health plan decision?

Yes. There are several complaint processes under state law.

- a. First, you can file a complaint with your health care plan or health insurance plan;
- b. If you disagree with a health care plan decision, or a Blue Cross or Blue Shield PPO (preferred provider organization) decision, you can

contact the California Department of Managed Health Care (DMHC) Help Center at: www.healthhelp.ca.gov or 888-466-2219;

c. If you disagree with a health insurance plan decision (other than a DMHC-regulated Blue Cross or Blue Shield PPO decision), you can contact the California Department of Insurance (DOI) at: 800-927-HELP (4357) or <http://www.insurance.ca.gov/01-consumers/101-help/index.cfm>

Mental Health Parity under Federal Laws

Do federal parity laws apply to all health plans?

No. Federal parity laws apply to the following types of California plans:

- a. Group health care service plans or health insurance plans with 50 or more members;
- b. Employer or union self-funded plans with 50 or more members;
- c. Medi-Cal managed care plans, but not county mental health plans;
- d. Medi-Cal Alternative Benefit Plans, which includes Affordable Care Act Medi-Cal expansion;
- e. Healthy Families plans;
- f. Covered California plans, and the same plans offered outside of Covered California.

There are separate parity rules for the Federal Employee Health Benefits (FEHB) Program, and for the Medicare program. Thus, federal parity laws may cover health plans not covered by California parity laws, and vice-versa.

What do federal parity laws require?

Federal laws apply if a plan covers one or more mental health or substance abuse conditions, including eating disorders. If so, federal rules ban both “quantitative” and “non-quantitative” limits.

What are “quantative limits”?

These limits refer to a number. This includes the following:

- a. How often one gets care;
- b. Number of visits;
- c. Days of treatment.

What are “non-quantative limits”?

These limits do not refer to a number. This includes the following:

- a. Restrictions on prescribing medications not on the plan’s approved drug formulary;
- b. Requirements that certain medications be tried first before other, more expensive, medications can be prescribed (“step therapy”);
- c. The utilization review process in which a request for medical services is compared to guidelines or criteria to determine service need.

Do the federal rules distinguish between types of mental health benefits?

Yes. The federal regulations require parity among six types of benefits. These include the following.

- a. Inpatient, in-network;
- b. Inpatient, out-of-network;
- c. Outpatient, in-network;
- d. Outpatient, out-of-network;
- e. Emergency care; and
- f. Prescription drugs.

Federal rules generally require parity within these benefit types. For example, if a plan has an inpatient co-pay, it should be the same for medical and mental health or substance use benefits.

In addition, the Ninth Circuit Court of Appeals recently held that a health plan subject to federal parity laws could not deny reimbursement for room and board at mental health residential treatment facilities if that plan reimbursed for room and board at licensed skilled nursing facilities. (*Danny P. v. Catholic Health Initiatives*, 891 F.3d 1155, 1160 (9th Cir. 2018)).

Do federal parity laws define inpatient, outpatient or emergency care?

No. Plans define these terms, which may be different from plan to plan. Federal rules say definitions must be consistent with generally recognized standards of medical practice. This means that a standard must be generally accepted in the relevant medical community. State laws or guidelines may define these terms. A plan must apply the terms uniformly for both medical/surgical benefits and mental health or substance use benefits.

Do federal parity laws require rehabilitation services?

Evidence-based care for “severe and persistent mental illnesses”ⁱⁱⁱ may require prolonged “treatment that consists of pharmacotherapy, supportive counseling and **often rehabilitation services.**” (Federal Register, Vol. 75, No. 21 Feb. 2, 2010, at 5422 (emphasis added)). Rehabilitation services are one of the required benefits under the Affordable Care Act (ACA). So plans may need to provide rehabilitative mental health services under the ACA. In addition, California parity laws have been interpreted to require the provision of all medically necessary care, which would include rehabilitative mental health services.

Is there a complaint process under federal parity laws?

Yes, you can contact the following government agencies:

- a. For self-funded plans provided by private employers or by unions:
U.S. Department of Labor at: 1-866-444-3272, or
<https://www.askebsa.dol.gov/WebIntake/Home.aspx>;

- b. For self-funded plans provided by state and local governments and churches: U.S. Department of Health & Human Services at: 1-877-267-2323, ext. 61565 or email phig@cms.hhs.gov.
- c. For health care service plans or health insurance plans: The state agencies listed previously.
- d. For Federal Employee Health Benefits (FEHB) Program plans, follow the plan appeal procedures and contact the Office of Personnel Management (OPM). For more information see: <http://www.opm.gov/healthcare-insurance/contact-healthcare-insurance/>.

Comparison of California & Federal Mental Health Parity Laws

When did mental health parity laws begin?

The federal Mental Health Parity Act began in 1996. This expanded under the Wellstone – Domenici Mental Health Parity and Addiction Equity Act in 2008. The California Mental Health Parity Act passed in 1999 and provided leadership in mandating coverage for serious mental health conditions.

How do federal and California parity compare?

Federal parity laws generally cover health plans with 50 or more members. But California laws apply to all state regulated plans.

Do California and federal parity laws differ in other ways?

Yes. California law requires parity for specified mental health conditions. Federal law applies only if a plan covers one or more mental health or substance use conditions. If they apply, federal rules ban both “quantitative” and “non-quantitative” limits.

Is care coordination needed for non-medical services?

Yes. Individuals with mental health disabilities may need support services. A California mental health parity oversight agency reported that this could include:

- a. Income support;
- b. Job training;
- c. Housing; and
- d. Help with daily life.

The California Department of Managed Health Care requires plans to:

- a. Monitor what people receive across the health care network;
- b. Identify people who could benefit from case management; and
- c. Help people get support outside of the plan's benefits.^{iv}

Where can I call for further information?

You could contact your health care service plan for more information. You could also contact Disability Rights California at: 1-800-776-5746.

We want to hear from you! After reading this fact sheet please take this short survey and give us your feedback.

English version: <http://goo.gl/forms/eiqqQ1GRfd>

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <https://www.disabilityrightsca.org/pod/list-of-funding-grants-and-contracts>.

The California Mental Health Services Authority (CalMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California’s diverse communities.

ⁱ See California Insurance Code § 10144.5; California Health & Safety Code § 1374.72.

ⁱⁱ See the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, Public Law 110-343; 26 C.F.R. § 54.9812.1T; 29 C.F.R. § 2590.712; 45 C.F.R. § 146.136.

ⁱⁱⁱ The legal terms referenced herein reflect the language used under the applicable law, and do not necessary mean that Disability Rights California or the Stigma and Discrimination Reduction project endorses the use of such terminology, which may perpetuate stigma.

^{iv} See DMHC, “Mental Health Parity Focused Survey Final Report Blue Cross of California, Inc.” (11/22/05), p.15.



WELLNESS • RECOVERY • RESILIENCE

