Model State Parity Legislation

The purpose of this model legislation is to facilitate implementation and enforcement of the Mental Health Parity and Addiction Equity Act (MHPAEA) and strengthen parity provisions within state law. Each title of this model legislation targets critical areas that must be addressed to ensure that coverage for mental health conditions and substance use disorders is equal to coverage for other medical conditions.

The titles of this bill are as follows:

Title I—Implementing and Enforcing the Federal Parity Law
Title II—Clearly Defining Mental Health and Substance Use Disorders
Title III—Ending Unequal Treatment Limitations
Title IV—Extending State Parity Protections to Medicaid
Title V—Consumer and Provider Education
Title VI—Solutions for the Opioid Crisis

These titles represent a basic approach to enhancing parity implementation and can be tailored and adjusted for the needs of any state, including insertion of state-specific terminology and relevant sections of state law (to request and obtain tailored versions, contact ParityTrack Policy Director, Tim Clement at tim@paritytrack.org).

(Words in italics indicate terms that will vary by state or dates that must be added)

TITLE I: Implementing and Enforcing the Federal Parity Law

Sec. 101. All *insurers* providing health coverage pursuant to *relevant sections of state law* must meet the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. 18031(j), and any amendments to, and federal guidance or regulations issued under, those acts, including 45 CFR 146.136, 45 CFR 147.136, 45 CFR 147.160 and 45 CFR 156.115(a)(3).

Sec. 102. All *insurers* providing health coverage pursuant to *relevant sections of state law* must submit an annual report to the *regulatory agency* on or before *insert date* that contains the following information:

a. The frequency with which the *insurer* required prior authorization for all prescribed procedures, services, or medications for *mental health and substance use disorder* benefits during the previous calendar year and the frequency with which the *insurer* required prior authorization for all prescribed procedures, services, or medications for medical and surgical benefits during the previous calendar year; *insurers* must submit this information separately for inpatient in-network benefits, inpatient out-of-network benefits, outpatient in-network benefits, outpatient out-of-network benefits, emergency care benefits, and prescription drug benefits; frequency shall be expressed as a percentage, with total prescribed procedures, services, or medications within each classification of

benefits as the denominator and the overall number of times prior authorization was required for any prescribed procedures, services, or medications within each corresponding classification of benefits as the numerator.

b. A description of the process used to develop or select the medical necessity criteria for *mental health* benefits*,* the process used to develop or select the medical necessity criteria for *substance use disorder* benefits, and the process used to develop or select the medical necessity criteria for medical and surgical benefits.

c. Identification of all non-quantitative treatment limitations (NQTLs) that are applied to both *mental health and substance use disorder* benefits and medical and surgical benefits; there may be no separate NQTLs that apply to *mental health and substance use disorder* benefits but do not apply to medical and surgical benefits within any classification of benefits.

d. The results of an analysis that demonstrates that for the medical necessity criteria described in item (b) and for each NQTL identified in item (c), as written and in operation, the processes, strategies, evidentiary standards, or other factors used to apply the medical necessity criteria and each NQTL to *mental health and substance use disorder* benefits are comparable to, and are applied no more stringently than the processes, strategies, evidentiary standards, or other factors used to apply the medical necessity criteria and each NQTL, as written and in operation, to medical and surgical benefits; at a minimum, the results of the analysis shall:

    i. Identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected

    ii. Identify and define the specific evidentiary standards used to define the factors and any other evidentiary standards relied upon in designing each NQTL

    iii. Identify and describe the methods and analyses used, including the results of the analyses, to determine that the processes and strategies used to design each NQTL as written for *mental health substance use disorder* benefits are comparable to and no more stringent than the processes and strategies used to design each NQTL as written for medical and surgical benefits

    iv. Identify and describe the methods and analyses used, including the results of the analyses, to the determine that processes and strategies used to apply each NQTL in operation for *mental health and substance use disorder* benefits are comparable to and no more stringent than the processes or strategies used to apply each NQTL in operation for medical and surgical benefits

    v. Disclose the specific findings and conclusions reached by the *plan or issuer* that the results of the analyses above indicate that the *plan or issuer* is in compliance with this section and the Mental

Health Parity and Addiction Equity Act of 2008 and its implementing regulations, which includes 45 CFR 146.136 and any other relevant current or future regulations.

e. The rates of and reasons for denial of claims for inpatient in-network, inpatient out-of-network, outpatient in-network, outpatient out-of-network, prescription drugs, and emergency care *mental health* services during the previous calendar year compared to the rates of and reasons for denial of claims in those same classifications of benefits for medical and surgical services during the previous calendar year.
f. The rates of and reasons for denial of claims for inpatient in-network, inpatient out-of-network, outpatient in-network, outpatient out-of-network, prescription drugs, and emergency care *substance use disorder* services during the previous calendar year compared to the rates of and reasons for denial of claims in those same classifications of benefits for medical and surgical services during the previous calendar year.
g. A certification signed by the *insurer's* chief executive officer and chief medical officer that states that the *insurer* has completed a comprehensive review of the administrative practices of the *insurer* for the prior calendar year for compliance with the necessary provisions of *relevant sections of state law*, the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. 18031(j), and any amendments to, and federal guidance or regulations issued under, those acts, including 45 CFR Parts 146 and 147, and 45 CFR 156.115(a)(3).
h. Any other information necessary to clarify data provided in accordance with this section requested by the *Commissioner of the regulatory agency* including information that may be "proprietary" or have "commercial value"; the *Commissioner* shall not certify any *policy of an insurer* that fails to submit all data as required by this section.

Sec. 103. The *regulatory agency* shall implement and enforce applicable provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. 18031(j), and any amendments to, and federal guidance or regulations issued under, those acts, including 45 CFR 146.136, 45 CFR 147.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3), and *insert relevant sections of state law*, which includes:

a. Ensuring compliance by individual and group *policies*
b. Detecting violations of the law by individual and group *policies*
c. Accepting, evaluating, and responding to complaints regarding such violations
d. Maintaining and regularly reviewing for possible parity violations a publically available consumer complaint log regarding *mental health and substance use disorder* coverage
e. Performing parity compliance *market conduct examinations* of individual and group *policies,* including but not limited to reviews of medical management

practices, network adequacy, reimbursement rates, denials, prior authorizations, and geographic restrictions

f. The *Commissioner* shall adopt rules, under *insert relevant section of state law*, as may be necessary to effectuate any provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of insurance

Sec. 104. In the event of uncertainty or disagreement with respect to the application, interpretation, implementation, or enforcement of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. 18031(j), and any amendments to, and federal guidance or regulations issued under, those acts, including 45 CFR 146.136, 45 CFR 147.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3), the *regulatory agency* may request a formal written opinion from the Attorney General; such requests and opinions shall be issued in accordance with state law and policies of the Attorney General; the *regulatory agency* shall inform the public on its website and in writing that any aggrieved beneficiary may ask the *regulatory agency* to request a formal written opinion from the Attorney General.

Sec. 105. Not later than *insert date* of each year, the *regulatory agency* shall issue a report to *relevant committees and/or elected officials* and provide an educational presentation to said *relevant committees and/or elected officials*. Such report and presentation shall:

a. Cover the methodology the *regulatory agency* is using to check for compliance with the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), 42 U.S.C 18031(j), and any federal regulations or guidance relating to the compliance and oversight of the MHPAEA and 42 U.S.C 18031(j).

b. Cover the methodology the *regulatory agency* is using to check for compliance with *relevant section(s) of state law.*

c. Identify *market conduct examinations* conducted or completed during the preceding 12-month period regarding compliance with parity in *mental health and substance use disorder* benefits under state and federal laws and summarize the results of such *market conduct examinations*. This shall include:

    i. The number of *market conduct examinations* initiated and completed

    ii. The benefit classification(s) examined by each *market conduct examination*

    iii. The subject matter(s) of each *market conduct examination*, including quantitative and non-quantitative treatment limitations

    iv. A summary of the basis for the final decision rendered in each *market conduct examination*

v. Individually identifiable information shall be excluded from the reports consistent with Federal privacy protections.

d. Detail any educational or corrective actions the regulatory agency has taken to ensure *health insurance policy* compliance with MHPAEA, 42 U.S.C 18031(j), and *relevant section(s) of state law.*
e. Detail the *regulatory agency's* educational approaches relating to informing the public about *mental health and substance use disorder* parity protections under state and federal law.
f. The report must be written in non-technical, readily understandable language and shall be made available to the public by, among such other means as the *regulatory agency* finds appropriate, posting the report on the *regulatory agency's* website.

Additional and more extensive provisions are available for this title and all other titles. Contact ParityTrack Policy Director, Tim Clement at Tim@paritytrack.org.

TITLE II: Clearly Defining Mental Health and Substance Use Disorders

Sec. 201. "*Mental health conditions*" and "*Substance use disorders*" mean any condition or disorder that involves a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental disorders section of the current edition of the International Classification of Disease or that is listed in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

Additional and more extensive provisions are available for this title and all other titles. Contact ParityTrack Policy Director, Tim Clement at Tim@paritytrack.org.

TITLE III: Ending Unequal Treatment Limitations

Sec. 301. A *policy of health insurance* may not impose a Non-quantitative treatment limitation (NQTL) with respect to a *mental health condition or substance use disorder* in any classification of benefits unless, under the terms of the *policy* as written and in operation, any processes, strategies, evidentiary standards or other factors used in applying the NQTL to *mental health or substance use disorder* benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the NQTL with respect to medical/surgical benefits in the same classification.

Sec. 302. Non-quantitative treatment limitations (NQTLs) are limitations that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment. NQTLs include, but are not limited to:

a. Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative
b. Formulary design for prescription drugs
c. For plans with multiple network tiers (such as preferred providers and participating providers), network tier design
d. Standards for provider admission to participate in a network, including reimbursement rates
e. Plan methods for determining usual, customary, and reasonable charges
f. Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols)
g. Exclusions based on failure to complete a course of treatment
h. Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage
i. In and out of network geographic limitations
j. Standards for providing access to out-of-network providers
k. Limitations on inpatient services for situations where the participant is a threat to self or others
l. Exclusions for court-ordered and involuntary holds
m. Experimental treatment limitations
n. Service coding
o. Exclusions for services provided by clinical social workers
p. Network adequacy
q. Provider reimbursement rates, including rates of reimbursement for mental health and substance use services in primary care

Sec. 303. For any utilization review or benefit determination for the treatment of a *substance use disorder*, including but not limited to prior authorization and medical necessity determinations, the clinical review criteria shall be the most recent Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions established by the American Society of Addiction Medicine. No additional criteria may be used during utilization review or benefit determination for treatment of substance use disorders.

Additional and more extensive provisions are available for this title and all other titles. Contact ParityTrack Policy Director, Tim Clement at Tim@paritytrack.org.

TITLE IV: Extending State Parity Protections to Medicaid

Sec. 401. The *medical assistance* program, including any Medicaid managed care organizations and Medicaid Alternative Benefit Plans, shall be subject to the provisions of *relevant parity section(s) of state insurance code* and any guidance or regulations issued

under that/those section(s), including *relevant state insurance regulations and/or guidance(s).*

Additional and more extensive provisions are available for this title and all other titles. Contact ParityTrack Policy Director, Tim Clement at Tim@paritytrack.org.

TITLE V: Consumer and Provider Education

Sec. 501.

a. For the purpose of this section, the term "*relevant state agency or other entity*" shall be defined as including the following, as available: *regulatory agency, department of behavioral health, consumer protection agency*, and state government advocacy unit (such as a *health ombudsperson or Office of the Healthcare Advocate*), consumer parity hotline, or contracted community-based advocacy organization that specializes in consumer assistance work.
b. By *insert date*, the *regulatory agency* shall develop a plan for a Consumer and Provider Education Campaign on *mental health and substance use disorder* parity and establish entities to support consumers in understanding appeals and complaints processes and in pursuing appeals and complaints. To educate and support consumers on parity issues, the *regulatory agency* shall:
    i. By *insert date*, conduct a broad public education campaign to alert consumers to the existence of both federal and state parity laws and the state agencies and consumer support resources available in *insert state*, including *any relevant state agencies or other entities*. This campaign shall be conducted in consultation with the *department of behavioral health* and may include public service announcements, mailings, social media, and/or poster campaigns.
    ii. By *insert date*, provide at least two live trainings in each *insert relevant geographic area* on parity for consumers and providers and two webinar trainings to be posted on the *regulatory agency* website. Separate trainings shall be developed and implemented for consumers and providers. The provider training shall also be made available to health advocates and enrollment assisters who work with consumers experiencing problems with health insurance and parity.
    iii. Establish a consumer hotline to assist consumers in navigating the parity process by *insert date.* The consumer parity hotline shall be operated by the *state agency that is responsible for consumer assistance with appeals and complaints* in conjunction with *any relevant state agencies or other entities*.

iv. Provide on the *regulatory agency* website or a link to a third-party website with general information about parity in non-technical, readily understandable language, including examples of possible parity violations. This information shall be accessible via links on other r*elevant state agency* websites and advertised broadly as part of the consumer and provider education campaign outlined in section 501 (b)(i).

v. Provide on the websites of *relevant state agencies* and on health insurance plan documents a prominently displayed notice that complaints regarding noncompliance with the federal Mental Health Parity and Addiction Equity Act may be filed with the *regulatory agency* and contact information for insurers and state agencies where appeals and complaints may be filed.

vi. Provide on the websites of *relevant state agencies* a prominently displayed notice that an insured may obtain assistance in filing an appeal or complaint with an insurer or the *regulatory agency* from the *appropriate state government advocacy unit (such as Office of the Healthcare Advocate*).

c. By *insert date* the *regulatory agency* shall issue a report to the *State Legislature* that includes the results of a formal evaluation of the education program and plans for continuing or modifying consumer education efforts in *insert state.*

Sec. 502. Such sums shall be authorized to carry out the activities required under Sec. 502 for the purposes of the Consumer Education Campaign.

Additional and more extensive provisions are available for this title and all other titles. Contact ParityTrack Policy Director, Tim Clement at Tim@paritytrack.org.

TITLE VI: Solutions for the Opioid Crisis

Sec. 601. A *policy of health insurance* that provides coverage for prescription drugs must provide coverage for at least one opioid antagonist including the medication product, administration devices, and any pharmacy administration fees related to the dispensing of the opioid antagonist. This coverage must include refills for expired or utilized opioid antagonists.

Sec. 602. A *policy of health insurance* that provides coverage for prescription drugs may not exclude coverage for any FDA-approved forms of medication assisted treatment prescribed for the treatment of alcohol dependence or treatment of opioid dependence, if such treatment is medically necessary according to most recent Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions established by the American Society of Addiction Medicine.

Sec. 603. With respect to *substance use disorders*, an *insurer* shall use policies and procedures for the election and placement of *substance use disorder* treatment drugs on their formulary that are no less favorable to the insured as those policies and procedures the insurer uses for the selection and placement of other drugs.

Additional and more extensive provisions are available for this title and all other titles. Contact ParityTrack Policy Director, Tim Clement at Tim@paritytrack.org.