

July 10, 2020

Via electronic submission to:
Rachel.Bowden@tdi.texas.gov

COMMENT LETTER

Ms. Rachel Bowden
Texas Department of Insurance
Life and Health Lines Office

Re: Informal Draft Mental Health/Substance Use Disorder Parity Rules

Dear Ms. Bowden:

On behalf of our more than 450 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, and private psychiatric facilities, the Texas Hospital Association is pleased to submit these comments regarding the Texas Department of Insurance's draft rule related to mental health parity. THA and its member hospitals supported the passage of HB 10, 85th Legislature, and have been following implementation efforts through the Health and Human Services Commission. While THA offers the below comments, we strongly encourage TDI to work in concert with the Mental Health Parity Workgroup, which is currently developing a strategic plan with recommendations related to increasing compliance with parity rules, regulations, and statutes.

THA applauds TDI's effort embodied in the draft rule to ensure that Texans with mental health conditions and substance use disorders have full access to the care they need on the same basis as they do for medical conditions. We encourage TDI to finalize the rules expeditiously, taking into account and consistent with the input we offer below. With one exception noted below, we also support TDI's approach of incorporating the final rules for the federal Mental Health Parity and Addiction Equity Act (MHPAEA), thereby allowing TDI to fully implement the parity protections of MHPAEA and unify its application with other states.

THA offers its assistance to TDI and other stakeholders to ensure that mental health parity is fully implemented in Texas.

Comments on the Draft Rule.

With regard to the text of the draft rule, THA offers the following comments:

Increased Cost Exemption (§21.2412). It is our understanding that the increased cost exemption found in draft rule 21.2412 is a continuation of existing rule 28 TAC §21.2405. THA understands that the existing Texas exemption was implemented in 2011 to give effect to the exemption contained in the federal parity law. At that time, Texas did not have its version of a parity law. It obviously now does, but the Texas law found in chapter 1355 does not contain an increased cost exemption. We question whether it is appropriate for the Texas rules to continue to grant an exemption that is not grounded in Texas statute and is contrary to the strong policy embodied

in HB 10. Moreover, given that we are in the early stages of a robust implementation of HB 10, THA is concerned that there may be unforeseen consequences of this loophole. We believe a better approach would be to move forward with the rules and the full implementation of HB 10 without this exemption, and to allow insurers to provide information to TDI on any cost increase that they believe may justify future legislative consideration of an exemption based on incremental cost.

Nonquantitative Treatment Limitations. We strongly support the prospective compliance and reporting system laid out in the draft rule for ensuring compliance with nonquantitative treatment limitations parity. Mental health facilities have reported example after example of how they are singled out and subjected to “more stringent” nonquantitative payment policies and practices by insurers that seem to be designed to do nothing more than ensure that they don’t get paid for providing the vital services Texans need. The Six-Step analysis has emerged as the leading approach to nonquantitative treatment limitation compliance. Other state insurance departments are finding nonquantitative treatment limitation violations whenever they perform market conduct examinations, and it is imperative that TDI attempt to determine compliance prospectively, rather than after-the-fact correction of these violations that do not rectify the denial of access to care that has already occurred.

Transparency of Information. We generally urge TDI to better-ensure transparency than what is currently embodied in the draft rules. For example, draft rule 21.2412, which we have urged TDI not to adopt, only requires insurers to maintain the underlying records of the basis for the exemption and report information to enrollees and the TDI in summary fashion. It further provides that the information reported to TDI is confidential. If TDI moves forward with this exemption, in addition to the notification to enrollees provided for in the draft rules, THA urges TDI to require that insurers report all information forming the basis of the claimed exemption and for that information to be considered public information that is available upon request.

Additionally, there is no requirement that information completed by an insurer related to its compliance with the quantitative and nonquantitative parity analyses be submitted to TDI and be available to the public. These analyses satisfy a key compliance component and should be available to the enrollees and providers who are most affected by instances of non-parity for validation of the insurer’s compliance. TDI should incorporate language requiring insurers to submit these analyses to it and specifically allowing for the disclosure to the public.

THA applauds the effort TDI has made to work with the policy experts to inform its data collection and enforcement practices. We appreciate your consideration of these comments. Should you have any questions or need additional information, please do not hesitate to contact me at 512/465-1577 or swohleb@tha.org.

Respectfully submitted,



Stephen G. Wohleb
Senior Vice President and General Counsel
Texas Hospital Association