



**Testimony in Support of SB 254**  
**Senate Insurance and Financial Institutions Committee**  
**February 12, 2020**

**NATIONAL PARTNERS**

LEGAL ACTION CENTER  
 THE KENNEDY FORUM  
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**LOCAL ANCHOR**

OHIO COUNCIL OF  
 BEHAVIORAL HEALTH  
 AND FAMILY SERVICES  
 PROVIDERS

Thank you for the opportunity to present testimony in support of SB 254, a bill to enforce the Mental Health Parity and Addiction Equity Act in Ohio. This testimony is being submitted on behalf of the Legal Action Center, a non-profit law and policy organization whose mission is to fight discrimination against individuals with histories of addiction, HIV/AIDS and criminal justice involvement and advocate for sound public policies to address these issues. The Legal Action Center also leads the Parity at 10 Campaign, an initiative to improve enforcement of the federal Mental Health Parity and Addiction Equity Act (Parity Act). Ohio has been one of the five launch states for the campaign. We have been working with the Ohio Council of Behavioral Health and Family Services Providers and its Parity Coalition since 2017 to identify treatment barriers in both private and public insurance that can be addressed through more robust Parity Act enforcement and provide technical assistance to support the Coalition's work.

President George W. Bush signed the Parity Act 11 years ago to end discrimination in insurance coverage of mental health and substance use disorder (MH/SUD) benefits, recognizing that these diseases must be afforded the same level of treatment as other medical conditions. Every day, thirteen Ohioans die by unintentional drug overdoses and five die by suicide. In the midst of our nation's worst opioid epidemic and rising rate of suicide deaths, Ohio has made substantial investments to expand access to MH/SUD treatment, including \$2 million for the Ohio Division of Insurance (ODI) to improve parity education and enforcement in the FY20-21 budget. Robust enforcement of the anti-discrimination protections in the federal Parity Act is needed now to ensure that Ohio's residents have access to the services they pay for and are entitled to receive. The provisions set out in SB 254 are essential to that enforcement.

**1. Technical Corrections to Ohio State Law are Necessary to Bring the State into Compliance with the Federal Parity Act.**

The federal Parity Act requires health plans that offer coverage of MH/SUD – like depression and addiction – to ensure that those benefits are provided at the same level as those for medical conditions – like diabetes and cancer. Insurers cannot impose financial requirements or limitations on the amount of treatment for MH/SUD that are stricter than those imposed for other medical conditions. The Parity Act also explicitly prohibits insurers from using – whether in writing or in practice – any plan design features, known as non-quantitative treatment limitations (NQTLs), on care for MH/SUD that are not used on care for other medical conditions.

Currently, Ohio has insurance standards in state law for private health plans that violate the federal Parity Act by:

- Placing **limitations on the scope of benefits** that can be covered for specific MH/SUD conditions (for example, if a plan covers outpatient care for alcoholism, it must also cover inpatient, prescription drug, and emergency care services for alcoholism);
- Setting **annual dollar limits and financial requirements**;
- Enabling issuers to implement **non-quantitative treatment limitations (NQTLs)**, such as different reimbursement rates for MH/SUD providers and different standards for approving and re-authorizing treatment; and
- Exempting plans from parity requirements when they meet **inconsistent cost exemption standards** than those provided by the federal Parity Act.

SB 254 would make the necessary technical corrections to bring Ohio law into compliance with the requirements of the federal law and also codify the federal protections in one place in state law to reduce confusion and ensure that Ohioans have equal access to MH/SUD care. The following chart identifies the existing insurance provisions that are inconsistent with federal law and create confusion for consumers regarding MH and SUD benefit coverage.

<b>Non-Compliant State Law Provisions</b>	<b>Violations of Federal Parity Act</b>
Sec. 3923.27: Hospitalization coverage for mental illness	<ul style="list-style-type: none"> <li>• Different reimbursement rates for providers</li> </ul>
Sec. 3923.28: Outpatient coverage for mental or emotional disorders	<ul style="list-style-type: none"> <li>• Limitation on the scope of benefits</li> <li>• Annual dollar limits and financial requirements</li> </ul>
Sec. 3923.281: Sickness and accident policies – biologically based mental illness	<ul style="list-style-type: none"> <li>• Different reimbursement rates for providers</li> <li>• Different standards for re-authorizing care</li> <li>• Inconsistent cost exemption standard</li> </ul>
Sec. 3923.282: Health coverage plans – biologically based mental illness	<ul style="list-style-type: none"> <li>• Different reimbursement rates for providers</li> <li>• Different standards for re-authorizing care</li> <li>• Inconsistent cost exemption standard</li> </ul>
Sec. 3923.29: Outpatient, inpatient, and intermediate primary care benefits for alcoholism	<ul style="list-style-type: none"> <li>• Limitation on the scope of benefits</li> <li>• Annual dollar limits and financial requirements</li> <li>• Different standards for re-authorizing care</li> </ul>
Sec. 3923.30: Requiring provision of coverage of treatment of mental or nervous disorders and alcoholism	<ul style="list-style-type: none"> <li>• Limitation on the scope of benefits</li> <li>• Annual dollar limits and financial requirements</li> <li>• Different standards for re-authorizing care</li> </ul>
Sec. 1751.01: Health insuring corporation law definitions	<ul style="list-style-type: none"> <li>• Limitation on the scope of benefits</li> <li>• Inconsistent cost exemption standard</li> <li>• Annual dollar limits and financial requirements</li> <li>• Different standards for re-authorizing care</li> </ul>

Repealing these non-compliant provisions will ensure that Ohio's regulation of self-funded individual, small and large group health plans is aligned with federal law. Ohio will be better positioned to ensure that all plans are in compliance with parity requirements and protect consumers from facing these inequitable and discriminatory barriers to treatment.

## **2. Reporting Requirements Will Ensure Plans Do Not Discriminate Against People with Mental Health and Substance Use Disorders.**

SB 254 will help ensure that state-regulated health plans meet their legal obligation to offer and provide mental health and substance use disorder benefits that are at the same level as plan benefits for medical conditions, as required under the Parity Act. Federal law prohibits issuers from offering health plans that do not comply with the Parity Act. 45 C.F.R. § 146.136(h). The State must also ensure that Medicaid managed care plans comply with the Parity Act and provide documentation of its compliance to the general public. 42 C.F.R. § 438.920(b).

Yet, under the current enforcement scheme, neither state regulators nor consumers receive the plan information that is necessary to determine whether the plan actually satisfies federal requirements of the Parity Act. While plan documents provide basic information on a consumer's numerical limits to MH/SUD care, such as deductibles and cost-sharing requirements or the amount of care, plans provide no information on the NQTLs that effectively determine whether an individual gets the prescribed care. In addition to the NQTLs described above (different reimbursement rates for MH/SUD providers and different standards for approving and re-authorizing treatment), plans often impose additional barriers to care that include more stringent or too vague medical necessity criteria, requirements that patients "fail first" at one course of treatment before trying the one their providers request, and provider credentialing and network admission requirements.

**A compliance reporting system is the most effective means of enforcing the Parity Act.** Carriers already possess all the information regarding their plan designs, and they have a legal obligation to ensure that their plan standards comply with parity requirements before selling those plans. The current enforcement paradigm places the responsibility on consumers to file complaints with state agencies if they believe their plan is failing to comply. However, these complaints require consumers to assess whether their plan offers comparable MH/SUD benefits to other medical benefits. Without the information to make this comparison, they cannot file a meaningful complaint under the Parity Act. Furthermore, in the face of a health care crisis, most consumers do not have the capacity to pursue their legal rights. They are pursuing necessary and life-saving health care.

While the Ohio Department of Insurance (ODI) conducts contract (form) review to ensure compliance with state and federal laws, it does not receive information that is needed to conduct an analysis of most NQTLs. This also means that consumers do not have access to plan information that is needed to understand their coverage of MH and SUD benefits and assert their right to equal coverage. **SB 254 will level the playing field for regulators and consumers by requiring plans to annually report Parity Act compliance information and for state regulators to make the results of those reports available to the public.**

### 3. The Ohio Bill Adopts the U.S. Department of Labor’s Detailed Roadmap for Parity Compliance that States are Increasingly Using.

SB 254 would implement compliance reporting requirements that track the U.S. Department of Labor’s (DOL) guidance to health plan compliance with the Parity Act. In April 2018, the DOL released its *Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act* that provides detailed guidance and compliance tips to issuers of group plans and self-funded plans for all Parity Act standards. (Available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-a-mhpaea.pdf>). **The DOL tool identifies a four-step process for assessing compliance of NQTLs that fully aligns with the reporting requirements in SB 254:**

DOL NQTL Step Analysis	DOL Self-Compliance Tool	SB 254
Step 1	Identification of NQTLs	Sec. 3902.51(B)(2)
Step 2	Identification of factors considered in the design of the NQTL	Sec. 3902.51(B)(3)(b)(i) and (ii)
Step 3	Identification of the sources, including any processes, strategies, evidentiary standards used to define the factors identified to design the NQTL	Sec. 3902.51(B)(3)(a)
Step 4	Demonstration that the processes, strategies, and evidentiary standards used in applying the NQTL are comparable and no more stringently applied to MH/SUD than medical/surgical benefits, both as written and in operation.	Sec. 3902.51(B)(3)(b)(iii) and (iv)

The Self-Compliance tool makes crystal clear that health plans must be prepared to provide all of the above information, including “records documenting NQTL processes and how the NQTLs are being applied to both medical/surgical as well as MH/SUD benefits to ensure they can demonstrate compliance with the law.” Self-Compliance Tool at 20.

While all issuers offering health plans in Ohio should already be conducting the parity analysis set out in the DOL Self-Compliance Tool, the adoption of SB 254 will ensure that ODI and the Department of Medicaid receive this compliance information and that consumers have access to an assessment by these state agencies regarding a plan’s compliance. Consumers deserve to know that

their plans are complying with the federal law, and they need these analyses to enforce their rights. This enforcement tool will help consumers get the life-saving mental health and substance use treatment they are entitled to receive under federal law and will ensure that the cost of treatment is not shifted to the State or to the individuals struggling to recover.

Ohio is not alone in pursuing Parity Act compliance through this reporting process.

- California has required issuers to provide detailed pre-market parity compliance information for financial requirements, and quantitative and non-quantitative treatment limitations since late 2014. CAL. HEALTH & SAFETY § 1374.76.
- Between 2018 and 2019, six states — Colorado (HB 19-1269), Connecticut (HB 7125), the District of Columbia (B22-0597), Delaware (SB 230), Illinois (SB 1707), and New Jersey (S.1339) — enacted legislation that requires annual reports of parity compliance for NQTLs. Like SB 254, these bills require plans to provide information about the standards used to adopt and implement NQTLs and their comparative analysis to demonstrate that standards for mental health and substance use disorder benefits are comparable to and applied no more stringently than standards for medical benefits.
- In 2019, eight more states—California (S11), Florida (SB 360), Maine (SP 559), Maryland (SB 631), Massachusetts (S 588), Mississippi (SB 2678), Missouri (HB 904), and Montana (SB 280)—introduced similar legislation that would require issuers in those states to submit reports like those outlined in SB 254.

By passing SB 254, Ohio would implement federal parity compliance reporting standards and join these other states as a leader in parity enforcement.

#### **4. Removing Barriers to Prescription Medications for the Treatment of Substance Use Disorders are Necessary to Combat the Opioid Epidemic**

SB 254 would take critical steps to codify best practices in the treatment of substance use disorders to further our goals of removing inequitable barriers to accessing care. When people with SUD are prepared to enter treatment, it is critical that they do not face unnecessary delays or undue financial burdens that could prevent them from accessing the services they need. This bill would:

- Prevent insurers from imposing prior authorization requirements to medications prescribed for the treatment of SUD;
- Prevent insurers from imposing step therapy requirements before authorizing these prescriptions;
- Require insurers to place these prescriptions on the lowest tier of the plan's drug formulary; and
- Prevent insurers from excluding coverage for these prescriptions and other wraparound services on the grounds that they were court ordered.

Ohio is not alone in its goal of removing authorization and other utilization management barriers to prescription medications for substance use disorder treatment to address the opioid epidemic. At least seventeen states have taken similar action as proposed in this bill:

- Both Colorado and Illinois have passed laws that contain the same four provisions as SB 254 to ensure that people with SUD have timely and affordable access to the treatment

they need (not imposing prior authorization requirements for prescription medications for the treatment of SUD, not imposing step therapy requirements for such prescriptions, placing these prescriptions in the lowest tier of the drug formulary, and not excluding coverage of prescriptions or wraparound services on the grounds that they were court ordered). *See* COLO. REV. STAT. § 10-16-148(1) (2019); 215 ILL. COMP. STAT. 5/370c(b)(6.5) (2018).

- Arkansas bars plans from requiring prior authorization to obtain prescription medications for SUD and from imposing “any other requirement” in order for a patient to obtain those medications. ARK. CODE ANN. 23-99-111(a) (2019). Similarly, both New Jersey and West Virginia bar insurers from imposing “any prior authorization or other prospective utilization management requirements” for medication-assisted treatment for SUD. *See* N.J. STAT. ANN. § 17:48A-7kk(i) (2018); W. VA. CODE §§ 33-15-4p(k), 33-16-3bb(k), 33-24-7q(k), 33-25-8n(k), 33-25A-8p(k).
- Delaware bars plans from imposing prior authorization requirements or step therapy requirements and ensures that prescription medications are available at the lowest tier of the plan’s drug formulary. DEL. CODE ANN. tit. 18, §§ 3571X(b), (d) (2019).
- Missouri and Montana prohibit plans from imposing prior authorization or step therapy requirements. MO. ST § 191.1165(3) (2019); MONT. CODE ANN § 33-32-215(8) (2019).
- New York and Vermont bar plans from imposing prior authorization requirements and ensure that prescription medications to treat SUD are available at the lowest tier of the plan’s drug formulary. N.Y. INS. LAW §§ 3216(i)(31-a), 3221(l)(7-b); 8 V.S.A. §§ 4089b(4), 4754.
- Seven other states (Arizona, Maine, Maryland, New Hampshire, Oregon, Virginia, and Washington) have enacted laws that limit commercial insurance plans from imposing prior authorization requirements for medications prescribed to treat SUD.

Ohio has made significant investments to expand treatment for people with substance use disorders and mental illness. That investment is not realized if insurance plans continue to impose unlawful limitations on access to the treatment. Requiring greater plan accountability and transparency is essential to ensuring that people with mental health and substance use disorders have timely and affordable access to evidence-based and life-saving care.

Thank you for considering Legal Action Center’s views, and we urge your support for SB 254.



Deborah Steinberg, J.D.  
Health Policy Attorney  
Legal Action Center  
810 1<sup>st</sup> Street, N.E., Suite 200  
Washington, D.C. 20002  
202-544-5478 Ext. 305  
dsteinberg@lac.org