

# KANSAS MENTAL HEALTH COALITION

.....Speaking with one voice to meet the critical needs of people with mental illness

## Mental Health Parity and Access to Care

**Position:** The Kansas Legislature should host public hearings on parity enforcement and establish an Interim Committee to review the findings of federal and state regulators as they conduct audits and examinations of health insurance plans for parity compliance in order to recommend improvements in Kansas parity statutes and regulations. Mental Health Parity laws must be enforced to provide needed access to care for mental health and addictions treatment.

**The Problem:** Kansans living with mental health and substance use conditions experience barriers in accessing care as a result of violations of state and federal parity statutes and regulations by their insurance carriers. Enforcement of mental health parity laws has been lacking at the state and federal level, creating a barrier to care for policyholders.

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State and Federal laws require equal treatment of behavioral health conditions in comparison to primary care. Closer scrutiny indicates Insurers have failed to adopt appropriate standards of care based on established professional criteria standards and often apply different standards for behavioral health, requiring the courts to intervene such as in the decision in *Wit v. United Behavioral Health*. This case highlighted how Non-Quantitative Treatment Limitations stand in the way of effective behavioral health treatment when applied without appropriate standards care in place.

A national mental health crisis and federal audits showing a lack of parity enforcement by the U.S. Department of Labor has increased focus on parity enforcement. The Kansas Insurance Department (KID) over the last 15 years had relied on complaint filings to document denials of service to indicate a parity violations. It is unrealistic for individuals with serious mental health and substance use conditions to deal with complaint and appeal procedures. The current Insurance Department has a new focus on effective oversight and initiated a Targeted Market Conduct Study in 2022 to identify potential problems among Kansas insurers.

**Why this matters:** Restrictions on behavioral health treatments which are not applied to other chronic medical conditions unnecessarily limit access to treatment, resulting in poor outcomes for individuals affected by these conditions. These restrictions violate mental health parity laws.

**The bottom line:** The Kansas Legislature should focus on parity issues as an important part of the solution to move beyond our current mental health crisis. Oversight is critically important to ensure that Kansans with mental illness and substance use issues have equal access to care under their insurance plans as others with physical medical conditions. The Legislature should assure that insurance plans regulated by the State do not use practices to unfairly limit Kansans' access to medically necessary treatment.

## The Rest of the Story about Parity

Unequal standards negatively impact policyholders access to needed care through various forms of violations such as the following:

1. There is a higher incidence of retrospective reviews and recoupment of payments from mental health providers compared to primary care providers.
2. Out-of-state treatment options are seldom or never authorized even when there are no appropriate treatment options available locally.
3. There is an inadequate network of behavioral health providers.
4. Continued payment for out-patient therapy is denied because progress has not been "proven."
5. Payment is refused for therapy relating to a co-occurring mental illness while a member is receiving in patient treatment for substance use disorder.
6. Payment is refused for higher cost therapies despite evidence supporting the need for more intensive treatment.
7. Payment is excluded for certain types of therapy without any medical necessity analysis, but authorization for is refused for partial hospitalization or intensive outpatient therapy.
8. Payments to out-of-network providers is less than for in-network providers.

The Coalition endorses these [Guiding Principles for Medical Necessity](#), which includes the following eight standards for effective treatment established by the court in the *Wit* case.

1. **Underlying Conditions:** Requires treatment of the individual's underlying condition and is not limited to alleviating the individual's current symptoms.
2. **Co-occurring disorders:** Requires treatment of co-occurring behavioral health disorders and/or medical conditions in a coordinated manner that considers the interactions of the disorders and conditions and their implications for determining the appropriate level of care.
3. **Safety and Effectiveness:** Patients should receive treatment for mental health and substance use disorders at the least intensive and restrictive level of care that is safe and effective -- the fact that a lower level of care is less restrictive or intensive does not justify selecting that level if it is also expected to be less effective. Placement in a less restrictive environment is appropriate only if it is likely to be safe and just as effective as treatment at a higher level of care in addressing a patient's overall condition, including underlying and co-occurring conditions.
4. **Errs on the side of caution:** When there is ambiguity as to the appropriate level of care, the practitioner should err on the side of caution by placing the patient in a higher level of care.
5. **Prioritizes Maintaining functioning and preventing deterioration:** Effective treatment of mental health and substance use disorders includes services needed to maintain functioning or prevent deterioration.
6. **Individual duration of treatment:** Appropriate duration of treatment for behavioral health disorders is based on the individual needs of the patient; there is no specific limit on the duration of such treatment.
7. **Special considerations for children/adolescents:** The unique needs of children and adolescents must be taken into account when making level of care decisions involving their treatment for mental health or substance use disorders.
8. **Multidimensional assessment:** The determination of the appropriate level of care for patients with mental health and/or substance use disorders should be made on the basis of a multidimensional assessment that takes into account a wide variety of information about the patient.