

Working With Your State Insurance Commissioner

A Guide for Substance Use Disorder and Mental Health Stakeholders

Introduction

Your State's insurance commissioner plays an important role in shaping how the Affordable Care Act (ACA) will work "on the ground." Insurance commissioners in most States are involved in:

- Developing and implementing the health insurance marketplace, and
- Monitoring and enforcing compliance with important consumer protections such as guaranteed issue and mandates for mental health and substance use disorder parity.

This Guide offers specific strategies to help you effectively collaborate and communicate with your State's insurance commissioner to raise awareness of health insurance regulatory issues that are most important to people with mental health or substance use disorder service needs.

State Insurance Commissioner Roles and Responsibilities

The State insurance commissioner is the public official responsible for regulating the commercial insurance market in each State. Depending on the State, the insurance commissioner is elected or appointed by the governor. While there are State by State differences, in general insurance commissioners are responsible for the following activities:¹

- Licensing of insurance companies and agents;
- Regulation of certain insurance products available in a State, including health, auto, home, life, malpractice, etc. to ensure compliance with State insurance laws and to protect consumers;
- Monitoring the financial solvency of licensed companies to make sure that consumers have the insurance coverage they expect when they need it;
- Providing consumer services such as education, complaint filing and investigation, and fraud reporting;
- Reviewing and monitoring the insurance marketplace to ensure that fair prices are charged for insurance products, that consumers have access to a range of reasonable products, and that insurers are complying with State insurance laws and regulations; and
- Researching and providing technical assistance on insurance issues to State policymakers.

The Affordable Care Act creates new requirements and responsibilities for insurers, many of which will be monitored and enforced by State insurance commissioners. For example, significant premium increases are now subject to review and approval by the State (or Federal government if the State lacks the authority or a system for doing so). In most States, this type of review and approval will fall under the authority of the State insurance commissioner. Keeping health insurance rates reasonably priced is critically important to ensuring that people with substance use and mental health disorders can purchase and/or retain their

¹ National Association of Insurance Commissioners. (2011). *State insurance regulation*, http://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf

health insurance. In another example, beginning in 2014 insurers will no longer be allowed to deny persons coverage for having a pre-existing condition, such as a substance use disorder. This is sometimes referred to as “guaranteed issue.”

Parity for substance use and mental health treatment is another area where the State insurance commissioner plays an important role in ensuring that insurance products comply with State and Federal laws. For example, the State insurance commissioner is responsible for enforcement of the Federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), the “parity” law that requires group health insurance plans with 50 or more employees that offer mental health and/or substance use disorder benefits to provide them in a way that is no more restrictive than the plan’s physical health benefits. The ACA built on the Federal parity law to extend the requirements of the MHPAEA to the individual and small group insurance markets beginning in 2014, which will also fall under the purview of the insurance commissioner.²

It is important to understand that MHPAEA does not pre-empt State parity laws that provide stronger consumer protections, including those which may require coverage of mental health and substance use disorders. Learning about parity and other State mandates related to the coverage of mental health and substance use disorders will help arm you with the information necessary to effectively communicate with your State’s insurance commissioner. Please see the resources section for links on how you can find out if your State has specific parity requirements in addition to the Federal requirements.

Understanding what the insurance commissioner does not have authority over is just as important as knowing what they do have purview over, so that you know which issues are appropriate to bring to the insurance commissioner (or not). The insurance commissioner does not make laws, such as those requiring coverage for certain diagnoses or particular treatments or providers, but rather monitors compliance and enforces laws made by legislative bodies. In contrast, the authority to mandate coverage for a certain type of care provider (e.g. substance use counselors) or treatment (e.g. Applied Behavioral Analysis) may fall under the purview of the State legislature, State commissioner for mental health and/or substance use, or State Medicaid Director (specific to Medicaid coverage), depending on the State.

Certain types of health insurance programs or products do not fall within the purview of a State’s insurance commissioner. For example, the Medicare and Medicaid programs, Veteran’s Administration benefits, and self-insured health plans³ are not regulated by a State’s insurance commission. Enforcement of certain Federal laws such as the Health Insurance Portability and Accountability Act (HIPAA) privacy rule, which addresses the use and disclosure of protected health information, and the Consolidated Omnibus Budget Reconciliation Act (COBRA) which gives workers and their families who lose their health benefits the right to elect to continue coverage, are regulated by the Department of Health and Human Services Office for Civil Rights and the Department of Labor/Internal Revenue Service, respectively. However, your State insurance commissioner may have roles in enforcing HIPAA protections and additional protections around privacy or retaining coverage.

² MHPAEA does not require that insurers cover substance use and mental health benefits, but says that if large group plans cover these benefits, then they must do so at parity with the medical/surgical benefits covered by the plan. The ACA, however, requires small group and individual market plans to cover substance use and mental health benefits as part of the essential health benefits package, and requires that those benefits be provided at parity.

³ Self-insured health plans are typically offered by large employers or trade unions and differ from fully-insured plans in that the plan sponsor (the employer or union) is at risk for medical claims made by its covered employees or members. Most self-insured health plans are regulated by the United States Department of Labor, Employee Benefits Security Administration (DOL-EBSA) under the Federal Employment Retirement Income Security Act (ERISA). However, DOL-EBSA does not regulate self-insured plans that are sponsored through school districts, municipalities, and churches.

Strategies for Collaborating with the Insurance Commissioner

Learn About the Insurance Commission/Department In Your State

Before approaching the State insurance commission with an issue or concern, spend some time learning about the insurance commission and the relevant laws or mandates specific to health insurance in your State. Find out who the insurance commissioner is, their role in regulating health insurance, what the structure and function of the various offices within the insurance commission are, and what authority they do or do not have related to the particular issue(s) that are important to you. Each State is different with respect to insurance laws and mandates and the authority and purview of the State insurance commission; do not assume what is required in one State will be the case in your State.

Inform the Insurance Commission About You/Your Role/Your Organization

As noted above, the insurance commissioner has oversight and responsibility for more than just health insurance products, so his/her knowledge or awareness of needs and issues specific to people with mental health and substance use disorders is most likely limited. Do not presume they know the mental health or substance use field or who you or your organization is. Be prepared to briefly describe who you are and who you represent. Having a one page overview available to share that describes who you and/or your organization are will help educate him/her about some basic facts about your organization and the policy issues you care about.

Power of Coalition

Joining with others who share your perspective can bring additional resources and attention to your issue(s). Representatives from the business community, provider organizations, general health care advocacy organizations, or stakeholders from other constituency groups (e.g. people with physical or developmental disabilities, traumatic brain injuries, etc.) can be particularly powerful and assist in getting your issue heard. They may also have valuable experience working with your commissioner already.

Develop and Maintain Opportunities for Ongoing Dialogue

Try to schedule a regular standing meeting with the insurance commissioner and/or relevant staff from their office. A predictable forum where issues can be discussed will allow both parties the opportunity to maintain a regular dialogue. It will also help keep you and your organization's issues "on the radar screen" of the insurance commissioner. It is much harder to let things fall through the cracks if he/she knows the issue will be a topic at your next meeting.

Prior to these meetings, consider creating an agenda and sending it to the person(s) you are meeting with so they can come prepared to discuss the relevant issues, and invite them to add any items of importance to the agenda in advance of the meeting as well. This allows for a more productive meeting for both sides, where no one is left feeling ambushed or "put on the spot".

It is also important to identify two or three goals or priority issues that you want to focus on with the insurance commissioner. Approaching him/her with a laundry list of problems can distract both sides from accomplishing anything leading to feelings of frustration for everyone involved.

Provide a Concise Analysis and Proposal

In advance of approaching the insurance commissioner with a specific issue(s) or concern(s), do your homework. Conduct a thorough analysis of the issue(s) at hand and bring something in writing to leave behind. This analysis may include:

- A brief description of the issue or concern. Quantitative data that details the scope of the problem will be particularly important to include if available.
- Information about its impact on the people/population in question. This might include an anecdote or two that are representative of how the issue has affected you or your constituency.
- A discussion of what will happen if the issue is not addressed.

Including a menu of strategies for remedying the issue(s) will lend your analysis weight as well. Be prepared to address how your proposal will not only affect the population you care about but other groups as well. Including details about how it might affect insurance companies and/or the businesses that supply or purchase insurance will help you to be prepared for all sides of the issue.

Highlight in your discussion the existence of any current service, program, or policy that addresses the problem in a way that may be relevant for your State. Examples from other States are particular helpful. Data such as costs or the number of people impacted will be particularly important to include if available.

Be Realistic About Your Expectations

State government can be complex and slow moving. It is also true that many State governments are under-resourced, particularly in this economic climate. Things might move more quickly if you can offer assistance or support in some way. Can you/your organization help do research, develop partnerships, conduct outreach or awareness activities, or collect data? Offering to partner with them may help you accomplish your objectives more quickly and make the task seem less daunting and more manageable for the commissioner and his/her staff.

Summary

Your State's insurance commissioner can be an important ally in helping make sure that people with substance use disorders and mental illness can access the benefits they need to help them in their recovery process. Developing effective communication and collaboration skills can help you to develop a successful partnership with your insurance commissioner.

For More Information

The website of the **National Association of Insurance Commissioners (NAIC)** includes an interactive map with links to the insurance department for each State, consumer guides, a glossary of relevant insurance terms, and information about ACA implementation activities: <http://www.naic.org/>

The **Consumer Information Source (CIS)** allows you to locate important information about insurance companies, including closed insurance complaints, licensing information and key financial data. It also allows you to file a complaint about an insurance company, broker, or agent, or report suspected fraud directly with your State insurance department: <https://eapps.naic.org/cis/index.do>

The **Kaiser State Health Facts** website includes links to State specific facts on health insurance, managed care, and other health information: <http://Statehealthfacts.org/>

Information about the Paul Wellstone and Pete Domenici **Mental Health Parity and Addiction Equity Act** can be located at: <http://www.samhsa.gov/healthreform/parity/> and <http://parityispersonal.org/> which also includes links to State parity laws.