



November 29, 2021

Evans G. Daniels, Director  
Arizona Department of Insurance and Financial Institutions  
100 North 15<sup>th</sup> Avenue, Suite 261  
Phoenix, AZ 85007

Dear Director Daniels,

On behalf of the Board of Directors for Mental Health America of Arizona, we want to thank you for your consideration of our comments regarding the draft proposed rule dated November 1, 2021, operationalizing Laws 2020, Chapter 4 (SB 1523), also known as “Jake’s Law.” As mental health advocates, we are despairingly disappointed with the direction of the current draft proposal which eliminates important oversight of non-quantitative treatment limitations (NQTLs). As evidenced by the disparity between the likelihood of going out-of-network for mental healthcare versus medical/surgical care, Arizonans continue to experience barriers to access for mental health treatment even when they have private insurance. We believe one reason for this disparity is a due to how health plans operationally apply NQTLs. Unfortunately, the health plans have attempted to undermine the examination of NQTLs from the outset. In their response to the original draft proposed rules from March, the health plans inaccurately claim that the Department exceeded its authority under federal parity regulations and state statute. Those claims seem to have resulted in the Department’s massive departure from the original draft.

We know that access to mental healthcare remains an enormous issue for Arizonans. According to Mental Health America’s 2021 State of Mental Health in America report, Arizona ranks 40<sup>th</sup> in the country for access to care and 49<sup>th</sup> for youth mental health.<sup>1</sup> People with insurance experience significant difficulty locating in-network providers and facilities for mental health care compared to general or specialty medical care (inpatient and outpatient).<sup>2</sup> Indeed, the disparity uncovered by Milliman Research, is shocking. Arizonans are 10x more likely to go out-of-network for inpatient behavioral health facilities than med/surg facilities. Additionally, Arizonans are 6.69x more likely to go out-of-network for outpatient behavioral health facilities<sup>3</sup>.

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<sup>1</sup> <https://mhanational.org/issues/2021/mental-health-america-youth-data>

<sup>2</sup> [https://www.nami.org/Support-Education/Publications-Reports/Public-Policy-Reports/Out-of-Network-Out-of-Pocket-Out-of-Options-The/Mental\\_Health\\_Parity2016.pdf](https://www.nami.org/Support-Education/Publications-Reports/Public-Policy-Reports/Out-of-Network-Out-of-Pocket-Out-of-Options-The/Mental_Health_Parity2016.pdf)

<sup>3</sup> [https://assets.milliman.com/ektron/Addiction\\_and\\_mental\\_health\\_vs\\_physical\\_health\\_Widening\\_disparities\\_in\\_network\\_use\\_and\\_provider\\_reimbursement.pdf](https://assets.milliman.com/ektron/Addiction_and_mental_health_vs_physical_health_Widening_disparities_in_network_use_and_provider_reimbursement.pdf)

Our mission is to end stigma and promote the mental health and well-being of all Arizonans through education, advocacy and the shaping of public policy.

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These statistics are indicative of the desperate need Arizona has to look under the proverbial hood of health plans purporting to provide mental health coverage at parity and hold accountable those who are failing.

Our organization advocated fiercely for the passage of Jake’s Law during the 2020 Legislative Session. We participated in stakeholder meetings on our own behalf and as part of a coalition with other advocacy organizations like the JEM Foundation. Our recollection of the stakeholder process was strong opposition by the insurance industry to the inclusion of data collection regarding NQTLs. In fact, in one of their proposed amendments, they suggested eliminating the NQTL provisions entirely. We, and many other advocates, successfully fought for the inclusion of the NQTL provision knowing that many patients experience disparity in how NQTLs, like medical management standards, are applied for mental health and substance use treatment. In fact, during their testimony before four separate legislative committees, Jake’s parents described how their son needed additional in-patient treatment for his mental health condition but despite his doctor’s insistence about the medical necessity of such treatment, the insurance company denied coverage as not medically necessary. His young life ended at the age of 15 and, sadly, his is NOT an uncommon story. The industry’s strong opposition against the original proposed rules, as articulated in their 28-page public comment dated March 12, 2021, and the resulting elimination of a wealth of data collection on NQTLs in the new draft rule is a major blow to that hard fought and won battle.

In their comment to the Department regarding the original draft rules from March, the health plans argued that the Department far exceeded federal regulations and its statutory authority. MHA Arizona strongly disagrees with this assertion. ARS 20-3502(F) clearly states, “the department is not prohibited from otherwise requesting information or data that is necessary to verify compliance with the mental health parity and addiction equity act or this chapter.”<sup>4</sup> Further, the health plans additionally claim that statute and federal regulation merely require that health plans report “a list of plan benefits and an identification of which NQTLs apply.” They additionally assert that federal regulation and state statute require only an analysis of the “process, not outcomes.” Jake’s Law and federal guidance suggests that both are required. ARS 20-3502(B)(3) requires demonstration through analysis the application of NQTL’s “as written and in operation.” The term “in operation” is so important to federal regulators that it was emphasized in bold and underline throughout the self-compliance tool developed by the United States Department of Labor. The tool explicitly states in several places that “while outcomes are NOT determinative of compliance” they “may be reviewed as a warning sign, or indicator of potential operational MHPAEA parity noncompliance.” DOL additionally states, “While results alone are not determinative of noncompliance, measuring and evaluating results and quantitative outcomes can be helpful to identify potential areas of noncompliance.”<sup>5</sup>

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<sup>4</sup> <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/20/03502.htm>

<sup>5</sup> <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/self-compliance-tool.pdf>

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The response by the insurance industry to the original draft rules is deeply frustrating and defeating as it is reminiscent of their opposition to the NQTL reporting during the 2020 legislative session where advocates prevailed. We encourage the Department to restore the NQTL reporting requirements under the original proposed rules. We believe those compliance indicators and corresponding exhibits align more closely with the spirit of parity and are not contrary to federal or state law.

Respectfully,

A handwritten signature in black ink, appearing to read "E. Irvin".

Ericka Irvin  
Executive Director, MHA AZ

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