

Submitter: Patrick Mooney PhD
On Behalf Of:
Committee: House Committee On Behavioral Health and Health Care
Measure, Appointment or Topic: HB2029

I write in support of HB 2029, which is designed to create a more even playing field between insurance companies and mental health providers regarding provider service audits. Throughout the United States, insurers leverage their auditing power to force solo practitioners and small behavioral health (BH) groups to justify the care they provide for their members. Ostensibly, they seek to curb Fraud, Waste, and Abuse, a legitimate goal to conserve their members' insurance premiums.

However, they are frequently not transparent in how they go about doing this. Insurers can assert that a behavioral health provider is not delivering medical necessary treatment without having first spelled out what constitutes medical necessity. They or third-party contracted companies can review behavioral health records, find mistakes and clerical errors, and sometimes demand repayments for a percentage of the BH provider's claims that were never reviewed, making the assumption that the same problems would likely exist if all of the provider's claims to the same company were investigated. Perhaps the insurers will have an appeal's process within their same company—a process that takes a lot of time and energy for the BH providers to protect their business and which almost always favors the insurance company.

There is very limited regulatory oversight of insurers' auditing practices. These practices are not transparent or accountable, nor are they easily challenged by individual providers, who will seldom have certified billing coders, lawyers, or accountants readily available to keep insurers honest.

If you look at how insurers have dealt with Mental Health Parity laws, which do require insurers to report their practices to regulators and government bodies, one can get a pretty good idea about the huge leverage insurers can bring to bear when the auditing is just between them and a solo practice BH provider.

After three years of filing required mental health parity reports to the Division of Financial Regulation and the Department of Consumer Business Services, DCBS concluded in their 2024 report about NQTLs, which include audits:

- Transparency remains an ongoing issue, with insurers varying widely in how they report the application of NQTLs to behavioral health/ substance use disorder versus medical/ surgical benefits. Some insurers provide detailed data, while others offer generalized statements with little supporting evidence.
- The inconsistency in NQTL reporting makes it challenging to assess whether

insurers are meeting parity requirements. In some cases, insurers do not provide enough data to demonstrate that NQTLs are applied comparably across different benefit types, complicating efforts to ensure equal treatment.

- Despite existing requirements, many insurers do not clearly explain the evidentiary standards used to justify NQTLs. This lack of clarity makes it difficult for those evaluating the data to determine if NQTLs are being applied in a fair and nondiscriminatory manner.
- While insurers generally assert that NQTLs are applied equally to both behavioral health/ substance use disorder and medical/surgical benefits, there is often insufficient evidence to back up these claims. The absence of detailed comparative analyses raises concerns about potential disparities in care.
- A major challenge in achieving parity is the inconsistency in how insurers categorize and report NQTLs. This variability complicates efforts to compare the application of NQTLs across different insurers and benefit types.

Although HB2029 is not per se a parity bill, like mental health parity laws, it does attempt to make the auditing process fair and transparent. Oregon and the USA have a mental health crisis and individual and small group practices, which make up the bulk of service provision, are in short supply. Please pass this legislation to keep BH providers working in their practices, rather than spending time fending off audits.