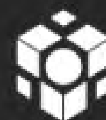
2022 Mental Health and Substance Use Disorder Parity Report Assessment

May 24, 2022



MYERS AND STAUFFER LC

CERTIFIED PUBLIC ACCOUNTANTS

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Introduction

The federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires health plans to provide benefits for mental health and substance use disorder (MH/SUD) benefits that are comparable to and no more stringent than that which is provided for medical and surgical (M/S) care. The Affordable Care Act expanded MHPAEA's requirements by ensuring qualified health plans offered on the Health Insurance Marketplace cover behavioral health treatment and services.

In 2016, the Centers for Medicare and Medicaid Services (CMS) finalized the MH/SUD parity rule[1] for Medicaid and Children's Health Insurance Programs, including Alternative Benefit Plans. Though the parity rule applies to coverage provided to the Health First Colorado members served through Medicaid Managed Care Organizations, the Alternative Benefit Plan, the Colorado Department of Health Care Policy and Financing (Department) endeavors to ensure parity exists for all members.

After finalizing the MH/SUD parity rule, CMS published the Parity Compliance Toolkit Applying MH/SUD Parity Requirements to Medicaid and Children's Health Insurance Programs (Parity Compliance Toolkit or Toolkit)[2] in 2017. Since states monitor and report to CMS on their compliance with parity requirements, the purpose of the Parity Compliance Toolkit is to provide guidance to help states assess compliance with the parity rule.

In 2019, Colorado passed House Bill 19-1269, creating Colorado-specific authority on MH/SUD parity. State statute[3] mandates annual evaluation and reporting on compliance with parity. Accordingly, the Department performed an analysis of parity compliance, and prepared the 2022 Mental Health and Substance Use Disorder Parity Report (2022 Parity Report) on the findings.

Myers and Stauffer was contracted by Department to perform an independent review of the 2022 Parity Report. The purpose of the review is to analyze the 2022 Parity Report and assess the processes and procedures the Department utilized to evaluate parity compliance and develop the conclusions presented in the report. The results of Myers and Stauffer's assessment of the 2022 Parity Report are contained herein. Myers and Stauffer analyzed the Department's approach, processes, and procedures for conformity with:

[1] Federal Register / Vol. 81, No. 61, Parts 438, 440, 456
[2] Medicaid website at https://www.medicaid.gov/medicaid/benefits/downloads/bhs/parity-toolkit.pdf.
[3] Colorado Revised Statutes 25.5-5-421

- Federal MHPAEA Rules and Regulations[4]
- State Parity Rules and Regulations[5]
- Best Practices for the Evaluation of MHPAEA

Myers and Stauffer was not contracted to perform an evaluation of the Medicaid program's parity compliance, as this would duplicate the evaluation performed by the Department. Accordingly, the assessment performed by Myers and Stauffer does not offer assurance nor express conclusions regarding parity compliance. This report is focused solely on evaluating the sufficiency and completeness of the Department's approach, analysis and report on parity compliance.

[4] The MHPAEA, and CMS final parity rule: Federal Register / Vol. 81, No. 61, Parts 438, 440, 456
[5] House Bill 19-1269, and Colorado Revised Statutes 25.5-5-421

Report Assessment Process

As required by Colorado statute[6], the Department performed an evaluation of the Medicaid Managed Care Entities[7] (MCEs) compliance with parity requirements, and compiled a report on their findings.

The Department utilized various resources to perform their assessment and develop the 2022 Parity Report, including the Parity Compliance Toolkit and the Behavioral, Mental Health, and Substance Use Disorder Parity Comparative Analysis Report – Training Manual[8] (Parity Manual) to perform the assessment. The Parity Manual was specifically developed for the Medicaid program to utilize in their assessment process, and includes detailed procedures for performing an evaluation of parity compliance considering the Colorado's unique Medicaid delivery system, as well as federal and state parity requirements.

Myers and Stauffer's Assessment

Myers and Stauffer was contracted by the Department to evaluate the Department's approach to, and process of, assessing parity compliance for the Medicaid benefit, and review the 2022 Parity Report drafted by the Department. Myers and Stauffer's evaluation of the 2022 Parity Report, as well as the underlying approach taken by the Department, included the following steps:

1. **Review of Background Information.** Myers and Stauffer reviewed the 2021 Parity Report and the Parity Manual, in order to become familiar with the prior assessment and processes previously established for evaluating parity compliance for Colorado Medicaid. Myers and Stauffer independently consulted other sources relevant to parity assessment, such as MHPAEA, the CMS parity rule, the Parity Compliance Toolkit, and House Bill 19-1269.

2. **MCE Completion of Questionnaires.** The Department developed a questionnaire for the MCEs to complete, in order to collect information used to assess parity. The questionnaire gathered information that assisted Myers and Stauffer in understanding the Department's approach and analysis performed. Myers and Stauffer used the responses to the questionnaires to supplement the background information reviewed.

[6] Colorado Revised Statutes 25.5-5-421

[7] MCEs include Medicaid Managed Care Organizations, as well as Colorado's Regional Accountable Entities

[8] Produced for the Department by CedarBridge Group, July 31, 2020

3. **Regular Meetings with Department Personnel.** For the duration of the project, Myers and Stauffer met bi-weekly with the Department to facilitate communication, provide updates on progress, and discuss issues relevant to the 2022 Parity Report assessment.
4. **Assessment of 2022 Parity Report.** Myers and Stauffer performed a thorough review of the 2022 Parity Report, in order to provide this report assessment.

In concert with the steps described above, Myers and Stauffer drew on our experience with, and knowledge of, conducting MHPAEA analyses in Colorado and other states in order to evaluate the sufficiency of the Department's approach for reviewing parity compliance. The report assessment conducted by Myers and Stauffer offers an objective, knowledgeable viewpoint on the parity analysis and report prepared by the Department.

Assessment Results

The Department's assessment of parity compliance covered all elements required by the CMS parity rule (parity rule) and state statute. The Department gave appropriate consideration to relevant authoritative sources and their applicability to Colorado Medicaid during their assessment of parity compliance. When defining the scope of the Department's evaluation, the unique elements present in Colorado's Medicaid delivery system were reflected. MHPAEA is applicable Medicaid Managed Care Organizations (MCOs), and Alternative Benefit Plans (ABPs), both of which are present in Colorado. The Department's approach included an evaluation of the statewide managed care system, which includes:

- Benefits provided by Managed Care Organizations (MCOs)
- Benefits provided by Regional Accountable Entities (RAEs)
- Benefits provided Fee-for-Service by the Department

The scope of the parity assessment also aligned with Colorado statute[9], which requires evaluation of Colorado Medicaid Managed Care Entities (MCEs). As prepaid inpatient health plans (PIHPs), RAEs meet the definition of MCEs, as do the Medicaid MCOs. The parity rule specifies that MH/SUD benefits must be comparable to, and no more stringent than M/S benefits. As a result, it was necessary for the Department to consider benefits provided fee-for-service, as these may be provided in combination with services covered by the MCEs. This multifaceted benefits delivery system required the Department to define various benefit combinations (termed "scenarios" within the Parity Report), and to assess compliance for each combination.

The parity rule allows states to define MH/SUD and M/S benefits within reasonable parameters. The Department's approach included outlining specific criteria based on independent standards to define MH/SUD and M/S benefits. The standards and methods used by the Department provided a reasonable basis on which to assess parity compliance.

MH/SUD and M/S Definitions

The Department clearly identified use of the current International Classification of Diseases, Clinical Modification (ICD-10-CM) to define the standards for MH/SUD services and M/S services. This resource is a generally recognized independent standard of current medical practice; thus, is an appropriate

[9] Colorado Revised Statutes 25.5-5-421

resource to define MH/SUD and M/S benefits. The Department clarified any mental health condition exceptions that were not considered as part of the MH/SUD benefits.

Classifications for Reporting

The parity rule identifies four primary classifications in which benefits are assessed for NQTLs, financial requirements, and quantitative treatment limitations. The four classifications dictated by the parity rule are:

- **Inpatient:** Benefits furnished on an inpatient basis.
- **Outpatient:** Benefits furnished on an outpatient basis.
- **Emergency:** Benefits for emergency care.
- **Prescription Drugs:** Benefits for prescription drugs.[10]

The definitions in the parity rule allow for states to further refine the classifications, as they apply to the program. The Department established definitions that add clarity to these classifications for the purpose of analyzing parity, and performed their assessment in accordance with these classifications.

Parity Components

Requirements within the parity rule include assessment of parity in the following areas:

- Aggregate Lifetime and Annual Dollar Limits.
- Financial Requirements and Quantitative Treatment Limitations.
- Non-Quantitative Treatment Limitations (NQTLs).

The Department initially assessed the health plans' benefits to determine which limitations and requirements are present. Appropriate sources were utilized to establish the existence of parity components. Since Colorado Medicaid does not impose aggregate lifetime limits, annual dollar limits, financial requirements, or quantitative treatment limitations (and none are therefore enforced by the health plans), these components of parity did not require further analysis. The only parity component applicable to the Department's analysis was NQTLs.

[10] Federal Register / Vol. 81, No. 61, Part 438 Managed Care, Subpart K, § 438.910 Parity requirements for financial requirements and treatment limitations.

Nonquantitative Treatment Limitations

The parity rule defines this element as shown below, though the definition applies to both quantitative and non-quantitative treatment limitations:

- **Treatment Limitations:** These include limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically, and nonquantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage.[11]

The distinction between quantitative and nonquantitative treatment limitations is the ability to express the limitation numerically. NQTLs are those limits that are not or cannot be expressed numerically. While the parity rule does not attempt to provide an exhaustive list of NQTLs, an illustrative list of NQTLs is provided for reference in the final rule:

- Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;
- Formulary design for prescription drugs;
- Standards for provider admission to participate in a network, including reimbursement rates;
- Methods for determining usual, customary, and reasonable charges;
- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);
- Exclusions based on failure to complete a course of treatment; and
- Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits or services provided. [12]

The Department's Parity Manual and 2022 Parity Report address NQTLs in three primary categories, with various subcategories, as shown in the table below.

[11] Federal Register / Vol. 81, No. 61, Part 438 Managed Care, Subpart K, § 438.900 Meaning of terms.
[12] Federal Register / Vol. 81, No. 61, Part 440 Managed Care, § 440.395

	Medicaid Nonquantitative Treatment Limitations
Category	**Subcategory**
Medical Management Standards (MMS)	Prior Authorization (identify services by name and service code)
MMS	Concurrent Review
MMS	Retrospective Review
MMS	Medical Necessity Criteria
MMS	Medical Appropriateness Review
MMS	Fail First/Step Therapy Protocols
MMS	Conditioning Benefits on Completion of a Course of Treatment
MMS	Outlier Management
MMS	Coding Limitations
Provider Admission Standards (PAS)	Network Provider Admission
PAS	Establishing Charges/Reimbursement Rates
PAS	Restrictions Based on Geographic Location, Facility Type, or Provider Specialty
Provider Access (PA)	Network Adequacy Determination
PA	Out-of-Network Provider Access Standards

The Department reviewed each of the above NQTLs to evaluate limitations on the scope and duration of benefits to determine parity compliance.

NQTL assessments involve gathering information on both the written policies and operationalized practices, in order to determine if MH/SUD benefits are comparable to, and applied no more stringently than, M/S benefits. The NQTLs addressed by the Department in the 2022 Parity Report encompass all elements of the illustrative list in the parity rule. Additionally, the Department collected public input to inform the comparative analysis performed, in accordance with state statute.

The Department identified non-compliance in two areas:

- Fee-for-service inpatient hospital concurrent review
- Denver Health Medicaid Choice’s utilization management
    - Prior Authorizations
    - Concurrent Review
    - Retrospective Review

Fee-for-Service Inpatient Hospital Concurrent Review

First identified in the 2021 Parity Report, the parity assessment revealed that concurrent review practices were suspended for M/S benefits due to the COVID-19 pandemic; however, these practices remained in effect for MH/SUD benefits. The Department has appropriately identified this issue in contradiction to the parity requirements, and is in the process of implementing a plan to bring this disparity back into compliance with parity.

Denver Health Medicaid Choice Utilization Management

The 2022 parity assessment identified a lack of authorization requirements for inpatient and outpatient M/S services when provided by Denver Health Medicaid Choice's preferred provider network. Whereas, inpatient and outpatient authorization requirements existed for MH/SUD services. The Department's analysis appropriately concluded Denver Health Medicaid Choice was out of compliance with parity for the inpatient and outpatient classification services for the following NQTLs: Prior Authorization, Concurrent Review, and Retrospective Review.

Both instances of noncompliance described above have been disclosed in the Parity Report.

Availability of Documentation

The Department's parity assessment appropriately considered the parity rule requirements regarding availability of documentation. Separate from the parity assessment, the Department contracted with an external entity to perform a quality review audit of utilization management policies and practices; the results of the audit revealed limited situations where MCEs were determined to have sent confusing member notices, and inappropriate denials were made. "In one situation, an MCE was identified to have not sent any members letters with appeals information, rather, they copied the members on letters sent to the providers."[13] These instances impacted their compliance with the Availability of Information parity requirements. The Department has worked with the affected MCEs to ensure the processes were corrected, to comply with parity going forward. Such has been disclosed in the Parity Report.

Stakeholder Input

The Department solicited feedback from stakeholders regarding parity compliance or concerns through a variety of formats, including hospital forums, behavioral health ombudsman, member grievances, and stakeholder outreach. The Department obtained feedback from stakeholders who spoke on behalf of providers, advocates, community centered boards, Medicaid members, and community members. Comments received were reviewed to determine applicability to the parity assessment; those found not to be applicable were not incorporated into the assessment. Feedback relevant to parity was assessed to ensure associated policies and procedures governing MH/SUD benefits were comparable and no

[13] 2022 Parity Report

more stringent than those governing M/S benefits. High frequency comments included topics such as establishing provider reimbursement/charges and the resulting impact to network adequacy. The Department's assessment of these comments appropriately included consideration of policies in place, procedures followed, and reimbursement provided. The Department oversees the MCE's network adequacy to ensure continued compliance.

Determination

Based on the report assessment described herein, as well as the myriad discussions with Department personnel regarding the procedures performed, Myers and Stauffer did not identify any overlooked parity compliance issues. Additionally, we did not identify any incomplete analyses or insufficient procedures. Myers and Stauffer determined that the analysis, procedures, and report are in conformity with MHPAEA laws, rules, and best practices.

Myers and Stauffer was not engaged to and did not perform an evaluation of the Medicaid program's compliance with parity. As a result, this determination is not intended to provide assurance regarding the Medicaid program's parity compliance.