



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Insurance

Health & Insurance Committee  
House of Representatives  
Colorado General Assembly  
200 East Colfax, Room 307  
Denver, Colorado 80203

Public Health Care & Human Services Committee  
House of Representatives  
Colorado General Assembly  
200 East Colfax, Room 307  
Denver, Colorado 80203

Health & Human Services Committee  
Colorado State Senate  
Colorado General Assembly  
200 East Colfax  
Denver, Colorado 80203

May 28, 2021

Dear Representatives and Senators,

Access to mental health, behavioral health, and substance use disorder (SUD) treatment is even more important now due to the current COVID-19 pandemic. Rates of anxiety, depression, substance use, and overdose have increased, as well as incidences of suicide ideation, attempt, and completion. These conditions are further exacerbated for certain communities of color and others that face structural barriers to accessing care. These issues are not new, but the global COVID-19 pandemic continues to create more urgency in the ways the State ensures access to behavioral health care in its rural, mountain, and urban communities.

Under the leadership of Governor Polis, the Colorado Division of Insurance (Division), part of the Department of Regulatory Agencies, continues to make progress in its efforts to ensure that Colorado consumers have access to quality and affordable behavioral health care with their private insurance coverage. We are pleased to share this report that highlights our activities to implement the Behavioral Health Care Coverage Modernization Act and enforce mental health parity in the private insurance market in Colorado.

Pursuant to §10-16-147 C.R.S., this report addresses the methodology used to evaluate health insurance carrier compliance with mental health parity laws and regulations, market conduct examination activities, and corrective actions taken to protect Colorado consumers. In addition to these statutory requirements, it summarizes other Division activities undertaken in the last year to increase public education and awareness related to mental health parity and to expand the Division's ability to support consumers in accessing such care.

Thank you for the opportunity to share with you our efforts to enforce mental health parity. Please do not hesitate to contact me should you have questions or comments about the information contained in this report.

Sincerely,

Michael Conway  
Commissioner of Insurance



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Insurance

**Mental Health Parity: Implementation and Enforcement by the  
Colorado Division of Insurance**

**Presented to the Health and Insurance Committee and the Public  
Behavioral Health and Human Services Committee of the Colorado  
House of Representatives and the Health and Human Services  
Committee of the Colorado State Senate, in accordance with §10-16-  
147 C.R.S.**

**May 28, 2021**

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## **Executive Summary**

Access to quality and affordable mental health, behavioral health, and substance use disorder (SUD) care is more important now than ever due to the ongoing effects of the COVID-19 pandemic, as the state of Colorado has seen increased rates of depression, anxiety, suicide ideation and attempt, substance use, and overdose, among other behavioral health needs. In this report, the Colorado Division of Insurance (the Division) shares a summary and update of its activities related to the Behavioral Health Care Coverage Modernization Act, which addresses issues related to mental health parity and coverage of mental health, behavioral health, and SUD services under private health insurance.

This report discusses the methodology used and rules promulgated to verify health insurance carrier compliance with State and federal mental health parity laws, market conduct examination activities, and educational and corrective actions taken during the preceding twelve months. It also summarizes other Division activities from the last year, including consumer outreach and public education, State and community partnership development, and expansion of the Division's capabilities in supporting consumers' access to such services.

The Division has revised its mental health parity regulation to include additional information, as required by SB20-007, and promulgated additional regulations around medication-assisted treatment (MAT) data collection expectations. It has revised its state benchmark plan, effective for plan year 2023, to include additional mental health, behavioral health, and SUD treatment options for consumers. Further, it continues its data collection and enforcement processes through its Rates and Forms section, and is currently investigating several carriers regarding potential parity violations over multiple plan years. More information will be shared publicly as these investigations conclude. The Division also continues its parity-specific market conduct examinations on four (4) carriers related to network adequacy and development, reimbursement rates and processes, pharmacy benefit design, and financial requirements and quantitative treatment limitations, and it expects to share the results publicly in late 2021. It initiated one additional market conduct exam this year, although the exam does not have an expected conclusion date at this time. Lastly, the Division continues its efforts to increase consumers' understanding of their rights and protections related to mental health parity, and it has created and disseminated more than 4,500 booklets on the topic of mental and behavioral health parity to over sixty (60) organizations and individuals throughout Colorado. It also has expanded its partnerships with community organizations, health systems, and State agencies to ensure coordination of mental health, behavioral health, and SUD care and coverage initiatives.

The activities highlighted in this report illustrate some of the momentum that continues to build in the state. The Division looks forward to continuing to work with the legislature, State agencies, health insurance carriers, service organizations, health care providers, and communities on future efforts to ensure that the behavioral health system works for every Coloradan.

## Introduction

The Colorado Division of Insurance welcomes the opportunity to share with the Public Behavioral Health and Human Services and Health and Insurance Committees of the Colorado State House of Representatives and the Health and Human Services Committee of the Colorado State Senate, a summary and update of its activities related to HB19-1269, [the Behavioral Health Care Coverage Modernization Act](#), which addresses issues related to mental health parity and coverage of mental health, behavioral health, and substance use disorder (SUD) services under private health insurance and Health First Colorado, Colorado's Medicaid program. This report responds to private health insurance and the Division's implementation activities in the Act's second year of implementation, which occurred from June 1, 2020, through May 31, 2021. The inaugural report, which summarizes the Division's mental health parity activities from the Act's effective date of May 16, 2019, through May 31, 2020, can be found on the Division's website [here](#).

As required by §10-16-147 C.R.S., this report discusses the methodology used and rules promulgated to verify health insurance carrier compliance with State and federal mental health parity laws, market conduct examination activities, and educational and corrective actions taken during the preceding twelve months. In addition to these statutory reporting requirements, this report summarizes other Division activities undergone in the last year, including consumer outreach and public education, State and community partnership development, and expansion of the Division's capabilities in supporting consumers' access to such services. The Division also extends its gratitude to Governor Polis for his prioritization of quality and affordable mental health, behavioral health, and SUD coverage for Coloradans.

Federal and Colorado State law requires that health insurance carriers cover services for mental health, behavioral health, and SUD conditions comparable to the way they cover other physical health conditions like diabetes or heart disease. This is called "parity." The core concept of parity is that people seeking mental and behavioral health care should be treated fairly and similarly to people seeking physical health treatment. Evaluation of parity is complex and involves comparing mental health, behavioral health, and SUD treatment to medical and surgical care across certain benefit classifications, financial requirements like copayments and coinsurance, and various treatment limitations, as explained in greater detail in this report.

Parity laws prohibit health insurance plans from being more restrictive in providing mental health, behavioral health, and SUD benefits than they would be for medical and surgical benefits, with respect to Quantitative Treatment Limitations (QTLs) and Non-Quantitative Treatment Limitations (NQTLs). QTLs measure whether numerical values like copayments, coinsurance, outpatient visit limits, inpatient daily limits, deductibles, annual caps on reimbursement, and reimbursement rates are the same for behavioral health and physical health.

NQTLs cannot generally be measured numerically, and as a result are more challenging to measure than QTLs. Examples of NQTLs include, but are not limited to, network credentialing standards, medical necessity criteria, evidentiary standards, pharmacy design, geographic restrictions, self-harm and suicidal exclusions of coverage, utilization management processes, preauthorization requirements, network adequacy standards, standards for denials of care, fail-first and step therapy, provider reimbursement practices, facility type restrictions, network tier design, and likelihood of improvement criteria. Both QTLs and NQTLs are considered when

comparing mental health, behavioral health, and SUD coverage with medical and surgical coverage.

Access to quality and affordable mental health, behavioral health, and SUD care is more important now than ever due to the ongoing effects of the COVID-19 pandemic. A March 2021 [report from the Government Accountability Office \(GAO\)](#) found that up to four (4) in ten (10) adults on average reported anxiety or depression symptoms during the pandemic, compared with about one (1) in ten (10) adults in early 2019. It further noted that during the first seven (7) months of the pandemic, there were 36% more emergency room visits for drug overdoses and 26% more visits for suicide attempts, compared to the same period in 2019. Additionally, an April 2021 [report from the Kaiser Family Foundation](#) found that about half of adults, 47%, continue to report negative mental health impacts related to worry or stress from the pandemic, and younger adults and women, including mothers with children under 18 in their households, are the most likely to report negative impacts on their mental health.

Further, [a June 2020 CDC survey](#) indicated that younger adults, racial and ethnic minorities, essential workers, and unpaid adult caregivers reported having experienced disproportionately worse mental health outcomes, increased substance use, and elevated suicidal ideation. Most frontline health care workers say that worry and stress related to the pandemic has negatively affected their mental health, [according to a nationally representative survey by the Kaiser Family Foundation of frontline health care workers](#). These health care workers say that the pandemic has also negatively impacted their physical health, relationships with family members and coworkers, sleep quality, and increased their alcohol or drug use.

In 2019, 1,062 Coloradans died from a drug overdose, and 612 of those deaths were caused by prescription opioids or heroin, according to [the Colorado Department of Public Health and Environment \(CDPHE\) Drug Overdose Dashboard](#). Opioid use may be exacerbated by the COVID-19 pandemic, CDC [Provisional Drug Overdose Death Counts](#) indicates that there were roughly 1,489 projected deaths due to overdose in Colorado in 2020, Colorado's deadliest year on record.

The [GAO report](#) also noted significant challenges related to carrier compliance with federal parity laws, behavioral health care workforce shortages, and increased demand for services, all exacerbated by the COVID-19 pandemic. In a February 2021 survey of its members, the National Council for Behavioral Health, which represents treatment providers, found that in the three (3) months preceding the survey, about two-thirds of the member organizations surveyed reported demand for their services increasing and having to cancel or reschedule patient appointments or turn patients away. The survey also found that during the pandemic, 27% of member organizations reported laying off employees, 45% reported closing some programs, and 35% decreased the hours for staff.

The Division continues to be active in responding to these immediate and long-term mental health, behavioral health, and SUD coverage needs. Although Colorado faces challenges in its efforts to ensure that every person has access to quality and affordable mental health, behavioral health, and SUD treatment, much progress is underway. The Division is pleased to share this summary of its behavioral health program efforts with the General Assembly.

### **Federal and State Policy Related to Mental Health Parity**

Both federal and Colorado state law provide protections for consumers accessing mental health, behavioral health, and SUD services. The following list is not exhaustive, yet it provides a

synopsis of the policies that serve as pillars of parity compliance and access to behavioral health care generally in Colorado.

#### Federal Policy:

- [Mental Health Parity and Addiction Equity Act of 2008 \(MHPAEA\)](#): This federal law - also called the Parity Law - requires health insurance coverage for mental health and/or SUD conditions to be comparable to what patients would receive for coverage of medical/surgical services, if they provide mental health and SUD benefits.

MHPAEA requires insurance companies to administer mental health and SUD benefits comparably to the way they administer medical and surgical benefits, addressing limits on QTL factors such as visits and deductibles, as well as limits or requirements around NQTL issues like prior authorization and network criteria. The [final regulation](#) implementing MHPAEA went into effect on January 13, 2014.

- [Patient Protection and Affordable Care Act of 2010 \(ACA\)](#): In addition to giving people better access to health insurance and health care, the ACA helps to further enforce mental health parity. It requires that individual and small group plans (except grandfathered plans created before the ACA) [cover mental health and substance abuse services as essential health benefits](#). This includes behavioral health treatment, such as psychotherapy and counseling, mental and behavioral health inpatient services, and substance use disorder treatment. It also requires that plans cover pre-existing mental and behavioral health conditions, like depression and anxiety, while eliminating annual and lifetime spending limits.

The ACA and MHPAEA work together to require coverage for mental health, behavioral health, and SUD treatment.

- [The Consolidated Appropriations Act, 2021](#): This federal law, enacted December 27, 2020, amended MHPAEA to provide important new protections nationally. It sets specific requirements on how carriers must demonstrate parity compliance. It further sets expectations for the US Department of Labor (DOL) on requesting, reviewing, and reporting the results of the analyses to Congress on an annual basis. The DOL, Health and Human Services (HHS), and the Treasury jointly [issued guidance](#) on April 2, 2021, to provide additional information to stakeholders regarding these amendments.

While these changes progress compliance requirements nationally, the Colorado state law already required these expectations of carriers.

- [Wit vs. United Behavioral Health](#): This class action lawsuit, decided on February 1, 2021, provided guidance on the Generally Accepted Standards of Care for behavioral health treatment, based on care guidelines previously used by United Behavioral Health (UBH) when assessing the medical necessity of outpatient and residential inpatient mental health and SUD treatment. While the case is not controlling in Colorado, the Division does utilize quality of care standards in its metrics to determine parity compliance.

Additionally, there have been several recent policy changes federally that impact mental health, behavioral health, and SUD treatment care generally, although not directly connected to parity enforcement. The [American Rescue Plan Act of 2021](#) allocates several billion dollars for block

grants and other mental health and SUD services that address mental health and SUD, workforce education and training, suicide prevention, and public education campaigns to increase access to behavioral health care nationally. Additionally, the Department of Health and Human Services released updated [Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder](#) on April 28, 2021. The guidance increases access to buprenorphine for people with opioid use disorder (OUD) by providing an exemption from certain statutory certification requirements related to training, counseling and other ancillary services to eligible providers who are state licensed and registered by the Drug Enforcement Administration (DEA) to prescribe controlled substances. The Food and Drug Administration (FDA) also [approved a higher-dose, 8 milligram, of Naloxone to treat and reverse an opioid overdose](#), which may mitigate the need to administer multiple doses to reverse an overdose while awaiting medical attention.

#### State Policy:

- [Behavioral Health Care Coverage Modernization Act \(2019\)](#): In regards to the private insurance market, the Behavioral Health Care Coverage Modernization Act specifies compliance with MHPAEA and mandatory coverage for the prevention of, screening for, and treatment of behavioral health, mental health, and SUD. It includes mental health parity requirements related to QTLs and NQTLs, network adequacy and provider reimbursement standards, SUD and behavioral health screening standards, pharmacy benefit design, an updated statutory definition of "behavioral, mental health, and substance use disorder," information on appeal processes for denials, and carrier reporting requirements.

The Division promulgated [Regulation 4-2-64 - Concerning Mental Health Parity in Health Benefit Plans](#) effective in June 2020, to implement this law. It is discussed in greater detail in the section below titled "Division Enforcement Actions."

- [SB20-007 Concerning Treatment for Substance Use Disorders](#): In regards to the private insurance market, this bill requires carriers to utilize, at a minimum, the American Society of Addiction Medicine (ASAM) criteria for placement, medical necessity, and utilization management determinations, as set forth in the most recent edition of "The ASAM Criteria for Addictive, Substance-Related, and Co-Occurring Conditions." The Division included this requirement and enforcement mechanisms in the Regulation 4-2-64 Mental Health Parity in Health Benefit Plan revision, detailed in the section below, to provide oversight for carrier compliance. The bill also requires carriers to report to the Commissioner the number of in-network providers who are federally licensed to prescribe medication-assisted treatment (MAT) for SUD, including buprenorphine, the number of prescriptions filled by enrollees for MAT for SUD, and a description of the carrier's efforts to ensure sufficient capacity for and access to MAT for SUD.

The Division promulgated [Colorado Insurance Regulation 4-2-75 Concerning Requirements for Reporting Medication-Assisted Treatment Coverage](#) to comply with the legislative requirements. More information on such reporting requirements are discussed below. This regulation will be effective June 15, 2021.

- [HB21-1097 Concerning Recommendations from the Colorado Behavioral Health Task Force, and, in Connection therewith, Establishing a Behavioral Health Administration](#): Signed into law on April 22, 2021, HB21-1097 requires Colorado Department of Human Services to create a plan to create a Behavioral Health Administration to lead, promote,



and administer the state's behavioral health priorities. With regard to the private insurance market, it requires the Division to work with stakeholders to develop recommendations for private insurance integration and coordination with the BHA. More information on the Division's efforts around the BHA creation and behavioral health reform can be found in the section titled "State and Community Partnerships" below.

### **Division Enforcement Actions**

Since the last report submitted to the Legislature, the Division has implemented the following strategies to detect and enforce mental health parity compliance in the commercial market, as well as ensure access to quality and affordable mental health, behavioral health, and SUD coverage.

#### Colorado Insurance Regulations

- Revisions to [Colorado Insurance Regulation 4-2-64 Concerning Mental Health Parity in Health Benefit Plans](#): This regulation provides requirements that carriers must follow to comply with the mental health parity laws, as well as the specific formats in which carriers must submit parity data to the Division. They include:
  - Minimum coverage requirements for mental health, behavioral health, and SUD treatment;
  - Expectations of the financial requirements and design of health benefit plans necessary to be compliant with parity requirements;
  - The format to submit carrier-specific information on QTLs, such as visit limits, deductibles, and dollar amounts for co-pays and co-insurance, and NQTLs, including medical necessity criteria, step therapy and prior authorization requirements, formulary design for prescription drugs, and failure to improve criteria; and
  - Requirements of a written notice of, and the reason for, denials of benefits for behavioral health, mental health, or SUD services and the provision of resources to assist with a denial.

This rule and related instructions apply to all health benefit plans that are regulated by the Division and that are marketed and issued in the individual, small group and large group markets in Colorado, including non-grandfathered health benefit plans, short-term limited duration health insurance policies, and student health insurance coverage. It does not apply to grandfathered health benefit plans or to limited benefit plans, as defined in § 10-16-102(32)(b), C.R.S., and some exclusions for coverage of specific mandated benefits as found at § 10-16-104(1.4), C.R.S.

The Division amended this regulation to provide additional guidance and clarity on the Division's mental health parity enforcement activities, update reporting requirements, update contact information for the Office of the Ombudsperson for Behavioral Health Access to Care, and include carrier utilization of the ASAM criteria. Some of the reporting templates have been changed or added, including the following:

- **Financial Requirement and Quantitative Treatment Limitation Analysis Tool, the Financial Requirement Attestation:** The tool was streamlined and made more flexible, as requested by insurance carriers, and it aligns with the analysis tool utilized by other states and the National Association of Insurance Commissioners (NAIC) MHPAEA Working Group, which is further explained below.

- **The Comparative Analysis Reporting Tool:** The tool was updated to improve organization and comparative capabilities across carriers, as well as align with the tool utilized by other states.
- **ASAM Criteria Questionnaire:** The new template was included to monitor and enforce ASAM criteria utilization by carriers, as required by SB20-007.
- **The Confidential Network Development Questionnaire:** This questionnaire was revised to include negotiation practices, quality measures, utilization of saturation limits, and reimbursement rates and practices, among other topics.
- **The Network Adequacy, Provider Credentialing, and Network Admission Questionnaire:** This questionnaire was revised to include information regarding provider credentialing practices, data on providers in the network by type, network admission policies and procedures, application requirements by provider type, recruitment and retention practices, and other topics.

All of the templates can be accessed online in the [folder for 4-2-64 Templates](#). The amended regulation is effective June 1, 2021.

- [Colorado Insurance Regulation 4-2-75 Concerning Requirements for Reporting Medication-Assisted Treatment Coverage](#): As required in § 10-16-710(1)-(2), C.R.S., the Division promulgated this rule to create reporting and data collection reporting requirements regarding access to MAT for SUD and opioid use disorder (OUD). Carriers will report to the Division annually the following information:
  - The number of MAT providers by county, the number of providers that can prescribe methadone for the treatment of OUD, and the number of providers with a federal waiver to prescribe buprenorphine for the treatment of OUD;
  - The number of SUD and opioid treatment programs (OTP) in the network;
  - The total number of prescriptions filled by unique enrollees; and
  - A detailed description of the carrier's efforts to ensure sufficient capacity for and access to MAT for SUD and OUD, including prior authorization and step therapy requirements, prescription drug coverage and formulary tiering, provider recruitment and retention strategies, utilization management protocols, and a description of evidentiary standards used in claims review.

The new regulation is effective June 15, 2021, and carriers shall provide data to the Division for 2020 no later than September 15, 2021.

#### Other Regulatory Oversight Initiatives

- [Essential Health Benefit Benchmark Plan](#): The Division worked with stakeholders and the actuarial consulting firm Wakely to evaluate the State's current benchmark health insurance plan, and it has [developed a set of proposed changes beginning with the 2023 plan year](#). The benchmark plan is the plan used to set minimum standards for essential health benefits (EHBs) within Colorado for individual and small group plans. All changes to Colorado's benchmark plan will require approval by the Centers of Medicare and Medicaid services (CMS), with a final determination expected by the Summer of 2021.

The proposed changes include adding acupuncture, adding an annual mental wellness exam, expanding the number of drugs required to be covered in certain USP classes to provide alternatives to opioids, and ensuring coverage of procedures to treat gender

dysphoria, which is the condition designated the Diagnostic and Statistical Manual of Mental Disorders (DSM–5) for transgender people.

- **MAT Coverage:** The Division ensures that the current state benchmark plan, effective through the 2022 plan year, includes coverage for a variety of MAT and naloxone.
- **Gender Dysphoria Coverage Data Call:** The Division issued a data call in July 2020 that required carriers to provide an explanation of their coverage for hormone therapy and surgical interventions to treat gender dysphoria, both of which are often integral for a transgender or non-binary person’s mental and behavioral health. The Division learned of gaps in coverage carrier-by-carrier and challenges related to medical necessity criteria, and it has worked with carriers to address issues that impact access to care for transgender Coloradans.
- **Provider Credentialing Data Call:** The Division issued a data call in October 2020 that required carriers to provide an overview of their processes for mental health, behavioral health, and SUD provider credentialing, data on timelines and providers in network compared to medical and surgical coverage, and applications approved and denied, among other topics. The Division learned that credentialing timelines, administrative burden, and providers approved to join a network varies greatly between carriers. In response, the Division has prepared [draft Bulletin No. B-4.114 Policy Directives for Credentialing Standards for Mental Health, Behavioral Health, and Substance Use Disorder Providers](#) and has received comments from stakeholders. Next steps are pending the outcome of [SB21-126 Timely Credentialing Of Physicians By Insurers](#) regarding timeline credentialing.

### **Rates and Forms Review**

Previously, carriers were only required to certify compliance with federal mental health parity laws and regulation. In addition to this certification of compliance, the Behavioral Health Care Coverage Modernization Act required them to submit to the Division mental health parity data on an annual basis. The Division staff provided written and verbal procedural guidance and biannual technical assistance webinars to carriers for submission. All filings, with the exception of appendices deemed confidential, are public via the System for Electronic Rates and Forms Filing (SERFF). The following illustrates the Division’s progress and preparation for the 2020, 2021, and 2022 plan years:

#### 2020 Plan Year:

The Division continues its investigation into potential financial requirement violations for several carriers related to copayments and coinsurance inappropriately charged to consumers for the 2020 plan year. It is seeking both penalties on carriers and restitution for consumers. The investigation impacts thousands of consumers, and restitution amounts being sought vary per consumer, ranging from as low as \$5 to hundreds or thousands of dollars per person.

#### 2021 Plan Year:

The Division reviewed financial requirements compliance for 351 plans in the Individual and Small Group markets in June 2020, during its annual rate filings review for the 2021 plan year and found 57 plans to be out of compliance. It provided targeted, verbal and written technical assistance to carriers with noncompliant plans, and required them to review, restructure, and resubmit plans to ensure consumers are not charged copayments and coinsurance for mental health, behavioral health, and SUD benefits that exceed the substantially all and predominant

level testing requirements. No fines were issued for non-compliant Individual or Small Group plans.

Further, the Division is currently reviewing the large group and student health plan parity filing submissions from carriers, submitted on March 1, 2021, thus no educational or corrective actions have been taken by the Commissioner at this time.

#### 2022 Plan Year:

The Division included explicit requirements regarding coverage of care associated for self-harm and suicide ideation, attempt, and/or completion in the 2022 Plan Year filing instructions for Individual and Small Group markets, and it will review for such coverage language in the annual binder filing review in July and August 2021. It also included in the filing instructions expectations on transparency in services covered for the treatment of gender dysphoria in each plan's Explanation of Coverage.

Carriers will submit Individual and Small Group parity filings to the Division on June 2, 2021 and September 1, 2021. The Division has changed its process of plan selection for its review based on the impact on the largest numbers of covered lives and breadth of counties represented in the review. Large Group and Student Health Plan filings will be submitted on February 2, 2022.

#### **Market Conduct Examinations**

The Division performs market conduct examinations and actions in accordance with Colorado statutes and regulations using guidance from the NAIC Market Regulation Handbook. These examinations review the "in-practice" aspects of systemic coverage compliance, meaning the ways in which Coloradans are able to access coverage in reality, in addition to "in-policy" coverage compliance, meaning the ways in which Coloradans are supposed to be able to access coverage based on written policies and procedures.

The Division called parity-focused, targeted market conduct exams on four (4) carrier groups in early 2020 to review how mental health, behavioral health, and SUD care compares to medical and surgical health care in the following areas of concern:

- Network adequacy and development standards
- Reimbursement rates and policies
- Pharmacy benefit design
- Financial requirements and QTLs

Currently, field work is being concluded, and the Division anticipates these exams to conclude in the late 2021.

The Division also launched a comprehensive market conduct examination, which includes parity and non-parity compliance. Comprehensive examinations often take much longer than the targeted parity examinations due to the breadth of coverage areas included. Thus, the Division does not have a targeted conclusion date for this exam at this time.

#### Other market conduct investigations:

The Division received complaints from behavioral health care providers in rural Colorado related to reimbursement practices, administrative burden related to billing and reimbursement, and credentialing. It has investigated such complaints and ensured remediation of the mental health parity-related issues at the root of the complaints.

## **Insurance Literacy and Community Education**

The Division has received 28 complaints from consumers pertaining to mental health, behavioral health, and SUD since June 2020. The Division also continues to get complaints from mental health, behavioral health, and SUD providers on reimbursement rates and delays in reimbursement. Consistent with other states, the Division sees far fewer complaints related to behavioral health than physical health. The GAO report previously cited substantiates the experience of the Division that complaints are far lower for behavioral health than that of medical and surgical care - not because barriers to care are fewer for behavioral health, but because consumers do not consistently understand their rights and protections related to mental health, behavioral health, and SUD coverage, as well as the stigma associated with accessing such types of care.

In addition to the [mental and behavioral health resource website](#) created by the Division in early 2020, it created an eight-page "[Mental / Behavioral Health Parity Booklet](#)" designed for health care consumers that addresses mental health parity, how to tell when benefits have been unfairly denied, and consumers' rights and protections, along with additional mental / behavioral health resources. It also created a "[Preventive Services](#)" resource for consumers that discusses preventive health services and how they work under health insurance. These printed resources are marketed to organizations that serve and/or advocate on behalf of consumers, [are available for order](#), free of cost, and shipped directly to the organization.

To date, the Division has provided 4,500 copies of the above mental health parity booklet to more than sixty (60) individuals or organizations across Colorado to disseminate consumer-centered information about mental health parity.

Further, the Division acknowledged this year's Mental Health Awareness Month by disseminating information about consumers' rights and protections in accessing mental health, behavioral health, and SUD care in Colorado through its email listserv and social media. It also supported the Colorado Naloxone Project's kickoff to spread information and awareness about carriers' required reimbursement to hospitals for naloxone given to at-risk patients at the time of discharge.

Lastly, it continues to ensure carrier disclosures to consumers are included in consumer-facing plan documents regarding denials of benefits and communication of contact information for the Behavioral Health Ombudsman Office of Colorado, as required by the Behavioral Health Care Coverage Modernization Act.

## **State and Community Partnerships**

The Division continues to partner with direct service organizations, advocacy organizations, provider associations, behavioral health coalitions, and carriers to assist in the evaluation of behavioral health, mental health, and SUD coverage in the private insurance market. The following list provides a summary of some of its new strategic partnerships since the passage of the Behavioral Health Care Coverage Modernization Act last year.

- [Behavioral Health Reform and the Behavioral Health Task Force](#): The Division serves as an active participant in the Colorado Department of Human Services' Behavioral Health Task Force, which was tasked to evaluate and set the roadmap to improve the current behavioral health system in Colorado. Commissioner Conway continues to represent the Division on the Executive Committee, and the Division participates in both the general task force and Safety Net Subcommittee. The task force

published [almost 150 recommendations](#) to reform and rebuild Colorado's behavioral health system related to access, accountability, affordability, local and consumer guidance, whole person care, and workforce and support. The Division enthusiastically supports the creation of the Behavioral Health Administration (BHA) and continues to work with the Executive Committee and larger task force to align and coordinate commercial insurance coverage efforts with the vision of the BHA. As noted previously, Governor Jared Polis signed [Colorado House Bill 21-1097](#) into law on April 22, 2021, directing the Colorado Department of Human Services to establish a new BHA by July 2022 and temporarily house it through November 2024.

**COVID-19 Special Assignment Committee:** In May 2020, Governor Polis asked the Behavioral Health Task Force to establish the COVID-19 Special Assignment Committee to assess and create recommendations on how to most effectively respond to future emergencies, pandemics, or crises that directly or indirectly impact the mental health, behavioral health, and SUD of Coloradans. The report, finalized on September 17, 2020, can be found [here](#) and highlights the following priorities:

- Expanding and increasing access to tele-behavioral health;
  - Ensuring capacity and understanding of the pressing need for behavioral health services during states of emergency;
  - Expanding and securing access to outpatient and inpatient behavioral health services during states of emergency;
  - Preparing for increased need for SUD services and treatment options;
  - Mobilizing emergency response strategies;
  - Adapting to emergency-related needs with funding flexibilities;
  - Individualizing behavioral health system responses to the unique needs of youth and children; and
  - Driving emergency-response strategies with an equity lens.
- **9-8-8 Implementation Planning Committee:** On July 16, 2020, the Federal Communications Commission adopted rules to establish 9-8-8 as the new, nationwide, 3-digit phone number for Americans in crisis to connect with suicide prevention and mental health crisis counselors. This new rule requires all phone service providers to direct 9-8-8 calls to the existing National Suicide Prevention Lifeline by July 16, 2022. The Division serves on the Funding and Sustainability Workgroup of the [9-8-8 Implementation Planning Committee](#), formed by the Office of Behavioral Health, to assess key coordination, capacity, funding, and communication issues in preparation for the launch of 9-8-8 in Colorado.
  - **[The Colorado Naloxone Project:](#)** The Division joined the Colorado Naloxone Project's [Leadership Council](#), along with other state agencies, provider groups, and direct service organizations, in March 2021, to support its efforts to address the opioid overdose crisis and improve quality of care for Coloradans with OUD and ensure that Colorado hospitals and emergency departments can distribute naloxone to at-risk patients prior to their departure from the hospital. For example, the Division provides to the Leadership Council technical support related to naloxone coverage and reimbursement by carriers to hospitals that give at-risk consumers naloxone upon discharge, pursuant to C.R.S. 10-16-154(2).
  - **[Behavioral Health Ombudsman Office of Colorado:](#)** The Division continues to work closely with the Behavioral Health Ombudsman Office of Colorado to investigate

complaints by consumers and health care providers related to private insurance behavioral health coverage. It investigates claims related to access to behavioral health, mental health, and SUD commercial coverage reported by the Behavioral Health Ombudsman and reports back findings and solutions when applicable. During the reporting period, the Division has received one (1) informal complaint from the Behavioral Health Ombudsman Office of Colorado. The Division investigated the case, but was unable to intervene due to the issue being outside of the Division's authority.

- **NAIC MHPAEA Workgroup:** The Division works with other states, the Department of Labor, and Department of Health and Human Services to create, coordinate, and refine best practices in MHPAEA implementation and enforcement. For example, the Division utilized best practices learned from the workgroup to update the data collection templates for financial requirements, QTLs, and comparative analyses information from carriers as outlined in Colorado Insurance Regulation 4-2-64. The workgroup also monitors, reports, and analyzes developments related to MHPAEA and makes recommendations regarding NAIC strategy and policy to ensure states, like Colorado, stay on the forefront of mental health parity implementation and enforcement.

## **Conclusion**

While much progress has been made to reform Colorado's behavioral health system and work towards parity in the commercial market, the Division knows there is much work to be done. It will take time to understand the long-term mental health, behavioral health, and SUD implications of the COVID-19 pandemic on consumers, but the Division knows the importance of having a quality, affordable, and accessible behavioral health system in Colorado to consumers experiencing need now. It is hopeful about the work being completed around the BHA and the conversations on how to reform the current behavioral health system to most effectively serve every Coloradan.

Consumers throughout the state must have access to adequate mental health, behavioral health, SUD, and OUD treatment providers in-network, and they continue to struggle with finding a provider that can meet their needs due to out of date provider directories or issues related to "ghost networks." The Division understands the increased challenges in finding the right provider for black, indigenous, and people of color, lesbian, gay, bisexual, transgender, and queer people, and people who speak English as a second language. As the opioid crisis and rates of overdose continue to increase, consumers will continue to need access to naloxone, MAT, and ALTOs. Providers report issues getting credentialed in-network in a reasonable amount of time, significant administrative burden when in the network, and challenges with both reimbursement rates and delay in reimbursement. Issues like these disincentivize providers from participating in commercial insurance networks, further limiting access to necessary care for consumers throughout the state. There is also much work to do around consumer insurance literacy and the understanding of how to use one's commercial insurance coverage for mental health, behavioral health, and SUD care.

These challenges are significant, and parity in mental health, behavioral health, and SUD care is more important than ever. The activities highlighted in this report illustrate some of the momentum that continues to build in the state. The Division looks forward to continuing work with the legislature, state agencies, health insurance carriers, service organizations, health care providers, and communities on future efforts to ensure that the behavioral health system works for every Coloradan.