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 & Behavioral 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

June 1, 2022

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.

June 1, 2022

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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 third year of implementation, which occurred from June 1, 2021, through May 31, 2022. The previous reports, which summarize the Division's mental health parity activities from the Act's effective date of May 16, 2019, through May 31, 2021, 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 behavioral health strategies implemented in the last year to increase access to quality, affordable, and culturally-competent care. The Division also extends its gratitude to Governor Polis for his prioritization of accessible and streamlined behavioral health care access through the creation of the Behavioral Health Administration (BHA).

The demand for mental health, behavioral health, and SUD services continues to grow, further exacerbated by the stress and isolation resulting from the COVID-19 pandemic. One in five adults in the United States - 53 million people – reported having some sort of mental health condition in 2020, 14 million of which reported a serious mental health condition or crisis. An additional 40 million adults were diagnosed as having a SUD. Further, the percentage of adults reporting symptoms of anxiety or depression quadrupled from 2019 to 2021 as a result of the pandemic, and mental health claims as a share of all medical claims for teens doubled between 2019 and 2020.

The 2021 Colorado Health Access Survey (CHAS) found that nearly one in four Coloradans ages 5 and older said they had eight (8) or more days of poor mental health in the past month, higher than the previous high of 15.3% recorded by the CHAS in 2019. It also indicated that 38.3%, or 1.6 million Coloradans over the age of 16, stated that they had a decline in mental health, such as anxiety, depression, or loneliness. Stigma and insurance literacy persist as a pervasive barrier to care, especially for SUD. There continues to be a significant insurance literacy gap – of those with insurance, 36.6% did not think their insurance would cover behavioral health care.

Further, historically marginalized communities continued to experience disparate health outcomes and struggle to access culturally-competent care. Transgender people, who are diagnosed with gender dysphoria based on the Diagnostic and Statistical Manual of Mental Disorders (DSM–5), have significant worse behavioral health outcomes than non-transgender people and struggle to find physical and behavioral health providers to meet their needs. Gender-affirming care, like hormone therapy and surgical procedures, can be a very effective intervention to reduce feelings of dysphoria and to improve mental health outcomes, according to the Journal of American Medicine and the National Institutes of Health. Black, indigenous,

and people of color (BIPOC) individuals similarly experience disparate mental health outcomes due to a variety of reasons - discrimination, a lack of provider cultural competency, and historically-based mistrust in the healthcare system, among other reasons.

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Additionally, drug overdoses in the United States were deadlier than ever in 2021, according to provisional data from the US Centers for Disease Control and Prevention, indicating that 1,913 Coloradans died by overdose, compared to 1,477 in 2020. This further exacerbates the need for medication-assisted treatment, harm reduction services and resources, and affordable access to naloxone, the medication that reverses overdoses.

The U.S. Government Accountability Office (GAO) report also noted significant challenges related to insurance 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. Burnout continues to create challenges with the behavioral health provider workforce, coupled with administrative burden, frustrations with reimbursement rates, and the process to get credentialed into a network.

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.

Overview: Mental Health Parity and Addiction Equity (MHPAEA)

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 comparable 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.

Both federal and Colorado State law provide protections for consumers accessing mental health, behavioral health, and SUD services. The following list of State and federal policies are not exhaustive, rather provide context to the pillars of mental health parity enforcement in Colorado and relevant updates since the previous report.

- Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA): The 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 comparable 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.

  MHPAEA was amended by the Consolidated Appropriations Act of 2021, which furnished the Departments of Health and Human Services, Labor, and Treasury with new enforcement tools by amending MHPAEA to require plans and issuers to provide comparative analyses of their NQTLs to the Departments and authorize the Secretaries of those departments to make determinations on MHPAEA compliance.

  Further, the 2022 MHPAEA Report to Congress highlights the recent emphasis by the federal government on greater MHPAEA enforcement and discusses the significant resources dedicated to supporting these efforts. While these changes progress compliance requirements nationally, the Colorado State law already required these expectations of carriers.

- 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.

- Mental Health Care in the United States: The Case for Federal Action: The United States Senate Committee on Finance released this report to support the federal bipartisan initiatives being undertaken by the Committee to improve mental health, behavioral health, and SUD for Americans covered under federal health programs. While not a

policy change, the report does highlight current federal momentum to address the increasingly severe challenges in behavioral health care in the United States.

- Behavioral Health Care Coverage Modernization Act (2019): In regards to the private insurance market, the Colorado 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.

- 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. Carriers submit data collection templates to the Division annually, found here.

- HB22-1278 Behavioral Health Administration: This legislation establishes the official duties of the Behavioral Health Administration (BHA), to be launched July 1, 2022. The Division actively supported this bill through the legislative process and is in the process of creating and executing its formal interagency agreement to ensure alignment and coordination between agencies. The formal interagency agreement will outline expectations around parity monitoring and compliance to support the division of insurance's enforcement of parity provisions. Additionally, the Division will coordinate with the BHA in the following areas:
    - Assessment of network adequacy to ensure community-based behavioral health networks align with the behavioral health continuum of care, behavioral health safety net services, and the care coordination provider standards created by the BHA;

- Consultation with the BHA on the creation of standardized, developmentally appropriate, culturally competent screening tools for primary care providers serving children, youth, and caregivers in the perinatal period, including postpartum people; and
- Appointment of a DOI liaison between the BHA, Division, and Behavioral Health Ombudsperson Office to assess complaints and concerns.

- Behavioral Health Task Force: Governor Polis and the General Assembly formed the Behavioral Health Transformational Task Force (BHTTF) and Subpanel, comprised of legislators, executive branch representatives, and diverse behavioral health practitioners and experts, to develop recommendations in 2021 in order to disseminate $450 million in unallocated funding from the American Rescue Plan Act of 2021. The recommendations, highlighted in the Behavioral Health Transformational Task Force Recommendation Report, published in January 2022, endeavor to bring Colorado from being one of the worst ranked states in meeting behavioral health needs to being a leader nationwide. Commissioner of Insurance Michael Conway served on the Executive Committee to ensure the alignment of the commercial insurance market with the recommendations.

Division Strategies to Improve Behavioral Health Care Coverage

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 Essential Health Benefit Benchmark Plan:
Colorado Essential Health Benefit Benchmark Plan is the insurance coverage plan used to set minimum standards for essential health benefits (EHBs) within Colorado for individual and small group plans. The Division worked with stakeholders and the actuarial consulting firm Wakely to evaluate the State's current benchmark health insurance plan, and it developed and finalized a set of changes to the Colorado Benchmark Plan starting in 2023. In the fall of 2021, the Center for Medicare and Medicaid Services approved the Division's plan with the following changes:

Comprehensive Gender-Affirming Care
Colorado is the first state in the country to explicitly include gender-affirming care services in its plan ("Gender-affirming care" is another way of describing the mental and physical health services that help align a transgender person's body into alignment with their gender identity). These will be comprehensive services that insurance companies cover for individuals and small group plans starting in 2023. Currently, all insurance companies must cover some form of gender-affirming care. However, coverage varies greatly by insurance company, and is not always comprehensive and may include explicit exclusions for certain services, even if a health care provider determines a service to be medically necessary. The coverage changes in the benchmark plan will

Annual Mental Wellness Exam
The plan also includes an annual mental health wellness exam, constituting one 45-60-minute visit per plan year with a qualified mental health care provider. The visit can include services such as behavioral health screening, education and consultation about healthy lifestyle changes, referrals to ongoing mental health treatment, and the discussion of potential medication options.

Alternatives to Opioids (ALTOs)
The new plan addresses SUD by expanding the number of drugs that insurance companies are required to cover in their prescription drug formularies as alternatives to opioids, as well as adding acupuncture treatments. The new plan adds fifteen (15) drugs as alternatives and will cover up to six (6) acupuncture visits per year.

The Division further ensured that naloxone and various medication assisted treatment (MAT) medications were included as covered benefits.

Coverage about the change was widespread. About 250 publications nationally covered the change, and other states have considered making similar changes to their benchmark plans to mirror that of Colorado. More information about the current benchmark plan, evaluation process, and benchmark plan effective in 2023 can be found here.

Colorado Option Standardized Plans

Starting in 2023, the Colorado Option will be available to all Coloradans who buy their health insurance on the individual market (i.e. not from an employer) and small employers with less than 100 employees. With appropriate federal approval, Colorado Option plans are required to lower health insurance premiums for individuals, families, and small businesses by 15% by 2025.

As part of the Colorado Option, the Division has created Standardized Plans which will allow consumers and businesses to easily compare plans and choose the plan that is right for them. These plans cover all essential health benefits - including mental health, behavioral health, and SUD - required by the Affordable Care Act, provide many high value services without consumer cost sharing, and are designed to reduce racial health disparities and improve health equity. The Division has subjected the Colorado Option Standardized Plans that will be offered in 2023 to comprehensive MHPAEA compliance review, as required by Colorado Insurance Regulation 4-2-64, including in-depth Financial Requirement testing to ensure the cost-sharing of mental health, behavioral health, and SUD benefits are no more expensive or restrictive than medical and surgical benefits.

Further, the Division has promulgated Colorado Insurance Regulation 4-2-80, requiring carriers to offer culturally responsive provider networks for their Colorado Option Standardized Plans to ensure consumers with historically-adverse behavioral health and physical health outcomes - like people of color and transgender people - have access to networks with providers that can serve their whole identities

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Consumer and Provider Complaints

The Consumer Services Section continues to receive and intervene on complaints from both consumers and providers on issues related to insurance coverage for mental health, behavioral health, and SUD. The number of complaints received since the last report are listed below. Consistent with other states, the Division sees far fewer complaints related to behavioral health than physical health. A March 2021 report from the Government Accountability Office (GAO) 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.

Yearly Complaint Totals from Consumers and Providers

Year	Number of Consumer Complaints	Number of Provider Complaints
2019	18	Not applicable
2020	28	Not applicable
2021	28	8

The Division also continues to receive and intervene on complaints from mental health, behavioral health, and SUD providers on reimbursement rates and delays in reimbursement, although the numbers of complaints remain low. This highlights the continued need to educate consumers and providers alike about their rights and protections in accessing behavioral health with commercial insurance coverage, as well as the resources available to them through the Division when barriers to coverage arise.

Plan year 2021 was the first year the Consumer Services section systematized its data collection on provider complaints due to the increased number of complaints received. Previously, when complaints were received, they were managed in a case-by-case process. It is worth noting that the Division received and intervened in a number of complaints from providers in rural and mountain communities regarding claims payments, reimbursement rates, administrative burden, telehealth, and network adequacy generally. These are not captured in the formal complaint system through Consumer Services.

Market Conduct Exams

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 began 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:

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

These exams are currently being concluded, and the Division hopes to share results publicly in the next few months.

Further, the Division also launched a comprehensive market conduct examination of one company, which includes mental health parity and other compliance issues unrelated to parity in January 2021. Comprehensive examinations often take much longer than targeted parity examinations due to the breadth of coverage areas included. The Division does not have a targeted conclusion date for this exam at this time.

Rates and Forms Reviews

Prior to the passage of the Behavioral Health Care Coverage Modernization Act, carriers were required to certify compliance with federal mental health parity laws and regulation. In addition to this certification of compliance, the Act required carriers to submit to the Division mental health parity data on an annual basis as required by Colorado Insurance Regulation 4-2-64. The Division staff provide written and verbal procedural guidance and annual technical assistance webinars to carriers for accurate and timely 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 activities to enforce MHPAEA compliance through its Rates and Forms activities.

In addition to the below descriptions of its MHPAEA template analyses, the Rates and Forms Section reviews the following pertaining to mental health, behavioral health, and SUD coverage:

- Carrier disclosures to consumers 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;
- Verification that no Explanations of Benefits (EOBs) and Evidences of Coverage (EOCs) include coverage exclusions for suicide and/or self-harm; and
- Evidence of coverage provisions related to gender-affirming hormonal and surgical services, as well as cosmetic exclusions, to treat gender-dysphoria

Colorado Insurance Regulation 4-2-64 Data Review

Carriers provide financial requirements data to the Division annually, and the Rates and Forms Section conducts a systematic review of the QTLs and NQTLs submitted.

Financial Requirements

Under MHPAEA, if a plan or issuer that offers medical/surgical and mental health and SUD benefits impose "financial requirements," such as deductibles, copayments, coinsurance and out of pocket limitations, the financial requirements applicable to mental health and SUD benefits can be no more restrictive than the "predominant" financial requirements applied to "substantially all" medical/surgical benefits. Colorado Insurance Regulation 4-2-64 clarifies that the "predominant/substantially all" test applies to six classifications of benefits on a classification-by-classification basis.

The Division Rates and Forms and Actuarial Sections strategically select plans that cover at least 85% of the carriers' populations in each county. They analyze enrollment data submitted in the most recent annual rate filings and sort plans by rating areas, county, and enrollment for each carrier. If a carrier has one plan in the county, the plan is selected for the financial requirement analysis. Otherwise, plans are chosen until the 85% population threshold is reached. This selection approach ensures that the financial requirement analysis on cost-sharing and deductibles has the greatest geographic and consumer impact.

Each plan and benefit classification undergoes the "substantially-all" and "predominant level testing" annually to ensure mental health, behavioral health, and SUD treatment cost-sharing is no more restrictive than physical health cost-sharing, and the Division provides verbal and written training and technical assistance to carriers to ensure compliance. The following chart highlights the carriers' performance on financial

requirements compliance testing based on their official submission to the Division. Carriers should be submitting “passing” cost-sharing structures, although many carriers continue to require multiple resubmissions to get into compliance with the financial requirement testing. The following chart indicates carrier compliance based on their initial submission of testing, as determined by “pass” or “fail” ratings.

Carrier Performance on Initial Financial Requirements Testing
Plan Year 2022

Company	Market(s)	No. Plans Passing Test 1	No. Plans Failing Test 1
4 Ever Life Insurance Company	Large Group	9	1
Aetna Health Insurance Company	Small Group; Large Group	8	3
Aetna Life Insurance Company	Small Group, Large Group, Student Health Plan	6	5
Bright Health Plans	Individual; Small Group	0	87
Cigna Health and Life Insurance Company	Individual; Large Group	12	7
Cigna HealthCare of Colorado, Inc.	Large Group	0	1
Denver Health Medical Plans, Inc.	Individual; Large Group	5	8
Friday Health Plans	Individual	19	0
HMO Colorado, Inc.	Individual; Large Group	60	27
Humana Health Plan, Inc.	Small Group; Large Group	28	3
Humana Insurance Company	Small Group; Large Group	16	0
Kaiser Foundation Health Plan of Colorado	Individual; Small Group; Large Group	67	3
Kaiser Permanente Insurance Company	Small Group; Large Group	21	0
Oscar Insurance Company	Individual	12	0
Rocky Mountain Health Maintenance Organization	Individual	10	10

Rocky Mountain Hospital & Medical Service, Inc.	Individual; Small Group; Large Group; Student Health Plan	38	6
UnitedHealthcare Insurance Company	Small Group; Large Group	31	2
UnitedHealthcare of Colorado	Small Group; Large Group	20	0
Wellfleet Insurance Company	Student Health Plan	1	0

Please note that the Division works one-on-one with carriers each year to ensure each plan passes the financial requirement testing formula, at times requiring multiple resubmissions to the Division until the plans pass the financial requirement testing.

NQTL Review

In addition to the QTL and financial requirement analyses conducted, the Division also reviews the following NQTL topics annually:

- Policies and procedures related to mental health, behavioral health, SUD, pharmacy services, and medical/surgical care;
- Network adequacy: Provider credentialing and network admission;
- Network development;
- Comparative analyses assessment;
- Medical management and utilization management criteria; and
- American Society of Addiction Medicine Criteria Utilization, further explained later in this report.

The Division conducts and investigates where pertinent the NQTL information provided by carriers. While the market conduct examinations review the “in-practice” aspects of MHPAEA compliance, the QTL and NQTL reviews pertain to the “in-policy” aspects of MHPAEA compliance.

American Society of Addiction Medicine Criteria Utilization

SB20-007 required that carriers utilize the most recent version of the American Society of Addiction Medicine (ASAM) medical criteria for the placement, medical necessity, and utilization management determinations for people with SUD, effective January 1, 2022, pursuant to § 10-16-104(5.5)(a)(I)(B), C.R.S. The Division incorporated this requirement into the revisions to Colorado Insurance Regulation 4-2-64 Concerning Mental Health Parity in Health Benefit Plans to require carriers to submit such information with their annual MHPAEA filings in the fall and spring of each year.

Carriers submitted Small Group and Individual Market filings in October of 2021, and Large Group and Student Health Market filings on March 1, 2022. Carrier responses pertain to Plan Year 2022, although the start date of each plan year varies across plan, market, and carrier.

In the first year of review of ASAM criteria utilization, the following carriers submitted templates that stated they do not use ASAM criteria, as indicated in the chart below. The Division

launched a formal inquiry into the companies' SUD medical management criteria to assess the validity of the submission and ASAM utilization compliance. The Division asked five (5) carriers to confirm the following:

- Company utilization, or lack of utilization, of ASAM criteria
- Copies of their internal policies and procedures to implement ASAM, including practices to train appeal reviewers on the criteria; and
- Claims from the beginning of the plan year in which ASAM was used to assess SUD claims.

ASAM Review Summary

Company	ASAM Utilization with Back Up Documentation	Claims Provided	Fine, if in Violation
Company A	Yes	Yes	Not Applicable
Company B	No*	No*	$500
Company C	Yes	Yes	Not Applicable
Company D	Yes	Yes	Not Applicable
Company E	Yes	Yes	Not Applicable

*At the time of writing this report.

Four (4) companies responded with all requested information clarifying and confirming their utilization of ASAM criteria for SUD and OUD coverage. One (1) remaining company received a $500 fine for not submitting the requested information, under 1-1-8 as described previously, and the review of that company's ASAM utilization compliance is currently underway. The Division will continue to work with all carriers to ensure compliance with ASAM requirements.

Medication-Assisted Treatment for Substance Use Disorder Data Review

As required in § 10-16-710(1)-(2), C.R.S., the Division promulgated Colorado Insurance Regulation 4-2-75 Concerning Requirements for Reporting Medication-Assisted Treatment Coverage to create reporting and data collection reporting requirements regarding access to MAT for SUD and 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 Division instituted its first review of data submitted by carriers as required by the regulation and imposed $1,000 fines on four (4) companies for inadequate and/or delayed submissions

related to their coverage for MAT for SUD. The fines were pursuant to Colorado Insurance Regulation 1-1-8 Concerning Penalties and Timelines Concerning Division Inquiries and Document Requests, and the review of the MAT data is currently underway.

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 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.

  The Division continues to work closely with the Behavioral Health Ombudsman Office and has instituted a system for consumers and providers to file complaints directly with the Division's Consumer Services Section. This may be one reason for the low number of formal complaints from the office, in addition to general insurance coverage literacy, as previously described.

- **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).

- **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, accessible, and culturally competent behavioral health system in Colorado to consumers experiencing need now. It looks forward to working alongside the BHA 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." Telehealth has been a positive resource for consumers accessing care, but it is not the only option for accessing care. The Division understands the increased challenges in finding the right provider for BIPOC, lesbian, gay, bisexual, transgender, 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.