

CBHC BOARD POSITION STATEMENT 24:

Mental and Behavioral Health Parity

Position Statement

Colorado's laws and regulations must adhere to the highest standards of parity in coverage and access across the entire healthcare system, including the full continuum of behavioral health.

Background

In 2008, Congress passed the [Mental Health Parity and Addiction Equity Act \(MHPAEA\)](#), requiring insurers to cover illnesses of the brain, such as depression or addiction, in the same manner in which they would treat illnesses of the body. The law has been improved upon numerous times since, including parity mandates created through the Affordable Care Act.

Through the MHPAEA, mental health and substance use care are considered non-specialties and are to be treated in parity with medical/surgical non-specialty benefits offered by an insurance plan. According to the law, insurance companies are to treat both illnesses of the brain and the body equally when it comes to:

- ❖ Coverage of services for inpatient or outpatient services with in-network or out-of-network providers
- ❖ Coverage of services at emergency departments
- ❖ Coverage of prescription drugs

The law further requires that deductibles be equal for both behavioral health and physical health service benefits as well as parity in the quantitative and non-quantitative treatment limits that a plan may place. Quantitative treatment limits may include equal coverage for frequency of visits, number of visits, days of coverage, and medical/surgical benefits. Non-quantitative treatment limits may include medical management, step therapy and pre-authorization.

While more people are seeking access to mental health and substance use care, not all of their insurance plans are created equal as they are not all subject to parity requirements, as defined by the law. Some examples include:

- ❖ Some fee for service Medicaid options
- ❖ Employers with less than 50 employees who self-insure
- ❖ Self-funded governmental health plans that opt out

Beyond parity in coverage and limitations, equivalence is also required. This critical aspect can be a difficult component to determine for behavioral health parity. This is especially true in acute

treatment settings such as detox or crisis stabilization, as it may be hard to determine the equivalent physical health service.

Despite the letter of the law, payors have been able to find loopholes that lead to denials, questions regarding equivalence of services, and the consumer not always clearly comprehending their rights. With all of the complexity, parity laws are often violated or not fully executed.

According to the [Don't Deny Me campaign](#), common violations to the MHPAEA are:

- ❖ Separate deductibles or higher co-pays for behavioral health services
- ❖ Limits on how many days patients can stay in a treatment facility or how many times they can see a behavioral health provider
- ❖ Narrow networks of behavioral health providers
- ❖ Higher costs for prescription medication for behavioral health treatment
- ❖ Requirements to try less expensive treatments before pursuing treatment suggested by a doctor
- ❖ Denials for behavioral health treatment outside of a patient's state or region
- ❖ Requirements for prior authorization before starting and/or continuing treatment

According to a [2017 report](#) by Milliman Research which analyzed (1) out-of-network rates for inpatient and outpatient facility services, as well as professional office visits, and (2) reimbursement rates for office visits for in-network healthcare providers, disparities were found in both of these areas. Among many of the disparities within this report, it was noted that, "in 2015, primary care and medical/surgical specialist providers were paid on average 15.2% and 11.3% higher than Medicare-allowed amounts, respectively, while behavioral providers were paid on average 4.9% less than Medicare-allowed amounts."

Over the years, many states have introduced their own parity laws to compliment the MHPAEA, including the state of Colorado. An overview of these laws can be found at [ParityTrack](#), a non-profit organization dedicated to ensuring that all individuals with mental health conditions, substance use disorders, and developmental disabilities have fair access to services. This breakdown does not yet include HB19-1269 which was passed during the 2019 legislative session and further modernizes and codifies existing parity requirements which were, at the time, largely within Colorado regulations. Beyond modernizing Colorado's expectations and language for parity, the bill also expressly added to Colorado law an expectation that payors comply with the MHPAEA.

Policy Priorities

24.1 Comprehensive Parity in Coverage and Beyond

To realize the comprehensive vision of parity across Colorado, it is critical that laws and regulations enforce a parity landscape in every sector. While coverage and benefit requirements that focus on whole person health are the beginning of creating equal access to behavioral health care, it is also critical to create policies that increase capacity, provider sustainability, and access for all consumers in need. Insurance benefit design, policies, or network adequacy must not be unduly limiting access to behavioral health.

- ❖ CBHC supports policies that prevent limitations on access to healthcare and increase enforcement on payors' requirements to adhere to parity regulations and equal access standards, including:

- Coverage of behavioral health services must be equally accessible as physical health and not be more stringent in requirements around acuity, diagnoses or levels of need;
 - Enforcement of parity laws as well as coverage and access standards must be empowered to ensure that payors across healthcare are meeting base level requirements; and
 - Equitable reimbursement for behavioral health services to promote quality with physical health care and bolster the capacity of services, while limiting the ability of payors to create disparities in rates or salaries.
- ❖ CBHC supports policies that universalize parity regulations across all populations and all modalities of healthcare delivery.
 - Requirements on payors to extend parity across all consumer populations and presentations, so as to not hinder an individual's access based on diagnosis or other arbitrary exclusion categories; and
 - Requirements on payors to extend parity across all appropriate healthcare delivery modalities, including telehealth, mobile services, walk-in and other innovative approaches to the delivery of care.

24.2 Behavioral Health Services Within Whole Person Care

The healthcare community has long embraced mental and behavioral health as a critical component of whole-person health. The behavioral health services continuum is wide ranging from primary services to specialty services with the potential to impact the entire person and the care delivery system around them. To ensure true parity in coverage and access, the entire continuum of behavioral health care must be as accessible within the whole person care continuum as physical health, without increased consumer costs, qualitative limitations, or other barriers to care.

- ❖ CBHC supports policies that increase consumers ability to access the entire continuum of behavioral health care.
 - Requirements on both private and public payors to fully cover the entire continuum of behavioral health services, including substance abuse and mental health services, within the whole person care approach;
 - Removal of barriers to care that are unique to behavioral health services, such as higher consumer contributions or costs, access limitations such as referral requirements or quantitative limits, or other regulations that limit access to care;
 - Clarification of payor and regulatory policies to identify behavioral health facilities within the primarily accessible continuum of services, so as to not allow place of service or status as a community mental health provider to lead to a higher consumer contribution or a lack of reimbursement for treatment of a covered individual; and
 - Assurances that individuals with coverage can access acuity appropriate care and response across the full continuum of substance use and mental health disorder services to meet their behavioral health needs alongside their physical health needs.

24.3 Substance Use Disorder Services Unique Parity Considerations

As with mental health services, the continuum of substance use disorder services is a critical component of a whole-person healthcare system. Parity regulations and laws must be clear and strict in their inclusion of SUD services to ensure access to this critical care is accessible for individuals in need. Beyond that, there are unique considerations for SUD care and provider systems that must be taken into account when developing parity policies.

- ❖ CBHC supports policies to increase access to SUD care and services, without unduly burdensome limitations on consumers or providers.
 - Removing or minimizing the utilization and impact of policies such as step therapy requirements, quantitative limits, or referral requirements before allowing access SUD care;
 - Ensuring that legal factors associated with SUD of individuals are not an allowable reason for payors to deny coverage or reimbursement of services; and
 - Promoting access to care for vulnerable populations but limiting payor-initiated bureaucratic barriers to care, especially for individuals with complex cases, dual diagnoses, or involvement in various systems (e.g., criminal justice or child welfare).

24.4 Network Parity

Coverage parity will not be fully realized until adequate, genuine, and accessible networks are in place for all payors across the continuum of both physical and behavioral health services so as to ensure consumers can access the benefits that are in their plans.

- ❖ CBHC supports policies that promote a comprehensive network of providers across plans and enhance access to care for individuals who seek it.
 - Regulations to require equal network adequacy, including the ability to regulate payors to ensure that networks are maintained accurately and accessible (e.g., providers are accepting new patients and have accessible hours);
 - Assurances that accessibility and capacity is protected across geographic or acuity variations, so as to allow timely services for individuals in need; and
 - Limitations and strict regulatory expectations on the length of the credentialing process for behavioral health providers to ensure it is not any more burdensome or difficult than physical health.
- ❖ CBHC supports policies to ease burden on healthcare providers that is associated with the credentialing processes and regulating that credentialing for behavioral health and physical health professionals is equal.
 - Enforcing, through policy, that various providers types can become credentialed through an equally streamlined and quick process;
 - Allowing for large providers in good standing to credential their professionals in administratively efficient manners, such as by facility or practice; and
 - Requiring payors to ensure credentialing processes are equal between physical and behavioral health.

24.5 Equivalence of Services & Limitations

To truly create parity for mental health services, benefit designs across payors must be responsive to the unique way in which mental health services are delivered. Equivalence for behavioral health services and limitations must match physical health in quality, value, and quantity while also being responsive to the whole-person nature of behavioral health care delivery. Colorado must adhere with all federal guidance on maintaining parity in equivalence of services and must also take steps towards innovation that promotes the best possible access, care, and outcomes for individuals in need.

- ❖ CBHC supports policies that ensure equivalence, in quality, value and quantity, for behavioral health services with physical health services coverage across all payor plans.
 - Requiring parity on access limitations across physical and behavioral health (e.g., how many visits per year are covered) that are responsive to behavioral health's value and organization; and
 - Increasing access to the full continuum of behavioral health care by incentivizing payors and providers to create flexible relationships that allow for responsive arrangements.

24.6 Consumer Contributions

Parity regulations, in a whole person approach, must account for the consumers who may or may not be contributing to their health plan costs. Payors cannot be allowed to require the individuals they cover to contribute more to access behavioral health care than they do to access physical health.

- ❖ CBHC supports policies that protect consumers who are seeking behavioral health care by ensuring plans do not impose unequal or unduly burdensome financial contributions or other requirements on them for behavioral health services as compared to other healthcare services.
 - Regulating and limiting payors' ability to create a higher co-pay or deductible standards for behavioral health as compared to physical health; and
 - Limiting payors' ability to require additional processes for consumers to go through before accessing behavioral health care, as compared to physical health.

Effective Period

The Colorado Behavioral Healthcare Council (CBHC) Board of Directors approved this policy on 3/19/20. It is reviewed as required by the Public Policy Advisory Committee.

Policy Updated

Updates to this policy position were approved by the CBHC Board of Directors on xx/xx/xxxx.

Expiration: 3/19/22