

CBHC BOARD POSITION STATEMENT 24.0

Mental and Behavioral Health Parity

Position Statement

Support progressive and innovative policy and legislation that ensure Colorado medical and administrative practices maintain strict compliance with federal and state mental health and substance use parity requirements.

Background

In 2008, in an effort to ensure equal access to behavioral health treatment for all individuals, Congress passed the [Mental Health Parity and Addiction Equity Act \(MHPAEA\)](#). The MHPAEA seeks to ensure that health plans providing mental health and substance use (MH/SUD) benefits apply limitations on those benefits that are comparable to and no more stringent than those limitations imposed on medical/surgical (M/S) benefits in the same classification.

In 2016, the Centers for Medicare and Medicaid Services (CMS) finalized the MH/SUD parity rule for Medicaid and Children's Health Insurance Programs.

In 2019, Colorado passed House Bill 19-1269, creating state-specific authority on MH/SUD parity. State statute mandates annual evaluation and reporting on compliance with parity and gives the Division of Insurance authority to enforce compliance amongst Colorado carriers.

There are three exemptions to parity regulations:

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

Over the years, many states have introduced their own parity laws to complement the MHPAEA, as Colorado has done. 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.

Components of the Parity Regulation

There are four classifications of services used to assess compliance with parity regulations:

- ❖ Inpatient - Treatment as a registered bed patient in a hospital or facility and for whom room and board charges are made, excluding nursing facilities.

- ❖ Outpatient - All covered services or supplies not included in inpatient, emergency care, or prescription drug categories.
- ❖ Emergency - All covered emergency services or items (including medications) provided in an emergency department (ED) setting or to stabilize an emergency/crisis, other than in an inpatient setting.
- ❖ Prescription Medications - that have been approved or regulated by the Food and Drug Administration that can, under federal and state law, be dispensed only pursuant to a Prescription Drug order from a licensed, certified, or otherwise legally authorized prescriber.

Assessment of compliance with parity rules is evaluated within each classification of benefits. This means, parity does not compare benefits between MH/SUD and M/S on a service-by-service basis. Rather, parity compares MH/SUD and M/S services in aggregate for all benefits falling within each classification of benefits.

The following elements of health care coverage are evaluated in each of the classifications identified above:

- Aggregate Lifetime (AL) and Annual Dollar Limits (ADLs) - dollar limitations on the total amount of specified benefits that may be paid under a benefit plan, and annual dollar limits are dollar limitations on the total amount of specified benefits that may be paid in a 12-month period.
- Financial Requirements (FRs) - include deductibles, copayments, coinsurance, or out-of-pocket maximums. These are situations where beneficiaries must make payment for services.
- Quantitative Treatment Limitations (QTLs)- limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment, which are expressed numerically. Quantitative treatment limitations are those that cannot be exceeded due to medical necessity or other factors; if a limitation may be exceeded through medical management processes, it is considered a nonquantitative treatment limitation (NQTL) rather than a QTL.
- Non-Quantitative Treatment Limitations (NQTLs) - limits on the scope or duration of treatment that either cannot be expressed numerically or whose numeric value can be exceeded through medical management processes. These include:
 - Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative; formulary design for prescription drugs;
 - Standards for provider admission to participate in a network, including reimbursement rates;
 - Methods for determining usual, customary, and reasonable charges;
 - Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);
 - Exclusions based on failure to complete a course of treatment; and
 - Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits or services provided.

Colorado Landscape

In Colorado, the Department of Health Care Policy and Finance, under the oversight of CMS ensures compliance with parity regulations for the Medicaid and Child Health Plan Plus programs. The Division of Insurance oversees/enforces compliance with parity for commercial carriers. Given the complexity, parity laws are often violated or not fully executed as many consumers and providers do

not always clearly understand their rights. The 2019 *Wit v. United Behavioral Health* found that payors implemented stricter utilization guidelines for behavioral health after MHPAEA was enacted in order to keep benefit costs down. However, in 2022 the Ninth Circuit overturned the ruling on the grounds that United had exercised proper discretion when setting behavioral and mental health guidelines and commercial health plans are not required to be consistent with generally accepted standards of care. As the *Wit* decision has served as a guideline for numerous ERISA benefit cases, its reversal has major implications for the future of behavioral health parity litigation.

The Colorado Department of Insurance lists the following as common parity violations amongst commercial carriers:

- ❖ Higher copay or coinsurance for behavioral health services.
- ❖ Limits on the number of visits or days of inpatient, outpatient, or behavioral health treatment.
- ❖ Behavioral health services have separate deductibles from physical health services.
- ❖ Access to higher cost treatments are denied unless a more affordable treatment is failed first.
- ❖ Medications for behavioral health treatment are more expensive than medications for other conditions.
- ❖ Denials for behavioral health treatment outside of a patient's state or region
- ❖ Requirements for prior authorization before starting and/or continuing treatment

Policy Priorities

24.1 Access to a Full Continuum of Behavioral Health Care Services in Public and Commercial Plans throughout the State

CBHC supports policies that ensure all Coloradoans have access to a full continuum of behavioral health services that is equal to the access for Medical/Surgical Services by ensuring:

- ❖ Public and Commercial Plans develop and offer a full continuum of behavioral health services, including substance use disorder services;
- ❖ A full continuum of behavioral health services are available statewide;
- ❖ Comprehensive substance use disorder services are part of the full continuum of care; and
- ❖ Medical and administrative practices are no more rigorous or burdensome than those on the Medical/Surgical side.

24.2 Active and Progressive Enforcement of Parity Regulations

CBHC supports policies that enable the progressive enforcement of parity regulations at the State and Federal level by ensuring:

- ❖ Oversight entities are granted the necessary authority and have adequate resources to enforce parity regulations;
- ❖ Appropriate transparency when violations are identified; and
- ❖ Ongoing community and stakeholder education/awareness of parity regulations and engagement in assessment processes.

24.3 Advancement of Integrated and Whole Person Care

CBHC supports policies that assist in the advancement and promotion of integrated and whole person care by ensuring:

- ❖ Rules, regulations and financing support the provision of behavioral health services across the full continuum of behavioral healthcare, ranging from co-location to fully integrated care;
- ❖ There is “no wrong door” for accessing behavioral health care; and
- ❖ Intake and assessment process are no more rigorous or intrusive than those on the Medical/Surgical side.

24.4 Development and Support of a Robust Behavioral Health Workforce

CBHC supports policies that aid in the development, maintenance and continued growth of a robust behavioral health workforce by ensuring:

- ❖ Local public and private educational institutions offer comprehensive curriculum including professional and para-professional degrees and certifications that will support the behavioral workforce;
- ❖ Providers utilize/employ professional and paraprofessional individuals throughout the continuum of care;
- ❖ Behavioral Health practitioners receive livable wages and benefits that encourage continued service in the behavioral health field.

24.5 Sustainable Reimbursement for Behavioral Safety Net Providers

CBHC supports policies that enable adequate and sustainable funding of the behavioral health safety net services and a full continuum of community-based care by ensuring:

- ❖ Rate development is actuarially sound and appropriately increase service capacity;
- ❖ Reimbursement for behavioral health is comparable to physical health care;
- ❖ Innovative healthcare delivery modalities, including telehealth, mobile services, walk-in, etc. are covered at an equitable rate;
- ❖ Parity is extended across all consumer populations.

Effective Period

The Colorado Behavioral Healthcare Council (CBHC) Board of Directors approved this policy on 03/19/2020. 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 3/17/2022

Expiration: 03/17/2024