



**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

June 1, 2020

Dear Representatives and Senators,

Under the leadership of Governor Polis, the Colorado Division of Insurance, part of the Department of Regulatory Agencies, has worked tirelessly 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.

Access to mental health, behavioral health, and substance use disorder treatment is even more important now due to the current COVID-19 public health emergency. Rates of anxiety, depression, and grief related to social isolation have increased, and these conditions are further exacerbated for certain communities of color and communities that face structural barriers to accessing care. These issues are not new, but current events do heighten the urgency to ensure compliance with State and federal parity laws.

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

CC: Members of the Health & Insurance Committee, Colorado State House of Representatives;  
Members of the Public Health Care & Human Services Committee, Colorado State House of Representatives;  
Members of the Health and Human Services Committee, Colorado State Senate;  
Eve Lieberman, Chief Policy Advisor and Legislative Counsel, Office of Governor Jared Polis; and  
Elisabeth Arenales, Health Policy Advisor, Office of Governor Jared Polis



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Division of Insurance

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

Presented to the Health and Insurance Committee and the House  
Public 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, 2020

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## **Introduction**

The Colorado Division of Insurance (The Division) welcomes the opportunity to share with the Public Health Care 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](#). The Act addresses issues related to parity and coverage of behavioral health, mental 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 inaugural year, effective since May 16, 2019.

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 12 months to increase insurance carrier compliance. 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 treatment services for Coloradans.

Federal and Colorado State law requires that health insurance carriers cover services for mental health, behavioral health, and SUD conditions comparably 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 as fairly and equally as 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, 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 co-payments, co-insurance, 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, utilization management processes, pre-authorization 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.

A [November 2019 report](#) released by the Milliman Research Group looked at NQTLs using data from 2013 through 2017. The analysis illustrates the disparate experiences of behavioral health care access nationally and by state. Findings were significant, indicating that Coloradans are:

- 7.95 times more likely to use an out-of-network inpatient behavioral health facility than an out-of-network medical/surgical facility, compared to 5.24 times more likely nationally.
- 7.55 times more likely to use an out-of-network inpatient behavioral health facility than an out-of-network outpatient medical/surgical facility, compared to 5.72 times nationally.
- 9.25 times more likely to use an out-of-network behavioral health office visit than an out-of-network primary care office visit, compared to 5.41 times more likely nationally.
- 4.87 times more likely to use an out-of-network behavioral health office visit than an out-of-network specialist office visit, compared to 4.04 times more likely nationally.
- It also indicates that *Colorado behavioral health providers are reimbursed 37.3% less than primary care providers and specialists*. This payment disparity is greater than the national average of 23.8%.

Additionally, the current global pandemic and related public health crisis due to COVID-19 has created tremendous stress in the health care system. It has had a significant negative impact on mental health outcomes due to social isolation, economic stress, and life disruption and increased the need for mental health supports.

One recent [issue brief](#) from the Kaiser Family Foundation found that 47% of adults report negative mental health effects from worry or stress due to social isolation, compared to 37% of those not sheltering-in-place. Further, certain populations are at higher-risk for negative health outcomes like depression, anxiety, and suicide ideation.<sup>1</sup> The report also highlights the increase in rates of burnout and strain on frontline health care workers and their family members. Mental health, behavioral health, and SUD conditions that existed before the crisis may be exacerbated by the pandemic.

The Division continues to be active in responding to these immediate and long-term mental health, behavioral health, and SUD coverage needs. It recently adopted [Emergency Regulation 20-E-05 Concerning Coverage and Reimbursement for Telehealth Services during the COVID-19 Disaster Emergency](#), which made more technologies available, including telephone and audio-only communication, and clarified the types of services that are reimbursable, which include mental health, behavioral health, and SUD treatment. This emergency regulation remains in effect for 120 days or when the Governor rescinds the Emergency Order that the regulation is based on, whichever is shorter. It may be re-promulgated if the disaster is extended and telehealth services, including behavioral telehealth services, are still needed.

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 a summary of its efforts to enforce mental health parity in private insurance with the General Assembly in this report.

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<sup>1</sup> The report highlighted that these issues are particularly impacting older adults, youth (as a result of more extreme isolation from school closures), low income people, and other populations that face generally face greater health disparities such as people of color, lesbian, gay, bisexual, transgender and queer people.

## **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 in Colorado.

- [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 July 1, 2014. More information about MHPAEA can be found in this [FAQ about Mental Health and Substance Use Disorder Parity Implementation](#).

- [Patient Protection and Affordable Care Act of 2010 \(ACA\)](#) - While the federal ACA gives people better access to health insurance and health care, it also 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.

- [Behavioral Health Care Coverage Modernization Act \(2019\)](#) – In regards to the private insurance market regulated by the Division of Insurance, the Behavioral Health Care Coverage Modernization Act was passed by the Colorado legislature in 2019. It specifies 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 February 2, 2020, to implement this law, and it is discussed in greater detail below.

## **Methodology: Division of Insurance Activities**

Since the May 16, 2019, effective date of the Behavioral Health Care Coverage Modernization Act, the Division has implemented the following strategies to detect and enforce mental health parity compliance in the commercial market.

### **Division Regulations Related to Mental Health Parity**

The Division worked extensively with stakeholders, including Mental Health Colorado, the Colorado Center on Law and Policy, the American Psychological Association, and the Colorado Association of Health Plans, to develop and promulgate emergency and permanent rules to establish the requirements, processes, standards, and forms to be utilized by carriers and submitted to the Division pursuant to the requirements set forth in the Act and MHPAEA.

- Colorado Insurance Regulation 4-2-42, Concerning Essential Health Benefits, was amended to incorporate changes related to the Behavioral Health Care Coverage Modernization Act and clarify minimum coverage requirements for mental health, behavioral health, and SUD.
- Colorado Insurance Regulation 4-2-53, Network Adequacy Standards and Reporting Requirements for ACA-Compliant Health Benefit Plans, was amended to include standards to evaluate adequacy of carriers for mental health, behavioral health, and SUD networks.
- Colorado Insurance Regulation 4-2-64 Concerning Mental Health Parity Health Benefit Plans established requirements for compliance and forms for carriers to submit parity-related data to the Division on an annual basis. Two emergency regulations went into effect in 2019 to create systems and prepare carriers for the inaugural year submission. All of these rules were promulgated after extensive stakeholder engagement with advocates, provider associations, and health insurance carriers. Additional details about the final regulation are below.

### **Overview: Regulation 4-2-64 Concerning Mental Health Parity Health Benefit Plans**

The emergency and permanent regulations provided 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. The emergency and permanent regulations 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

#### 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 Act required them to submit to the Division a significant amount of mental health parity data for the first time for the 2020 plan year. Individual and small group health plan carriers submitted data on October 1, 2019, and will submit it with yearly rate filings moving forward. Carriers offering large group and student health plans submitted data on March 1, 2020, as required by statute.

Division staff provided written and verbal procedural guidance to carriers for submission, as this process was a new practice for all parties involved. Review is ongoing, thus no educational or corrective actions have been taken by the Commissioner at this time. All filings, with the exception of appendices deemed confidential, are public via the [System for Electronic Rates and Forms Filing \(SERFF\)](#).

#### Market Conduct Exams

The Division performs market conduct examinations and actions in accordance with Colorado statutes and regulations using the National Association of Insurance Commissioners (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.

In 2017, the Division called comprehensive market conduct exams on all 11 health insurance carriers in Colorado to examine several compliance issues from the 2016 plan year, including mental health parity. The firm contracted by the Division to conduct these exams provided a report to the Division in late 2018. Insurance Commissioner Michael Conway formally rejected the report in March 2019. The Commissioner was not satisfied that the findings in the report accurately reflected the market in Colorado. The firm was granted the opportunity to redo the examinations, but the Division ultimately removed the parity-related review from the exam scope in late 2019 given the time elapsed since the 2016 review period, the passage of updated State parity laws, and the quality of the work related to parity.

The Division called new parity-focused targeted market conduct exams on four carriers in early 2020 to review how mental health, behavioral health, and SUD providers compared to medical and surgical health providers in the following areas of concern.

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

The Division anticipates these exams to conclude in the summer of 2021.



### Consumer Services and Education

The Division is working to increase access for consumers seeking quality and affordable behavioral health, mental health, and SUD treatment. Simultaneously, it recognizes the immense value in hearing from Coloradans when the health system does and does not work for them, utilizing consumer and provider complaints related to behavioral health, mental health, and SUD treatment to ensure consumers have access to the care they need and to drive policy related to private insurance coverage. The Division has implemented the following strategies to improve consumer education and service navigation.

- Carrier disclosures to consumers 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.
- Cross-department training at the Division on parity compliance and enforcement.
- Training with the Consumer Services staff to identify, collect data on, triage, and remedy potential or definite parity violations, especially nuanced issues related to NQTLs. It is worth noting that the Division does not typically involve itself with provider-carrier relations, but it has done so given the intricacy of provider relations to parity compliance in areas such as credentialing processes, network adequacy standards, and reimbursement rates. The Division has investigated claims related to reimbursement rates for Autism Spectrum Disorder (ASD) providers, reimbursement rates for behavioral health providers in rural and mountain communities, credentialing standards and timelines, and pharmacy benefit design for people with chronic conditions, among others.
- [Educational information and resources posted on Division's website](#) on consumer rights and protections related to mental health parity, behavioral health care, and network adequacy in the commercial market. The resources include an overview of parity laws, real-life examples of potential parity violations, and an explanation of the process to file complaints for DOI-regulated plans should consumers experience difficulty getting coverage for mental health, behavioral health, and SUD care. The website resource also includes contact information for other types of private and public insurance programs not regulated by the Division, as well as contact information for a variety of resources regarding mental health access and insurance issues
- [Observance of Mental Health Awareness Month](#) in May 2020 by releasing media advisories, disseminating information on social media, and partnering with community and policy organizations working on mental health, behavioral health, and SUD care and coverage issues. The information shared by the Division educates consumers on parity, their rights and protections when accessing mental health, behavioral health, and SUD care, and community and state resources.

### State and Community Partnerships

In addition to the consumer education and feedback strategies, the Division relies upon feedback from its partner agencies, coalitions, and task forces 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 Task Force and its Mental Health Parity Workgroup](#): 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 represents the Division on the Executive Committee, and the Division participates in both the general task force and Safety Net subcommittee. It also leads the Mental Health Parity Workgroup, which was charged with determining recommendations for the task force to implement, enforce, and achieve parity in behavioral health care across payer systems, including commercial insurance, ERISA plans, Medicaid, Medicare, and Veterans Administration/TRICARE.
  - The Division also hosted a [webinar on mental health parity enforcement in the commercial market](#) for the task force, executive committee, and Governor's Cabinet, which was recorded and is available on the task force website.
  - The Division hosted [two public testimony listening sessions](#), available in-person and virtually, at Division headquarters, to hear from Coloradans statewide about the current behavioral health care system, access to care, and pressing needs. Mental health parity continues to be a consistent and urgent topic of conversation at public testimony sessions throughout the state. Public testimony sessions have been recorded and are organized by topic area and date on the [Behavioral Health Task Force website](#).
- [Suicide Prevention Taskforce](#): The Division participates on Governor Polis' Suicide Prevention Task Force, a collective effort of his cabinet to remedy Colorado's growing rates of ideation, attempt, and death by suicide. The Division works to ensure that private insurance plans have comprehensive mental health, behavioral health, and SUD coverage in compliance with federal and State law and that Coloradans have access to the care they need.
- [Behavioral Health Ombudsman Office of Colorado](#): The Division works 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.
- [National Association of Insurance Commissioner \(NAIC\) Parity 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. 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**

The Division has made great strides in understanding the current landscape of mental health parity in Colorado and has laid a strong foundation on which it will continue to support building a

behavioral health care system that works for everyone. The private insurance market is an integral component in that system. Behavioral health care today faces unique challenges that are simultaneously systemic and responsive to current events. The insurance system is fragmented, and the Division has regulatory authority over only a portion of plans that cover Coloradans across the state.

Colorado also faces challenges related to behavioral health provider shortages, especially in rural and mountain communities, access to telehealth services in communities without broadband, inconsistent data collection across systems and service providers, and insufficient services and programs for specific population needs in communities throughout the state. The Division will continue to build on the activities highlighted in this report and refine its infrastructure to enforce mental health parity through data collection, utilizing market conduct resources, and increasing educational information that is easily accessible to consumers seeking mental health, behavioral health, and SUD care.

While these challenges are significant, parity in mental health, behavioral health, and SUD care is of paramount importance. The activities highlighted in this report illustrate some of the momentum that continues to build in the state. The Division looks forward to working 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.