

Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor



Marylou Sudders
Secretary

Daniel Tsai
Director of MassHealth

Report Certifying the Office of Medicaid's (MassHealth) Contracted Health Benefit Plans' Compliance with Mental Health Parity in 2018

July 1, 2019

MassHealth



Introduction

The Executive Office of Health and Human Services Office of Medicaid (MassHealth) respectfully submits this report to the Legislature and Attorney General regarding how the MassHealth contracted managed care plans and their contractors complied with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the federal Act) and applicable state mental health parity laws set forth in Section 265 of Chapter 224 of the Acts of 2012 (Section 265) in calendar year 2018. MassHealth seeks to improve and enhance access to high-quality health care services for its members across the spectrum of covered services, including access to behavioral health services in full parity with other health care services. These services include the suite of Children's Behavioral Health Initiative (CBHI) services to provide home- and community-based behavioral health care to eligible children under the age of 21.

Section 265 directs the Office of Medicaid to promulgate regulations requiring any Medicaid health plan, managed care organization (MCO) and their health plans, and any behavioral health management firms and third party administrators that are under contract with a Medicaid MCO, to comply with the federal Act and applicable state mental health parity laws, effective for contracts on or after January 1, 2013. Section 265 also requires the Office of Medicaid to submit an annual report to the Legislature and Attorney General certifying and outlining how the health benefit plans under the Office of Medicaid and their contractors have complied with the federal Act, and applicable state mental health parity laws by July 1 of each year.

State Regulations

Effective January 1, 2013, MassHealth promulgated regulations at 130 CMR 450.117(J) which require its contracted managed care entities to comply with and implement applicable regulations and federal guidance requiring parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements and treatment limitations. MassHealth then amended these regulations effective December 18, 2017, including moving them to their own section at 130 CMR 450.123. The language of 130 CMR 450.123 can be found in the Appendix of this report.

Federal Regulations

On March 30, 2016, the Centers for Medicare and Medicaid Services (CMS) promulgated final federal regulations implementing federal mental health parity laws to Medicaid Managed Care Organizations, Children's Health Insurance Programs, and Alternative Benefit Plans. The new regulations required compliance by October 2, 2017. MassHealth worked with its managed care plans to ensure compliance and, on October 2, 2017, published information related to compliance with these rules on the MassHealth website (<https://www.mass.gov/service-details/mental-health-parity-reports>).

Language in Managed Care Contracts

MassHealth includes mental health parity requirements in its managed care entity contracts and handbooks. Below are the mental health parity provisions that were in effect for calendar year 2018 for the MCO (including CarePlus), SCO, and One Care (ICO) contracts and, beginning in March, 2018, for the Accountable Care Partnership Plans (ACPP) contracts.

MCO Contract Language

MassHealth added mental health parity language to MCO contracts in April of 2011, and amended the language in 2013 to incorporate the reference to 130 CMR 450.117(J). The CarePlus MCO contracts became effective January 1, 2014 and include the amended health parity language. The ACPP contracts became effective March 1, 2018 and include the amendment health parity language. All MCO and ACPP contracts included the following language (at §5.3.A.2):

In accordance with 130 CMR 450.117(J), the Contractor shall review its administrative and other practices, including the administrative and other practices of any contracted Behavioral Health organization, for the prior calendar year for compliance with the relevant provisions of the federal Mental Health Parity Law, regulations and guidance and submit a certification to EOHHS in accordance with 130 CMR 450.117(J) (I) and any additional instructions provided by EOHHS.

SCO Contract Language

As of May 2014, all SCO contracts contain the following language:

In accordance with 130 CMR 450.117(J), the Contractor shall review its administrative and other practices, including the administrative and other practices of any

contracted Behavioral Health organization, for the prior calendar year for compliance with the relevant provisions of the federal Mental Health

Parity Law, regulations and guidance and submit a certification to EOHHS in accordance with 130 CMR 450.117(J) (l) and any additional instructions provided by EOHHS.

One Care Plans (ICOs) Contract Language

The One Care Plan contract containing mental health parity language was signed on July 16, 2013. All One Care Plan contracts contain the following language (at §5.2.E.3.b):

The Contractor and providers must comply with the Mental Health Parity and Addiction Equity Act of 2008, including the requirements that treatment limitations applicable to mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan (or coverage), and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.

Mental Health Parity Language in Managed Care Member Handbooks

MassHealth requires managed care plans to include information in their member handbooks about mental health parity, including a description of the process for filing a grievance if a member believes that services were not provided consistent with mental health parity requirements. MassHealth drafted the following model language for the managed care plans to include in their member handbooks:

Mental Health Parity

Federal and state laws require that all managed care organizations, including (insert Plan name) provide behavioral health services to MassHealth members in the same way they provide physical health services. This is what is referred to as “parity.” In general, this means that:

- 1. (insert Plan name) must provide the same level of benefits for any mental health and substance abuse problems you may have as for other physical problems you may have;*
- 2. (insert Plan name) must have similar prior authorization requirements and treatment limitations for mental health and substance abuse services as it does for physical health services;*

3. *(insert Plan name) must provide you or your provider with the medical necessity criteria used by (insert Plan name) for prior authorization upon your or your provider's request; and*
4. *(insert Plan name) must also provide you within a reasonable time frame the reason for any denial of authorization for mental or substance abuse services.*

If you think that (insert Plan name) is not providing parity as explained above, you have the right to file a Grievance with (insert Plan name). For more information about Grievances and how to file them, please see (insert section(s)) of your Member Handbook.

You may also file a grievance with MassHealth. You can do this by calling the MassHealth Customer Service Center at 1-800-841-2900 (TTY: 1-800-497- 4648) Monday—Friday 8:00 a.m. to 5:00 p.m.

For more information, please see 130 CMR 450.117(J).

MassHealth's MCO, ACPP, One Care, and SCO plans have all added either the model language or substantially similar language in their member handbooks. MassHealth continues to work with plans, members, and advocates to address any concerns that arise related to mental health parity and resolve any issues as quickly as possible.

Annual Managed Care Certifications of Compliance

MassHealth regulations at 130 CMR 450.123 require that contracted managed care plans review their administrative and other practices, including those of any contracted behavioral health organizations or third party administrators, for the prior calendar year for compliance with the relevant provisions of the mental health parity laws, regulations and guidance. The regulations require the plans to submit a report on their review of their practices and to either certify that their plans fully comply with the federal Act and applicable state mental health parity laws and regulations or identify areas of non-compliance and a corrective action plan to bring those practices into compliance.

To effectuate this requirement, MassHealth requested that all MassHealth MCO, ACPP, One Care, and SCO contractors submit a report and a statement from their Chief Executive Officer and their Chief Medical Officer for Calendar Year 2018. Based upon our review of the certifications and the supplemental information provided by the plans, MassHealth certified that all of our contracted MCO, ACPP, One Care, and SCO managed care plans have certified their compliance with the federal Act and applicable state mental health parity laws for calendar year 2018.

Conclusion

MassHealth is pleased to provide this report on our contracted managed care plans' compliance with federal and state mental health parity laws, and we look forward to continuing to work with our plans to ensure that there is parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements and treatment limitations.

In addition to our work assuring compliance with state and federal parity requirements, MassHealth has implemented a number of initiatives focused on strengthening behavioral health services for MassHealth members. In March 2018, MassHealth implemented new accountable care organization health plan options to strengthen the care delivery system by increasing focus on integration and coordination of care. Additionally on July 1, 2018, MassHealth launched the Community Partners (CP) program, through which Behavioral Health and Long Term Services and Support Community Partners work with ACOs and MCOs to provide care coordination and care management support to MassHealth members with complex long term medical and/or behavioral health needs. Beginning in 2018, MassHealth expanded substance use disorder (SUD) services, and worked with sister agencies to increase SUD treatment capacity across the Commonwealth. In February 2019, MassHealth began providing coverage for telehealth services for behavioral health care. These programmatic initiatives are in addition to new MassHealth behavioral health investments totaling nearly \$400 million between state fiscal years 2016-2019.

Currently, MassHealth is working as part of an EOHHS-wide initiative to envision and develop an ambulatory behavioral health care system that truly meets the needs of MassHealth members – and Commonwealth residents generally— for primary, outpatient, urgent and emergency behavioral health treatment services. In support of this effort, EOHHS is hosting listening sessions around the Commonwealth during the summer of 2019 and plans to publicly release a policy roadmap in SFY 2020.

Appendix

130 CMR 450.123:

Managed Care Compliance with Mental Health Parity

(A) MCOs, Accountable Care Partnership Plans, SCOs, and ICOs, and their behavioral health subcontractors or third party administrators, if any, must comply with and implement relevant provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the Federal Mental Health Parity Law), and implementing regulations and federal guidance, which requires parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements and treatment limitations.

(B) Annual Certification of Compliance with Federal Mental Health Parity Law. Each MCO, Accountable Care Partnership Plan, SCO, and ICO must annually review its administrative and other practices, including the administrative and other practices of any behavioral health subcontractors or third party administrators, for compliance with the relevant provisions Federal Mental Health Parity Law, regulations, and guidance.

(1) Each MCO, Accountable Care Partnership Plan, SCO, and ICO must submit a certification signed by the chief executive officer and chief medical officer stating that the entity has completed a comprehensive review of the administrative practices of the entity for compliance with the necessary provisions of State Mental Health Parity Laws and Federal Mental Health Parity Law.

(2) If the MCO, Accountable Care Partnership Plan, SCO, or ICO determines that all administrative and other practices were in compliance with relevant requirements of the Federal Mental Health Parity Law, the annual certification will affirmatively state that all relevant administrative and other practices were in compliance with Federal Mental Health Parity Law.

(3) If the MCO, Accountable Care Partnership Plan, SCO, or ICO determines that any administrative or other practices were not in compliance with relevant requirements of the Federal Mental Health Parity Law, the annual certification will state that not all practices were in compliance with Federal Mental Health Parity Law, and will include a

list of the practices not in compliance, and the steps the entity has taken to bring these practices into compliance.

(C) A member enrolled in an MCO, Accountable Care Partnership Plan, SCO, or ICO may file a grievance with MassHealth if the member believes that services are provided in a way that is not consistent with applicable Federal Mental Health Parity laws, regulations, or federal guidance. Member grievances may be communicated for resolution verbally or in writing to MassHealth's customer service contractor.