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# **Report Certifying the Office of Medicaid's (MassHealth) Contracted Health Benefit Plans' Compliance with Mental Health Parity in 2021**

**August 2022**



## **Introduction**

The Executive Office of Health and Human Services (EOHHS) Office of Medicaid (MassHealth) submits this report to the Legislature and Attorney General in conformance with Section 265 of Chapter 224 of the Acts of 2012.

Specifically, the Office of Medicaid was authorized 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 Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“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 2021 for the Accountable Care Partnership Plans (ACPP), MCO plans, Senior Care Organizations (SCOs), and One Care (ICO) plans.

### MCO and ACPP Contract Language

MassHealth added mental health parity language to MCO contracts in April 2011 and amended the language in 2013 to incorporate a reference to 130 CMR 450.117(J). The CarePlus MCO contracts became effective January 1, 2014 and included the amended mental health parity language. The current ACPP and MCO contracts became effective March 1, 2018 and include the amended mental health parity language. All MCO and ACPP contracts include the following language (at Section 5.3.A.2 (MCO) and Section 6.3.A.2 (ACPP)):

In accordance with 130 CMR 450.123(B), 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 450.123(B)(1)-(3) 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, including subpart K of 42 CFR 438; and guidance; and submit a certification to EOHHS in accordance with 130 CMR 450.117(J) (1) 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.*

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 2021. Based upon our review of the certifications and the supplemental information provided by the plans, MassHealth certified that all but one 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 2021.

One plan identified a disparity where medical/surgical providers could appeal a recredentialing denial for any reason but mental health/substance use disorder providers could only appeal a recredentialing denial if they were terminated for quality-of-care reasons at the time of recredentialing. The plan noted there had been no recredentialing denials (and therefore no appeals) in the last year, so this disparity had no impact on provider enrollment. The plan included a remediation plan for this disparity in their submission and is in the process of updating their policies and procedures to resolve this disparity and ensure parity.

### **Conclusion**

MassHealth continues to reinforce the implementation of parity and works 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.

EOHHS also continues to expand access to mental health and addiction treatment through the administration's Roadmap for Behavioral Health Reform. Behavioral Health. Urgent Care services were implemented in February 2022, providing increased access and availability of services with evening and weekend hours, as well as same-day/next-day appointments for urgent needs. Additionally, EOHHS is working towards the launch of new services and statewide reforms that will start in January 2023. First, the Behavioral Health Helpline will offer a statewide 24/7/365 clinical resource to assess, triage, refer and provide follow-up support to callers, including the ability to deploy mobile crisis intervention teams. Additionally, a statewide network of newly designated Community Behavioral Health Centers will restructure the 24/7 mobile crisis response system, provide community-based alternatives to the emergency department, and expand timely access to evidence-based mental health and addiction treatment. Additional information on the Roadmap can be found at [www.mass.gov/BHRoadmap](http://www.mass.gov/BHRoadmap).

## 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.