Compliance Actions Under State and Federal Mental Health and Substance Use Disorder Coverage and Parity Laws

Joint Annual Report to the General Assembly

Produced by:

Illinois Department of Insurance

Illinois Department of Healthcare and Family Services

January 2024

January 1, 2024

To the Honorable Members of the General Assembly:

Section 370c.1(h)(3) of the Illinois Insurance Code requires the Department of Insurance, in conjunction with the Department of Healthcare and Family Services, to submit an annual report to the General Assembly regarding the agencies' respective activities in enforcement of Sections 356z.23, 370c, and 370c.1 of the Illinois Insurance Code, as well as the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. 18031(j), and any federal regulations or guidance relating to the compliance and oversight of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and 42 U.S.C. 18031(j). *See* 215 ILCS 5/370c.1(h)(3).

In accordance with Section 370c.1(h)(3) of the Illinois Insurance Code, we are pleased to submit the January 2022 edition of the Joint Annual Report to the General Assembly on Compliance Actions Under State and Federal Mental Health and Substance Use Disorder Coverage and Parity Laws. The report contains significant information from a national and Illinois perspective regarding the current condition of regulated entities' compliance with these important laws.

Respectfully,

Dana Popish Severinghaus
Director of Insurance

Theresa Eagleson
Director of Healthcare and Family Services

Contents

Methodology to Ensure Compliance

Illinois Department of Insurance

DOI utilizes market conduct examinations to verify a health insurance issuer's compliance with mental health and substance use disorder (MH/SUD) coverage and parity laws contained in Sections 356z.14, 356z.23, 370c, and 370c.1 of the Illinois Insurance Code and DOI regulations, which are interpreted consistently with the Paul Wellstone and Pete Demenici Mental Health Parity and Addiction Equity Act of 2008. The scope of the examinations includes, but is not limited to, activities as they pertain to parity in MH/SUD benefits within the company's health insurance business.

1. The objective of the examinations is to evaluate if the company designed, implemented, and managed MH/SUD benefits no less favorably than medical/surgical benefits. The specific review processes for the examination include, but are not limited to, the following:
2. Review the procedures and guidelines related to utilization review to ensure that such guidelines and utilization review processes on MH/SUD services are no more stringently applied that those applied to medical/surgical services.
3. Evaluate a sample of MH/SUD claims during the examination to compare services to medical/surgical and to ensure denials were appropriate based on medical necessity criteria.
4. Evaluate the universe of appeals during the examination to determine if the appeal decisions were based on appropriate clinical criteria and policies.
5. Evaluate the medical necessity criteria, policies, and procedures to ensure the company was not imposing more restrictive requirements and determination for MH/SUD treatments and services than on medical/surgical treatment and services.
6. Determine that the MH/SUD benefits provided in the classification identified by 45 CFR § 146.136(c)(2)(ii)(A) are paid in parity with benefits in the same medical/surgical classifications.
7. Evaluate financial requirements and quantitative treatment limitations (QTL) to ensure that any such requirements and limitations were consistently applied through MH/SUD and medical/surgical benefits, and that any financial 4 requirements and QTLs imposed meet the two-thirds threshold of "substantially all" requirements outlined in 45 CFR § 146.136(c)(3)(i).
8. Evaluate non-quantitative treatment limitations (NQTL) to ensure that such limitations were consistently applied through MH/SUD and medical/surgical benefits and that the company was not being more restrictive as outlined in 45 CFR § 146.136(c)(4)(i)-(ii).
9. Evaluate pre-certification/prior-authorization, step therapy policies, and procedural requirements for MH/SUD treatments to ensure that any such requirements were no more restrictive than the comparable medical/surgical policies and procedural requirements.
10. Determine that the policies and procedure for the selection, tier placement, and quantity limitations of MH/SUD treatment drugs on the formulary were no less favorable to the insured than policies and procedures used for the selection, placement, and limitations of medical/surgical drugs.

Outside of market conduct examinations, since 2018, DOI has required every company to submit information in an MHSUD Supporting Documents Template for every major medical, HMO, or HMO Point-of-Service policy that the company files for approval, both on and off the ACA Health Insurance Marketplace. This template is designed to assist DOI, when deciding whether to approve a policy to be sold in Illinois, and in performing an initial, high-level review of the policy for compliance with regulations under the Federal Mental Health Parity and Addiction Equity Act. In particular, it instructs companies to explain how their policy complies with parity requirements relating to aggregate lifetime and annual dollar limits, financial requirements, QTLs, NQTLs, and the ability of healthcare providers and insured individuals to access a company's medical necessity criteria.

Illinois Department of Healthcare and Family Services

The Department of Healthcare and Family Services (HFS) performs parity compliance audits for the Illinois Medicaid Managed Care Program (HealthChoice Illinois) in order to verify a Managed Care Organizations (MCO) is in compliance with mental health (MH) and substance use disorder (SUD) coverage and parity laws contained in Sections 356z.23, 370c, and 370c.1 of the Illinois Insurance Code and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008.

HealthChoice Illinois delivers fully integrated healthcare, inclusive of MH and SUD benefits, to Illinois Medical Assistance Program customers. To provide a base for ensuring compliance with MHPAEA, HFS includes specific language regarding MHPAEA compliance in all HealthChoice Illinois contracts. HFS utilizes two primary mechanisms to monitor each health plan's compliance with its contract: 1) internal quality and contract management activities including but not limited to Quarterly Business Reviews; and Monthly monitoring MCO complaints that tare indicated as related to Parity. 2) Annual Parity Compliance Audits conducted by HFS' external quality review organization (EQRO), Health Services Advisory Group, Inc. (HSAG).

Mental Health Parity Workgroup

The Mental Health Parity Workgroup (Workgroup), established pursuant to 215 ILCS 5/370c.1(j), is comprised of eleven (11) members representing behavioral health parity experts, advocates, insurers, and providers. The Workgroup receives technical support from DOI and HFS, and meets minimally on a semi-annual basis, with supplemental meetings scheduled and as determined necessary by the members.

The Workgroup met a total of six times between January 13, 2023, and April 21, 2023. During this period, the Workgroup's primary focus was on developing and finalizing the Phase III templates necessary for plans to meet the statutory reporting requirements. However, due to concerns raised that the NQTL instructions and templates lacked the necessary guidance for plans to successfully meet the reporting requirements, it was determined that the NQTL templates and instructions for Phase I and Phase II would need to undergo significant revisions before moving forward with Phase III.

At the April 21, 2023, meeting of the Workgroup, there was discussion and a motion made that the duties of the Workgroup including continued development of the necessary NQTL Instructions and

Templates should be transitioned to the state monitoring agencies (DOI and HFS). The Workgroup carried the motion and voted that legislative action should be initiated to sunset the Workgroup.

With the signing of Public Act 103-0094, 215 ILCS 5/370c.1 was amended, removing subsection (j) and, sunsetting The Mental Health Parity Workgroup effective June 27, 2023. In addition, there was a change in the due date for annual reporting by health insurance, qualified health plan and/or a managed care organization from July 1 to September 1, 2023, and annually thereafter.

With the assistance of Parity Subject Matter Experts, DOI finalized revisions of the NQTL Templates and Instructions that are now in alignment with the most recent Federal requirements and guidance provided in FAQs about MH and SUD Parity Implementation and the Consolidated Appropriation Act, 2021 Part 45 (FAQs Part 45).

Compliance Activities in 2023

Market Conduct Examinations: Illinois Department of Insurance

DOI completed two market conduct examination evaluating compliance with MH/SUD coverage and parity laws for the following companies:

- Quartz Health Plan Corporation
- Quartz Health Benefit Plan Corporation

Each market conduct examination where DOI has found violations of law has resulted in a stipulation and consent order requiring the company to correct all activities where violations were found, pay a civil forfeiture, and provide proof of compliance to DOI. The orders and the final reports are posted publicly on the DOI website. The following is a summary of findings by company for the recent round of examinations:

- Failed to utilize statutory and American Society of Addiction Medicine (ASAM) requirements by imposing prior authorization on substance use disorder claims.
- Failed to include all FDA-approved substance use disorder medications on the formulary which is the list of generic and brand-name prescription drugs covered by a specific health insurance plan. The company did not include brand-name prescription drugs on its list.
- Created consumer access barriers (prior authorization) to Naltrexone (a craving reduction medicine for alcohol and opioid use disorder).
- Created a consumer access limitation to prescription inhalants for members who suffer from asthma or other life-threatening bronchial ailments. The company did not allow members to refill a prescription for inhalants just a few days in advance, instead deeming it as a “refill too soon.”
- Created a barrier to access without disruption to anti-anxiety and antipsychotic medications by limiting maximum fill to 30 days. Typically, fill allotment for anti-anxiety and antipsychotic medications is up to 90 days to avoid disruption of treatment.

- Created a barrier to treatment for consumer to continue use of previously successful prescriptions, by improperly imposing step therapy. When consumers are already on a prescription drug and can demonstrate stability, the company should not require the consumer to begin step therapy all over again.
- Total Number of Combined Finable Violations: 15
- Posted final report and order: January 11, 2023
- Civil Forfeiture total $500,000. $195,000 related to mental health parity violations.

Parity Audits: Illinois Department of Healthcare and Family Services

Quarterly Business Reviews

HFS staff meet with the health plans independently for monthly operations meetings and quarterly business reviews (QBRs) focused on monitoring health plan performance. QBRs include monitoring of areas related to Mental Health Parity and Addiction Equity Act (MHPAEA) compliance, including: the percent of prior authorization requests denied and top denial reasons, broken down by behavioral health and non-behavioral health benefits.

Managed Care Provider Resolution Portal and Parity Tracking

Per Illinois statute (215 ILCS 5/370c(d)(2)), HFS is required to evaluate all consumer or provider complaints related to mental health (MH) or substance use disorder (SUD) coverage for possible parity violations. Effective January 1, 2022, HFS Bureau of Managed Care (BMC) updated its Managed Care Provider Resolution Portal to include the ability to identify complaints that include an indication of potential parity violations and to track the outcome of those complaints. When a provider submits a complaint through the portal, there is an option for indicating if the complaint is related to MH/SUD Parity. Complaints flagged as a potential parity violation are routed to staff within the HFS Bureau of Behavioral Health (BBH), for additional review and scrutiny to determine if the complaint is related to MH Parity and if there is evidence of a possible parity violation. Once a Complaint has been received by BBH staff, they have 30 days to review and respond with a determination. Data regarding the number of complaints identified as possible parity issues and the outcomes of the determinations are tracked and reported monthly. During calendar year 2023, there were three complaints submitted to the Portal that were indicated as being a parity issue. All three complaints were related to medical necessity determination, but all three were determined by Bureau of Behavioral Health to not constitute a Parity issue.

Parity Audit: Phase I Mental Health Parity (MHP) Monitoring

HSAG collaborated with HFS to define the scope of the MHP review to include applicable Federal and State regulations and laws and the requirements set forth in the contract, as they relate to the scope of the review. HSAG developed a protocol and tools in alignment with guidance outlined in the toolkit provided by the Centers for Medicare & Medicaid Services (CMS): *Parity Compliance Toolkit Applying Mental Health and Substance Use Disorder Parity Requirements to Medicaid and Children's Health Insurance Programs.*

The MHP analysis performed by HSAG consisted of:

- Review of the health plans MHP Parity Analysis Template and comparative analyses, which were submitted to HFS on June 30, 2022, and addressed HFS' Phase II parity reporting for:
    - Concurrent Review
    - Retrospective Review
    - Outlier Management
    - Failure to Complete
    - Blanket Exclusions of Services
    - Exclusions for Court-Ordered Treatment or Involuntary Holds
    - Provider Type Exclusions
    - Out-Of-Network Coverage Standards
    - Geographic Restrictions
- Review of the health plans utilization management (UM) documents and information.
- Analysis of Medical/Surgical (M/S) and MH/SUD prior authorization (PA) denial data, which are self-reported to HFS.
- File review of PA requests and health plans decisions, encompassing both M/S and MH/SUD requests.

HSAG used deviation ratings *None, Moderate, and Substantial*, to indicate the degree to which each health plans reported metrics differed across MH/SUD and M/S services.

- ***None*** - Difference between MH/SUD and M/S metric is less than 5 percentage points.
- ***Moderate*** **-** Difference between MH/SUD and M/S metric is, greater than or equal to 5 percentage points, and less than 10 percentage points.
- ***Substantial*** - Difference between MH/SUD and M/S metric is greater than or equal to 10 percentage points.

HSAG reviewed and determined that four (4) of the seven (7) health plans that received a rating of ***Substantial*** did not demonstrate differences between M/S and MH/SUD denial rates the differences were driven by a lower denial rate for MH/SUD services compared to M/S services, suggesting no concerns with parity. In addition, HSAG reviewed a random sample of 50 PA request records (25 MH/SUD and 25 M/S) for each of the health plans. Results demonstrated 100 percent concordance between independent UM decisions and the health plans decisions.

Overall, HSAG determined that the health plans demonstrated parity between M/S and MH/SUD services. Documentation and implementation of the health plans processes demonstrated compliance with State and Federal MHP requirements and standards. HSAG's observations included the following:

- All health plans used nationally recognized utilization review criteria.
- All health plans policies and procedures described an appropriate level of expertise required for UM staff members making PA request decisions, and record reviews demonstrated that all health plans followed decision-making guidelines. The documentation within the files demonstrated that in all cases, the individual who made the determination possessed the required credentials and expertise to do so.

- All health plans followed their policies and procedures regarding interrater reliability testing to ensure the consistency and quality of UM decisions.
- The health plans demonstrated ongoing review of M/S and MH/SUD data and information to inform MHP.

The 2022 Mental Health Parity Analysis Summary Report is viewable on the HFS website under in the Report Center | HFS (illinois.gov)

Educational Actions Taken in 2023

Illinois Department of Insurance

The Illinois Department of Insurance (DOI) announced a new ad campaign highlighting mental health parity that kicked off in May 2023 and will continue throughout the summer of 2024. The radio, digital, out of home, and social media ads aim to raise awareness about mental health parity to help Illinoisans better understand their rights related to health insurance coverage for mental health and substance use disorders, under the Mental Health Parity and Addiction Equity Act (MHPAEA).

MHPAEA requires health insurers provide coverage for mental health and substance use disorders that is no more restrictive than coverage for physical health conditions. As the state's insurance regulator, DOI is tasked with ensuring companies' compliance with MHPAEA and other parity laws to protect Illinois insurance consumers. The Department's enforcement includes conducting market conduct examinations to investigate the practices of health insurance companies, and when parity law violations are found, companies are fined.

DOI's mental health parity ad campaign will also direct consumers to file a complaint with the Department if they believe their health insurer's mental health and substance use disorder coverage has more restrictive requirements than those for physical health coverage.