ARIZONA
DEPARTMENT OF INSURANCE
& FINANCIAL INSTITUTIONS

Mental Health Parity Annual Report

November 2024

Arizona Department of Insurance and Financial Institutions

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Introduction

The journey for fairness in insurance coverage for the treatment of mental health and substance use disorders started with President Kennedy in 1963. Forty-one years later, the Mental Health Parity and Addiction Equity Act (MHPAEA) was signed into law on October 2, 2008, that requires health insurance plans to provide mental health and substance use disorder (MH/SUD) benefits that are no more restrictive than their medical/surgical benefits. The law applies to self-insured and large employer group plans, but not to individual or small group plans.

In 2020, the Arizona legislature passed S.B. 1523 with unanimous support. On September 4, 2022, the final rules for Jake's Law went into effect. The law is in alignment with the federal law and addresses several different aspects of mental health care in Arizona:

- It gives The Department of Insurance and Financial Institutions (DIFI) the clear authority to enforce MHPAEA and ensure that insurance companies are complying with parity requirements.

- It created the Children's Behavioral Health Services Fund and provided $8 million for behavioral health services for children who are uninsured or underinsured (**administered and managed by AHCCCS**).

- It prohibits insurance companies from denying coverage for services that are covered by the plan simply because they are delivered in an educational setting.

- It helps increase follow-up services for patients who visit a hospital and are at risk for suicide.

- It established the multi-discipline Mental Health Parity Advisory Committee to give all parties including families, providers, advocacy organizations and insurers an opportunity to provide input.

- It created a Suicide Mortality Review Team in the Arizona Department of Health Services.

S.B. 1523 is named in honor of Jake Machovsky, an Arizona teen who lost his life to suicide in 2016 after battling mental health issues.

This final report reflects over 12 months of work by DIFI to conduct reviews of the triennial mental health reports submitted by 19 insurers. This review was conducted with the assistance of the consultant firm, INS Consultants.

What is mental health parity?

Parity requires health plans that cover MH/SUD services to provide the same level of benefits and access to coverage for MH/SUD as for medical and surgical benefits. This includes:

- Annual and lifetime limits on coverage.
- Financial requirements:
    - Deductibles.
    - Copayments.
    - Coinsurance.
    - Out-of-pocket expenses.
- Quantitative treatment limitations:
    - Frequency of treatment.
    - Number of visits.
    - Days of coverage.
    - Scope or duration of treatment.
- Non-quantitative treatment limitations examples include but not limited to:
    - Medical management standards.
    - Prescription Drug Step therapy.
    - Formulary design.
    - Provider Network restrictions
    - Utilization Management Criteria
    - Availability of coverage for benefits provided by out-of-network providers and network tier design.
    - Prior Authorization
    - Concurrent review
    - Reimbursement rates
    - Network Admission Standards

Coverage terms that limit MH/SUD benefits must be comparable to, and not more stringent than, limits for medical benefits. This includes the processes and standards used to apply the limit.

Definition of M/S and MH/SUD Services

For the purposes of the parity analysis, DIFI uses the most current version of the International Classification of Diseases (ICD) or the Diagnostic and Statistical Manual of Mental Disorders (DSM) to define mental health (MH) and substance use disorder (SUD) conditions:

- Mental health conditions are those conditions listed in ICD-10 Chapter 5(F), except for subchapter 1 (mental disorders due to known physiological conditions), subchapter 8 (intellectual disabilities), and subchapter 9 (pervasive and specific developmental disorders). The etiology of these conditions is a medical condition—physiological or neurodevelopmental—and treatment would address medical concerns first.

- Substance use disorder benefits are defined as benefits used in the treatment of SUD conditions listed in ICD-10 Chapter 5 (F), subchapter 2 (mental and behavioral disorders due to psychoactive substance use).

- Benefits used to treat all other ICD-10 diagnoses are considered M/S.

Classification of Benefits

The final federal regulations specify requirements for treatment limitations apply to each benefit classification individually. Arizona benefits were classified and divided into six categories, guided by the U.S. Department of Labor Self-Compliance Tool for MHPAEA and CMS Parity Toolkit. The following definitions were used to differentiate benefit classifications:

- Inpatient (In-Network & Out-Of-Network)
    - A patient who has been formally admitted to a hospital with a doctor's order and is expected to stay overnight and receives services that are provided in a hospital setting, excluding nursing facilities.

- Outpatient (In-Network & Out-Of-Network)
    - All covered services or supplies not included in inpatient, emergency care, or prescription drug categories, such as:
        - Outpatient facility-based services, such as physical, occupational, speech, and cardiovascular therapy, surgeries, radiology, and pathology
        - Intensive outpatient and partial hospitalization services for mental health conditions or substance use disorders.
        - Outpatient office visits

- Emergency Care
    - All covered emergency services or items (including medications) provided in an emergency department setting or to stabilize an emergency/crisis, other than in an inpatient setting.

- Prescription Benefits
    - 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.

Aggregate Lifetime and annual Dollar Limits

No aggregate lifetime or annual dollar limits in any classification, apply to MH/SUD services in any benefit package.

Financial Requirements and Quantitative Treatment Limitations

No quantitative treatment limitations are applied to MH/SUD services in the inpatient, outpatient or emergency care classifications of any benefit package.

Methodology

Tools and Resources to Collect and Analyze Required Data

DIFI determined that the scope of the inaugural submission of the triennial mental health parity report would require guidance, technical assistance and analysis.

DIFI researched various data collection tools and consulted with the states that had the more widely used data collection templates Oklahoma, Pennsylvania, and Texas. DIFI decided to develop their own data collection template the Arizona Mental Health Parity Triennial Report Checklist. DIFI solicited feedback from the the industry on ease of use and functionality through a Technical Assistance webinar session and gave the industry the option of using the Arizona template or another template of their choice that would capture all of the necessary required elements.

Considering the immense volume of the reporting and limited resources, DIFI decided it would be prudent to solicit the assistance of a MHPAEA subject matter expert to consult and train which would best be done through the semi-formality of a conduct exam. DIFI's goal was to have the exanimation process be collaborative and educational as this was the initial submission for both insurers and DIFI. DIFI conducted Pre-Exam meeting with each insurer to explain the process of the exam and introduce the consulting team and to answer any questions. DIFI conducted exit exam meetings to review the results and findings of the analysis review and provide recommendations to improve reporting in the future.

Review Process for NQTLs

DIFI prepared a list of common NQTLs that may be submitted in the triennial reports from the illustrative list of NQTLs in the parity toolkit, and written guidance from CMS and the Department of Labor regarding the commercial parity rule (including FAQs and related guidance). DIFI also gathered feedback through the Mental Health Parity Advisory Committee for prioritization of NQTLs to review. The final priority list included the following NQTLs:

- Formulary Design
- Retrospective Review
- Concurrent Review
- Prior Authorization
- Step Therapy
- Provider Network

DIFI will continue to monitor the health plans for any and all NQTLs, including those not listed in the report, and will address them specifically when found to be utilized.

Factors Used to Determine if an NQTL Will Apply

Parity requires NQTLs not be applied to MH/SUD benefits in any classification unless their application to MH/SUD benefits are comparable to and no more stringent than the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to M/S benefits in the classification. The application standards for any NQTL must be clearly delineated under the policies and procedures as written and in operation.

The CMS Parity Toolkit divides this analysis into two parts:

1. Evaluate the comparability of the processes, strategies, evidentiary standards, and other factors (in writing and in operation) used in applying the NQTL to MH/SUD benefits and M/S benefits.

2. Evaluate the stringency with which the processes, strategies, evidentiary standards, and other factors (in writing and operation) are applied to MH/SUD benefits and M/S benefits.

Following the process outlined in the CMS Parity Toolkit, DIFI used the information provided in the triennial mental Health Parity reports to determine if an NQTL applies and requires analysis. Any identified NQTL is tested for comparability and stringency to ensure it meets parity guidelines. During this analysis, multiple reference points are explored to determine compliance with parity guidelines including: policy follows standard industry practice, is little to no exception or variation when operationalizing procedures, policy and practice follows established state definitions and guidelines, the staff operationalizing the policy are qualified to make the decisions and complete the tasks assigned, and appropriate supervision and oversight is in place to ensure the policy is operationalized as documented.

Findings

A comprehensive assessment and review of the submitted comparative analysis of MH/SUD benefit limitations compared to M/S benefit limitations found the written policies and procedures to be parity compliant and did not rise to a level of concern where actin needed to be taken. DIFI's determination was based on the analysis of the following limitations:

Aggregate Lifetime and Annual Dollar Limits

Based on the information collected during the analysis, none of the insurers utilize aggregate lifetime or annual dollar limits for MH/SUD benefits and are, therefore, compliant with parity requirements for these limits.

Financial Requirements and Quantitative Treatment Limitations

Based on the information collected during the analysis, none of the insurers utilize financial requirements or quantitative treatment limitations (QTLs) for MH/SUD benefits and are, therefore, compliant with the parity requirements of these limitations.

Non-Quantitative Treatment Limitations

DIFI completed an analysis of the NQTLs submitted that are being used and an analysis of whether, for each NQTL, there are differences in policies and procedures, or the application of the policies and procedures for MH/SUD benefits and M/S benefits.

Aetna, Blue Cross Blue Shield of Arizona, Cigna Health, Health Net of Arizona, Humana, Medica, Oscar Health, United Healthcare and WellFleet Insurance were assessed in this analysis.
Compliance NQTLs include in the above assessment include the following categories:

Categories
Inpatient, In-Network
Inpatient, Out Of-Network
Outpatient, In-Network
Outpatient, Out Of-Network
Emergency Care
Prescription Drugs

Common Trends

During the review of the submitted triennial reports DIFI discovered some common trends among the submissions across the group of insurers.

- Combining together multiple NQTLs into one analysis, when each NQTL analysis needs to be separate (Ex. Prior Authorization and Concurrent Review)

- Definition Clarity (Ex. Not clear on how factors are defined or when they might be triggered. For example, when does the "complexity of the condition" reach the level of complexity that would necessitate concurrent review?)

- Not showing results of the analyses performed

- Describing in-operation processes without demonstrating comparability and no more stringent application.

- Missing evidentiary data

In these instances, recommendations and guidance were provided to the insurer and if more information was requested from the insurer, it was submitted in a timely manner to demonstrate compliance.

Ongoing and future monitoring activities

DIFI will continue to review and ensure parity compliance on a regular basis to determine whether behavioral health benefits meet parity requirements.

DIFI has been notified that the following insurers either have already exited the Arizona market or will be exiting the Arizona market by the end of 2024, so no future Mental Health Parity reporting will be required:

- Bright Health
- WMI Mutual Insurance Company
- Humana Insurance Company

DIFI has been monitoring the ongoing updates of the federal MHPAEA final rules. DIFI will carefully review the updated final federal MHPAEA rules to ensure that Arizona's S.B. 1523 is in alignment with any changes in federal guidelines. DIFI will be vigilant in providing communication to the public on any changes or updates for Arizona MHPAEA legislation and rules. DIFI has identified the most

pertinent information of the recent federal MHPAEA final rule updates are the applicably dates which are as follows:

- The final rules generally apply to group health plans and group health insurance coverage on the first day of the first plan year beginning on or after **January 1, 2025**.

- The meaningful benefits standard, the prohibition on discriminatory factors and evidentiary standards, the relevant data evaluation requirements, and the related requirements in the provisions for comparative analyses apply on the first day of the first plan year beginning on or after **January 1, 2026**.

- The final rules apply to health insurance issuers offering individual health insurance coverage for policy years beginning on or after **January 1, 2026.**

- Until the applicability date, plans and issuers are required to continue to comply with the existing requirements, including the CAA, 2021 amendments to MHPAEA.

DIFI is astute of the progression of technology and the use of AI in healthcare. DIFI will continue to stay abreast of current technological healthcare AI processes and procedures to monitor and review to ensure algorithms are in parity compliance.

Conclusion

The completed Arizona review of the submitted triennial reports by the insures were found to be compliant and did not rise to a level of concern where action needed to be taken. DIFI will continue to monitor compliance through ongoing annual Mental Health Parity filings, upcoming Triennial Mental Health Report submissions, and via any applicable complaints filed with the department. DIFI will continue to work collaboratively with the industry to provide ongoing education and technical assistance to ensure compliance is maintained as federal and local MHPAEA Law changes.

DIFI will continue to enhance its outreach with the assistance of the Mental Health Parity Advisory Committee as well as utilizing our social media platforms to keep the community informed about MHPAEA and important issues related to mental health initiatives and resources. Together, we can ensure the residents of Arizona, receive the optimal access mental health and addiction services possible.

References

1. Arizona Mental Health Parity Rules:
   Arizona Administrative Code, Title 20, Chapter 6, Article 13

2. Arizona Mental Health Parity Triennial Report Checklist
   https://difi.az.gov/insurers/life-health-rates-forms-compliance/mental-health-parity-reporting

3. Arizona Senate Bill 1523 Jake's Law
   Codified:
   Arizona Revised Statues § 20-3501 through § 20-3508

4. Center for Medicare and Medicaid Services Mental Health Parity and Addiction Equity Act Toolkit. https://www.medicaid.gov/sites/default/files/2020-07/parity-toolkit.pdf

5. Mental Health Parity and Addiction Equity Act
   https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/self-compliance-tool

6. Mental Health Parity and Addiction Equity Act Final Rules Fact Sheet
   https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rules-under-the-mental-health-parity-and-addiction-equity-act-mhpaea

7. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008
   Statutory Citation**:** Public Law 110-343, Division C, Title V, §512
   Codified:
   29 U.S.C. § 1185a (Employee Retirement Income Security Act, (ERISA)
   42 U.S.C. § 300GG-26 (Public Health Service Act)
   26 U.S.C. § 9812 (Internal Revenue Code

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