Arizona Department of Insurance and Financial Institutions

Report on Mental Health Parity

January 6, 2022

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I. Purpose of Report

In 2020, the Arizona legislature passed S.B. 1523 (Chapter 4) with unanimous support, granting the Arizona Department of Insurance and Financial Institutions (DIFI) express authority to enforce state and federal requirements pertaining to the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), to help ensure that insurance companies operating in Arizona are complying with parity requirements. The bill was named Jake's Law, in honor of Jake Machovsky, an Arizona teen who lost his life to suicide in 2016 after battling mental health issues. This report is an update on the many activities DIFI has undertaken to implement various aspects of Jake's Law.

II. Update of Agency Activities

Jake's law required DIFI to undertake a number of activities to increase oversight of health plan MHPAEA compliance in Arizona. The law grants the agency general oversight and enforcement authority, but the agency lacked staff, data and regulations, and the public lacks awareness of their rights under the law. DIFI has taken the following actions in an attempt to address these issues.

Staffing and consumer education activities-

- Dr. Leanette Henagan was hired as DIFI's Behavioral Health Program Administrator
- The Mental Health Parity Advisory Committee was established by DIFI and members appointed in 2020. The Committee convened seven times in 2021 and five times in 2022 offering consumers, providers and insurers to provide stakeholder input to the Directors of DIFI and ADHS.
- A consumer facing webpage was developed in 2021 with content to help consumers:
  - better understand MHPAEA and its application to health plans issued in Arizona
  - understand how to file an appeal or complaint related to MHPAEA with the Department (https://difi.az.gov/know-when-submit-appeal-versus-complaint)
  - covered by self-insured health plans can reach the U.S. Department of Labor
  - connect with additional resources for understanding MHPAEA or finding mental health resources (https://difi.az.gov/content/mental-health-parity-1).
- In consultation with the Advisory Committee, DIFI developed and published a concise, printable consumer brochure with fundamental information about MHPAEA, how to file

a complaint or appeal, and resources for various mental health situations including early inpatient discharge. Members of the Advisory Committee were encouraged to disseminate the publication further and help promote the website.

- DIFI has joined in several Mental Health Awareness campaigns in an effort to further public awareness of the availability of insurance rights and services in response to society's increasing need for mental health services and alarming frequency of suicide.

Oversight and enforcement activities-

- DIFI staff recorded a presentation to explain the "Substantially All/Predominance" test which is a fundamental check of that insurers are required to perform to assess whether their mental health benefits are in parity with their medical/surgical benefits. (https://www.youtube.com/watch?v=OTMqsP625Wk&t=1s). While this presentation was designed to help insurers comply with the test, it also helps the public understand certain allowances regarding the variations in health plan cost-share between mental health and medical/surgical benefits.
- DIFI fulfilled the condition in Jake's Law to adopt rules to establish requirements for the confidential MHPAEA reports that Arizona insurers must submit every three years (and updates in intervening years) to demonstrate compliance with MHPAEA Nonquantitative Treatment Limit (NQTL) provisions. After multiple drafts and listening sessions, Article 13 was added to Title 20, Chapter 6 of the Arizona Administrative Code in September 2022. In accordance with these rules, applicable health insurers must begin making reports to DIFI March 15, 2023. DIFI is actively forming internal processes for receiving and evaluating insurer reports.
- DIFI continues to review pertinent health plans for compliance with MHPAEA provisions related to Qualitative Treatment Limits (QTL) as part of its annual review of health insurers Qualified Health Plan filings.
- Jake's Law directed DIFI to post on its website an "aggregated summary of its analysis of the reports filed by health care insurers…including any conclusions regarding industry compliance with [MHAPEA]." At this time, because insurers will not begin reporting MHPAEA data until 2023, there are no reports to analyze and summarize. However, in accordance with ARS 20-3503, DIFI will publish a summary of any stakeholder outreach

conducted and regulatory activity related to the implementation, oversight and enforcement of MHPAEA in future Annual Reports.

- DIFI has conducted an informal “secret shopper” survey to evaluate the efficacy of certain Arizona health plan’s mental health and substance use provider networks. The results of this research follow.

III. Analysis of de-identified health plans' provider directory listings of mental health providers

Background. Millions of Americans are impacted and affected by mental illnesses every year. Nearly one in five U.S. adults live with a mental illness, 52.9 million in 2020 (https://www.nimh.nih.gov/health/statistics/mental-illness). Network adequacy standards are key to insuring timely and appropriate access to behavioral health services. Inadequate access to behavioral health services has both economic and health related consequences. The economic impact of inadequate access increases the cost of treating more complex health issues and the loss of productivity from work, school, etc. Untreated mental illness is one of the leading causes of mortality worldwide and other chronic diseases. (Walker 2015). Network adequacy standards help address delays in treatment and can improve the quality of life for patient and reduce the barriers that can lead to higher instances of morbidity and mortality.

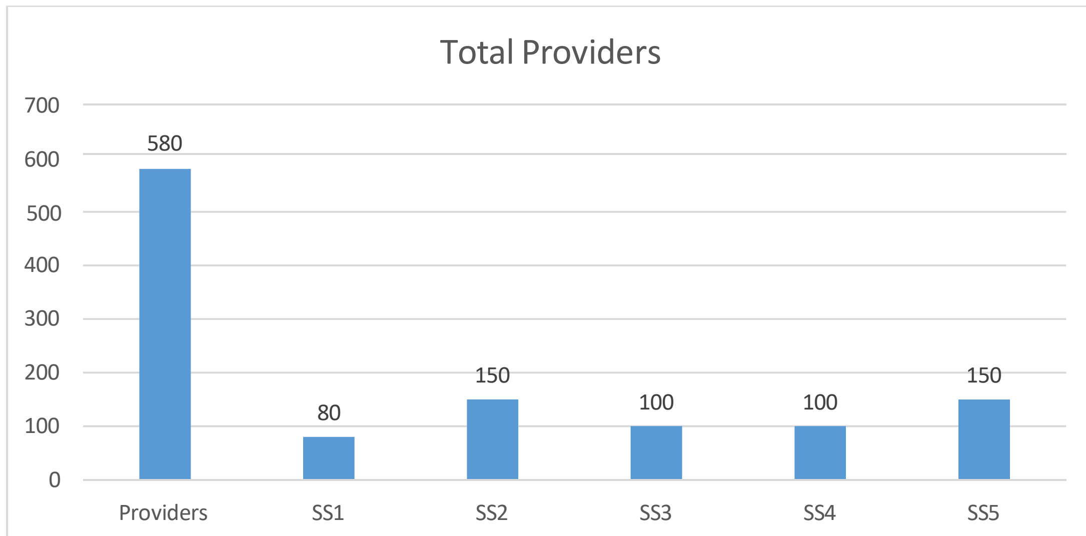
Objective. In order to evaluate the accessibility of mental health and substance use providers among Arizona’s health plan networks, DIFI undertook an informal “secret shopper” exercise. Secret shopping is a commonly used method in which an entity monitors quality of service and compliance with regulations using evaluators posing as a client. It is a typical tool of customer/client-centered services as it provides and overall and standardized evaluation of elements of customer service as well as physical elements of service environments (Shinn 2019). The Centers for Medicare and Medicaid have used “secret shopping” to assess Medicare plans, and several state insurance departments have used this method to assess health plan networks and provider directories. The information in this informal study was not collected in a manner that would permit enforcement for violations of the network adequacy and provider directory standards[1] for Arizona health care service organizations (aka, HMO). However, the data does

[1] Arizona Administrative Code R20-6-1912 through R20-6-1920; ARS 20-2455; 45 CFR § 156.230)

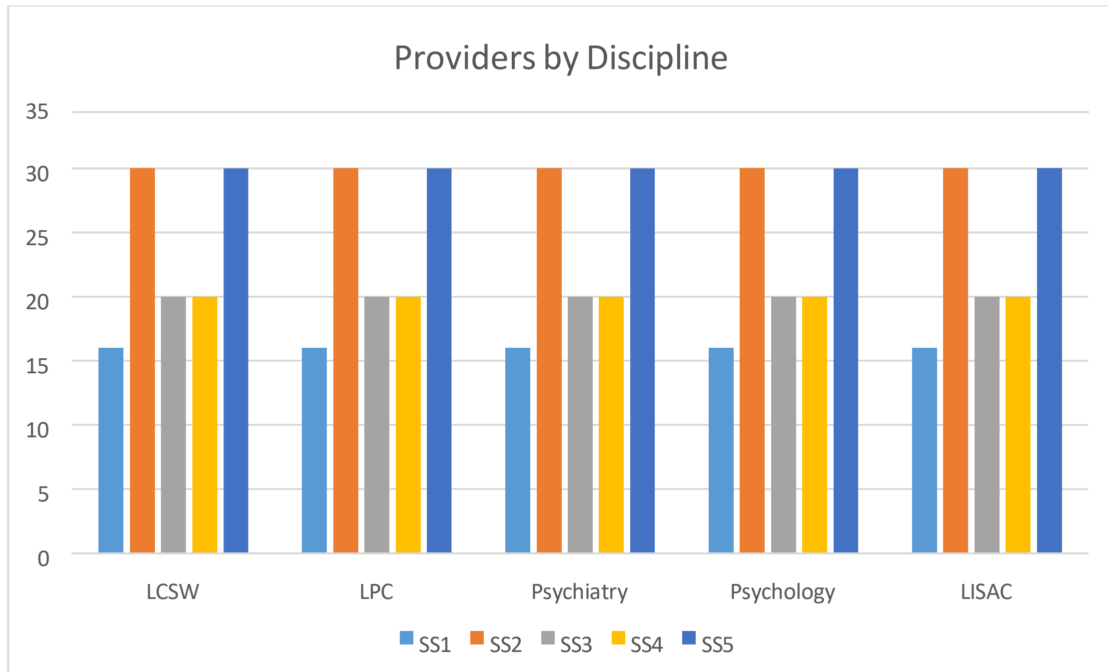
suggest some health plan directories are in need of improved monitoring to ensure accuracy and timely access to covered services. DIFI will be communicating the findings of this research to applicable insurers.

Methods. A "secret shopper" analysis was performed, in which DIFI staff attempted to telephone 580 behavioral healthcare providers listed in the most current online directory of five commercial HMO insurers.[2] Data from random telephone interviews was collected from January 2022 to June 2022 to obtain information on insurance network accuracy/capacity and provider availability.

Results. DIFI staff endeavored to contact 580 behavioral health provider as follows:

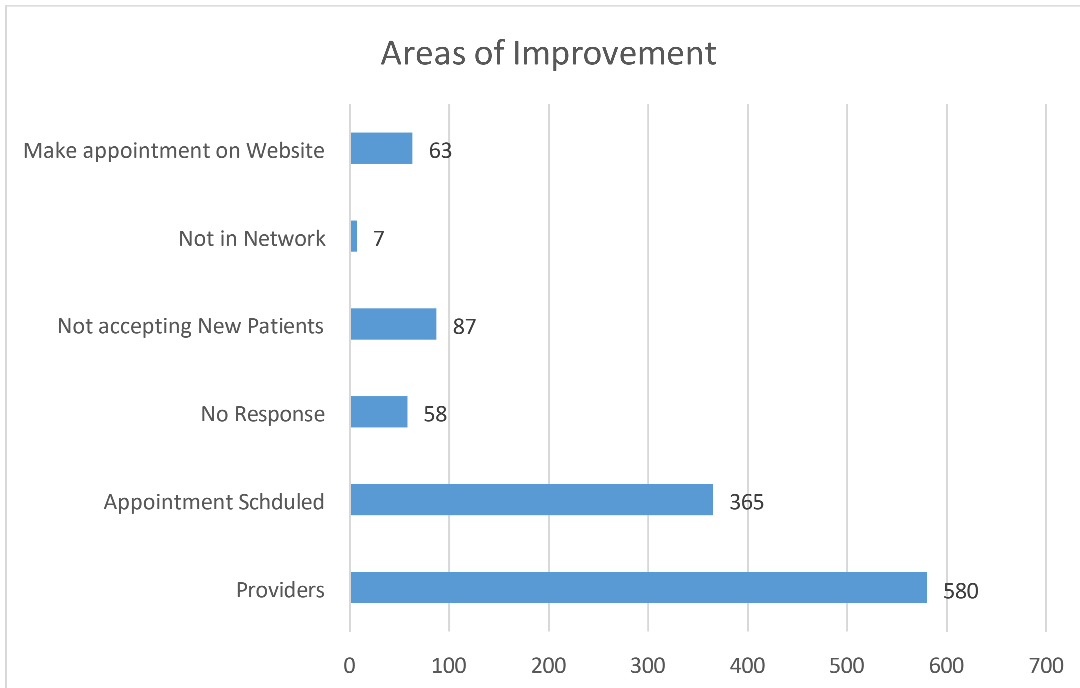


[2] The Department selected five HMOs with notable Individual market share.



Initial findings were generally quite positive as approximately 63% of calls resulted in researchers booking an appointment. However, data collected indicated the following areas needed improvement:

- 10% of calls resulted in "no response" – no return call or no ability to leave a message
- 15% connected to a behavioral healthcare provider not accepting new patients (even though the provider directory indicated they were),
- 1% of listed providers stated they were not in the insurers' network
- 11% were redirected to a website to make an appointment; there was no alternate way to schedule.



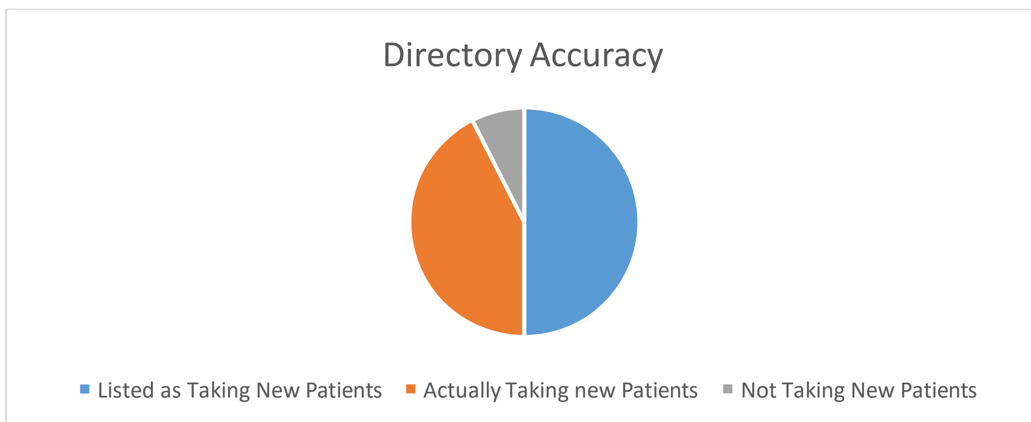
Discussion. There were three observations of note:

- Deflecting consumers to websites to make appointments
- No return calls
- Not taking new patients.

Many of the providers for whom initially had to leave a message, usually responded with 72 hours of the message being left. This same group of providers were usually able to schedule an initial appointment with the patient within 2 weeks.

However, there appears to be a growing trend of mental health providers using a website or third party to schedule appointments. This raised a concern for Department personnel given than not all patients may have access to the internet in order complete an internet intake form to get an appointment. Furthermore, depending on a patient's mental health needs, they may need to reach a provider more immediately or be unable to navigate a web based system for making an appointment at the point in time when they reach out for help. And, many individuals may be hesitant to enter protected mental and medical health information on a website, especially before they even know if they will be accepted as a patient by that provider. There did not appear to be any alternative or special accommodations to the website forms.

DIFI staff noted that in 100% of the instances where a provider told our secret shopper that they were "not taking new patients," the insurers' provider directory listed them as "taking new patients." This issue can create frustration for the patient as well as the provider, so it is critical for insurers to routinely update their provider directories for accuracy, as is required by state and federal rules,[3] so as not to delay access to care.



A study in the Community Mental Health Journal emphasized this issue of network inaccuracy especially as it relates to the impact it has of the Mental Health Parity and Addiction Equity Act and mental and behavioral health networks (Tenner 2022). The discrepancies continue to add complicated layers to bridging the gap between the demand for mental health services and the availability of service providers. Under MHPAEA, a health plan must be able to demonstrate that the factors, strategies, and evidentiary standards used in building an adequate network of MH/SUD providers are comparable to, and applied no more stringently than, the factors and strategies that it uses in building a M/S provider network. (Tenner 2022)

The final area of disappointment from the data was the notable percentage of "no response." It is a critical moment when a patient decides to reach out for help. Common sense suggests that not receiving a response from provider(s) could lead a member to give up or have to make further calls during what is likely a difficult time. It is not too dramatic to point out, that in serious situations, patients may be resting on their last few threads of hope, which could erode if they receive no response from a provider (or cannot easily make an appointment).

[3] AAC R20-6-1912, ARS 20-3455 and 45 CFR § 156.230

Insurers can enhance monitoring programs and establish provider service standards to ensure that their contracted providers are accessible to members, e.g., that they are returning calls, making it easy to make appointments, and are in fact accepting new patients.

Conclusion. The secret shopper project provided DIFI with the opportunity to study the accuracy of some key health plans' provider directories and provider accessibility. The secret shopper study identified several areas of possible improvement. Inaccurate directory information exacerbates the issue of access to mental health treatment. In addition, the inability to get through to a live person to make an appointment hinders access to care for patients. There needs to be accountability from insurers for the reliability of their online directories. There also need to be accountability from providers to equitable and inclusionary processes to make an appointment and timely updates to insurers about new patient intake.

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