

DC DEPARTMENT OF INSURANCE,
SECURITIES AND BANKING
BEHAVIORAL HEALTH PARITY ACT OF 2018
2022 COMPLIANCE REPORT

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INTRODUCTION

The Behavioral Health Parity Act of 2018, effective March 13, 2019 (D.C. Law 22-242; D.C. Official Code §§ 31–3175, *et al.*)(BHPA) requires health insurers offering health benefits plans in the District of Columbia to comply with the requirements of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

D.C. Official Code § 31–3175.03(b) sets forth the following reporting requirements for the Department of Insurance, Securities and Banking (Department or DISB), and requires that the Department submit an annual report by October 1 that contains the following:

- The methodologies used by the Department to verify compliance with the requirements of the Behavioral Health Parity Act;
- A description of the market conduct examinations related to the Behavioral Health Parity Act conducted by the Department during the prior year;
- A description of any educational or corrective actions the Department took to ensure health insurer compliance with the requirements of the Behavioral Health Parity Act; and
- A description of the Department's efforts to educate the public regarding mental health condition and substance use disorder protections under MHPAEA and the Behavioral Health Parity Act.

This report is being submitted to the Council in accordance with D.C. Official Code § 31-3175.03(b) and seeks to inform the Council and the public of the steps that DISB has taken to comply with the BHPA.

1. DEPARTMENT METHODOLOGY FOR COMPLIANCE VERIFICATION

Reporting and Tool Mechanisms

The Department developed reporting templates which collect uniform qualitative and quantitative data from both public and commercial insurance carriers subject to the reporting requirements of the BHPA. The Department created two reporting templates which allow DISB to solicit data and verify adherence to section 4 of the BHPA: (a) the *Behavioral Health Compliance Report* which collects qualitative information; and (b) the *Behavioral Health Parity Compliance Template*, which collects quantitative data on prior authorizations and denial of claims for both medical/surgical benefits (med/surg) and mental health/substance abuse disorder (MH/SUD).

Behavioral Health Compliance Report

The *Behavioral Health Compliance Report* is an open response form that insurers use to provide information regarding processes that are in place for determining medical necessity criteria and non-quantitative treatment limitations, the reasons for denying claims, and medication assisted treatment attestation for Medicaid products.

Behavioral Health Parity Compliance Template

The *Behavioral Health Parity Compliance Template*, formatted similarly to the Market Conduct Annual Statement (MCAS), allows the Department to collect quantitative prior authorization and denial of claims data for both med/surg and MH/SUD services at the product level for all market types. The tool also has a functionality to internally flag potential parity issues between the two service categories. For example, if in-patient med/surg claims are denied at a lower rate than in-patient MH/SUD services, then the tool will indicate as such. This allows the Department to act quickly and follow up with the issuer about any flagged parity violations.

Behavioral Health Parity Issues Overview

In review of the parity report submissions and in discussion with issuers, the following theme has emerged as an item to monitor:

- The number of prior authorizations for behavioral health services which were ultimately approved seemed somewhat high. This suggests that insurers are denying the initial claim which requires the consumer to file an appeal. This need to file an appeal is an undue burden for consumers seeking these services.

The Department defined potential parity issues as any instance where the rate of denial for MH/SUD Services was higher than the rate of denial for Med/Surg Services. An exception is in the claims administration criterion of claims denied within 30 days, in which case a potential parity issue is flagged if the rate for MH/SUD services is lower than that of Med/Surg Services. This is because a higher claim denial rate for MH/SUD is preferable early on so that insurers do not delay addressing claims and end up denying them later. Percentage differences between 0-10% were flagged in yellow and percentage differences greater than 10% were flagged in red. This differentiated minor parity issues versus major ones.

2. MARKET CONDUCT EXAMINATIONS

DISB is participating as a lead jurisdiction in a multi-state examination of a health insurance provider. The benefit classifications being assessed during this market conduct examination are the non-quantitative treatment limitations placed on accessing mental

health and substance abuse disorder treatment. The examination is ongoing and requires extensive production of data from the insurer and review by regulators. A final decision on the examination has not been rendered.

DISB also participates in various NAIC working groups, including the Market Action Working Group, and Improper Marketing Working Group to identify, monitor, and mitigate market conduct issues, including mental health parity, that may impact District residents.

3. EFFORTS TO ENSURE HEALTH INSURER COMPLIANCE

The Department administers the consumer complaint process to help protect consumers from illegal and/or unauthorized insurance practices. The Department reviews each complaint and investigates issues to determine if insurance companies and producers are operating in accordance with DC insurance laws and regulations and provisions of the insurance policies that are issued. Where DISB finds a violation of law or policy, the Department can require that companies take corrective action. In FY 2022, the Department did not identify any violations related to the act and therefore did not take any corrective action against a health insurer. Since submitting its 2021 report to the Council, the Department received three consumer complaints related to mental health parity and found that in two of the complaints the allegations of wrongdoing were unsubstantiated and one where the Department had no jurisdiction and referred the matter to the appropriate regulatory entity.

4. EDUCATION AND OUTREACH

In Fiscal Year 2022, the Department held two virtual Mental Health Parity Forums. The first forum took place on May 12, 2022, and targeted DC government employees. One hundred thirty-five people, including panelists and organizers, attended the forum.

The second Mental Health Parity Forum occurred on September 22, 2022. The Department targeted students and educators for this forum, and thus, advertised it at schools (*e.g.*, colleges, universities, and high schools) and with administrators, parents, guardians, caregivers, guidance counselors, youth support professionals and young people between the ages of 16 and 25 years old. Five panelists discussed mental health parity requirements, access to treatment, appropriate insurance coverage, the appeals and complaint processes, and resources for those in need. The forum included a question and answer period and welcomed stakeholder organizations such as the Department of Behavioral Health, the DC Health Care Ombudsman, the DC Behavioral Health Association, University of the District of Columbia Counseling and Wellness Center, and Children's National Hospital. Seventy-six people registered for the event and 57 attended, including Department staff and panelists.

The feedback received from attendees at both forums reaffirms the need to expand awareness of mental health parity benefits to improve access to behavioral healthcare. To further that effort, DISB drafted and published a Frequently Asked Questions document related to mental health that is accessible on our [website](#). In FY 2023, DISB will host an additional mental health forum, work with the regulated community to comply with our parity law, and intervene on behalf of District residents and health plan participants to continue to reduce existing barriers to, and health disparities in, accessing treatment.