

**Charles D. Baker**  
Governor

**Karyn Polito**  
Lieutenant Governor



**Marylou Sudders**  
Secretary

**Daniel Tsai**  
Director of MassHealth

**Report Certifying the Office of Medicaid's  
Contracted Health Benefit Plans'  
Compliance with Mental Health Parity**

**July 1, 2017**



## **Introduction**

The Executive Office of Health and Human Services Office of Medicaid (MassHealth) respectfully submits this report to the Legislature and Attorney General regarding how the MassHealth contracted managed care plans and their contractors comply with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the federal Act) and applicable state mental health parity laws set forth in Section 265 of Chapter 224 of the Acts of 2012 (Section 265). MassHealth seeks to improve and enhance access to high-quality health care services for its members across the spectrum of covered services, including access to behavioral health services in full parity with other health care services. These services include the suite of Children's Behavioral Health Initiative (CBHI) services to provide home- and community-based behavioral health care to eligible children under the age of 21.

Section 265 directs the Office of Medicaid 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 Act and applicable state mental health parity laws. These regulations were required to be promulgated not later than January 1, 2013. Section 265 requires that the regulations be implemented as part of the MassHealth MCOs' contracts with providers on or after July 13, 2013. Finally, 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**

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. These regulations were effective January 1, 2013. The language of 130 CMR 450.117 (J) 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 require compliance by October 2, 2017. Over the past year, MassHealth has been working to ensure compliance with these rules.

## **Language in Managed Care Contracts**

MassHealth includes mental health parity requirements in our managed care entity contracts and handbooks. Below are the current mental health parity provisions for the MCO (including CarePlus), SCO and One Care (ICO) contracts.

### MCO and Care Plus MCO Contract Language

MassHealth added mental health parity language to MCO contracts in April of 2011, and amended the language in 2013 to incorporate the reference to 130 CMR 450.117(J). The CarePlus MCO contracts became effective January 1, 2014 and include the amended health parity language. All MCO and CarePlus MCO contracts now include the following language (at §5.3.A.2) :

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 and guidance and submit a certification to EOHHS in accordance with 130 CMR 450.117(J) (l) 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 and guidance and submit a certification to EOHHS in accordance with 130 CMR 450.117(J) (l) 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.*

*For more information, please see 130 CMR 450.117(J).*

MassHealth's SCO, MCO, One Care, and CarePlus MCO managed care plans have all added either the model language or substantially similar language in their member handbooks. Since the promulgation of the regulation in March, 2013, MassHealth has not received any grievances from members regarding compliance with mental health parity.

### **Annual Managed Care Certifications of Compliance**

MassHealth regulations at 130 CMR 450.117 (J) 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, on April 5, 2017, MassHealth requested that all MassHealth MCO, SCO, CarePlus MCO and OneCare contractors submit a report and a statement from their Chief Executive Officer and their Chief Medical Officer for Calendar Year 2016.

The MassHealth-contracted managed care plans submitted their annual certifications of compliance for calendar year 2016 to MassHealth by May 5, 2017. Based upon our review of the certifications and the supplemental information provided by the plans, MassHealth certifies that, all of our contracted MCO, SCO, CarePlus MCO and One Care managed care plans have certified their compliance with the federal Act and applicable state mental health parity laws for calendar year 2016.

### **Conclusion**

MassHealth is pleased to provide this report on our contracted managed care plans' compliance with federal and state mental health parity laws, and we look forward to continuing to work 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.

In addition to our work assuring compliance with state and federal parity requirements, MassHealth has a number of initiatives under way to strengthen behavioral health services for MassHealth members, including expanding substance use disorder treatment services. We have also identified the integration of physical and behavioral health care as one of several top strategic priorities. Additionally, MassHealth is in the process of procuring new care delivery and payment models that reward providers for the quality and cost effectiveness of care. Through these reforms, MassHealth is committed to partnering with members, providers and managed care plans to drive increased integration of behavioral and physical health care, improved access to behavioral health services, and the expansion of targeted approaches that meet the needs of members with significant behavioral health needs.

## Appendix

### **130 CMR 450.117 (J):**

MassHealth-contracted Managed care entities (MCEs), including its MCOs, senior care organizations (SCOs), and integrated care organizations (ICO), and their contracted behavioral health management firms 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.

(1) Annual Certification of Compliance with Federal Mental Health Parity Law:

The above referenced managed care entities must review their administrative and other practices, including the administrative and other practices of any contracted behavioral health organizations or third party administrators, for the prior calendar year for compliance with the relevant provisions Federal Mental Health Parity Law, regulations and guidance.

(i) Managed care entities must submit a certification signed by the chief executive officer and chief medical officer stating that the managed care entity has completed a comprehensive review of the administrative practices of the managed care entity for the prior calendar year for compliance with the necessary provisions of State Mental Health Parity Laws and Federal Mental Health Parity Law.

(ii) If the managed care entity determines that all administrative and other practices were in compliance with relevant requirements of the Federal Mental Health Parity Law during the calendar year, the certification will affirmatively state, that all relevant administrative and other practices were in compliance with Federal Mental Health Parity Law.

(iii) If the managed care entity determines that any administrative or other practices were not in compliance with relevant requirements of the Federal Mental Health Parity Law during the calendar year, the 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 managed care entity has taken to bring these practices into compliance.

(2) A member enrolled in any of these managed care entities may file a grievance with MassHealth if 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 services contractor.