

211 CMR 154.00: ENFORCEMENT OF MENTAL HEALTH PARITY

Section

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154.01: Purpose, Scope and Authority

211 CMR 154.00 provides guidance and definitions for provisions set forth in St. 2012, c. 224, which amends M.G.L. c. 26. The 211 CMR 154.00 guidance and definitions provide for the Commissioner of Insurance's implementation and enforcement power over federal and state mental health and substance use disorder parity laws. 211 CMR 154.00 is promulgated pursuant to the Commissioner's authority under St. 2012, c. 224 and M.G.L. c. 26, § 8K.

154.02: Definitions

As used in 211 CMR 154.00, the following words mean:

Carrier: an insurer that is subject to State Mental Health Parity Laws or Federal Mental Health Parity Law, and which is licensed or otherwise authorized to transact accident or health insurance under chapter 175; a nonprofit hospital service corporation organized under chapter 176A; a nonprofit medical service corporation organized under chapter 176B; a health maintenance organization organized under chapter 176G; and an organization entering into a preferred provider arrangement under chapter 176I, but not including an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

Commissioner: the Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

Commonwealth: the Commonwealth of Massachusetts.

Examination: an examination of the affairs of a Carrier as called by the Commissioner or one of the Commissioner's deputies, according to the relevant licensing statute of the carrier.

Federal Mental Health Parity Law: Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

Federal Mental Health Parity Law Agencies: the United States Department of Health and Human Services, the United States Department of Labor, the United States Department of the Treasury

and/or any succeeding federal agency or organization that is responsible for development of rules, regulations, guidances and/or policies associated with Federal Mental Health Parity Law.

State Mental Health Parity Laws: M.G.L. c. 32A, § 22; M.G.L. c. 175, § 47B; M.G.L. c. 176A, § 8A; M.G.L. c. 176B, § 4A; and M.G.L. c. 176G, §§ 4, 4B, and 4M; in regard to any carrier licensed under chapters 175, 176A, 176B and 176G.

154.03: Certification of Compliance with State and Federal Mental Health Parity Requirements

(1) Initial certification materials to be submitted by no later than October 1, 2013:

- (a) Carriers must review their administrative and other practices, including those delegated to subcontracting organizations, for compliance with the relevant provisions of State Mental Health Parity Laws and Federal Mental Health Parity Law, and any interim or final regulations, guidelines, sub-regulatory guidances, or related instructions that have been issued or promulgated by the federal Center for Medicaid and Medicare Services or other federal organization in its exercise of appropriate authority over the Federal Mental Health Parity Law.
- (b) Carriers must submit a certification to the Division of Insurance and the Office of the Attorney General signed by the Carrier's chief executive officer and chief medical officer that states that the Carrier has completed a comprehensive review of the administrative practices of the Carrier for the 2012 calendar year for compliance with the provisions of State Mental Health Parity Laws and the Federal Mental Health Parity Law.
 - 1. If the Carrier determines that all administrative and other practices were in compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law during calendar year 2012, the certification will affirmatively state that all relevant administrative and other practices were in compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law.
 - 2. If the Carrier determines that any administrative or other practices were not in compliance with State Mental Health Parity Laws or Federal Mental Health Parity Law during calendar year 2012, the certification will state that not all practices were in compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law and will include a list of the practices not in compliance and the steps the Carrier has taken to bring these practices into compliance.
- (c) In support of its certification, every Carrier shall submit such information as determined by the Commissioner that demonstrates the Carrier's compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law, including but not limited to information regarding financial and treatment limitations, medical necessity criteria, and authorization processes.

(2) Annual certification for calendar years following 2013:

- (a) Prior to July 1st in each year, Carriers must review their administrative and other practices, including those delegated to subcontracting organizations, for the prior calendar year for compliance with the relevant provisions of State Mental Health Parity

Laws and Federal Mental Health Parity Law, and any interim or final regulations, guidelines, sub-regulatory guidances, or related instructions that have been issued or promulgated by the Federal Mental Health Parity Law Agencies in their exercise of appropriate authority over Federal Mental Health Parity Law.

- (b) On or before July 1st in each year, Carriers are required to submit a certification to the Division of Insurance and the Office of the Attorney General signed by the Carrier's chief executive officer and chief medical officer that states that the Carrier has completed a comprehensive review of the administrative practices of the Carrier for the prior calendar year for compliance with the necessary provisions of State Mental Health Parity Laws and Federal Mental Health Parity Law.
1. If the Carrier determines that all administrative and other practices were in compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law, the certification will affirmatively state that all the relevant administrative and other practices were in compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law.
 2. If the Carrier determines that any administrative or other practices were not in compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law, the certification will state that not all practices were in compliance with State Mental Health Parity Laws and Federal Mental Health Parity Law and will include a list of all practices not in compliance and the steps that have been taken to bring these practices into compliance.
- (c) On or before July 1st of each year, in support of annual certification, every Carrier shall submit the same information that is required under 211 CMR 154.03(1)(c).

154.04: Complaints, Disclosures, Investigations and Examinations.

- (1) Complaints. Complaints alleging a Carrier's noncompliance with State Mental Health Parity Laws and/or Federal Mental Health Parity Law may be submitted verbally or in writing to the Division of Insurance for its review.
- (2) Disclosures. Carriers shall provide each subscriber household with a written notice in a form approved by the Commissioner which sets forth in clear language covered persons' rights under State Mental Health Parity Laws and Federal Mental Health Parity Law.
- (3) Investigation. The Commissioner shall review all complaints made against a Carrier or any subcontracting entity to which the Carrier has delegated administrative or other functions alleging noncompliance with State Mental Health Parity Laws and Federal Mental Health Parity Law and may at any time initiate an investigation into the practices of a Carrier.
- (4) Examination. The Commissioner may initiate an Examination at any time to review the operations of any Carrier when, in the opinion of the Commissioner, a Carrier or any subcontracting entity to which the Carrier has delegated administrative or other functions may be engaging in or has engaged in a pattern of noncompliance with State Mental Health Parity Laws or Federal Mental Health Parity Law. The Examination shall be conducted pursuant to the Commissioner's examination authority under M.G.L. c. 175, § 4; M.G.L. c. 176G, § 10; and any other applicable law.

154.05: Penalties

The Commissioner may order the following penalties if he or she finds, after hearing held pursuant to M.G.L. c. 30A, that a violation of M.G.L. c. 26, § 8K or 211 CMR 154.00 has occurred:

- (1) A corrective action plan and a timeframe to achieve compliance;
- (2) A civil fine not to exceed \$10,000 for each violation;
- (3) Suspension or revocation of a Carrier's accreditation; and/or
- (4) Suspension or revocation of a Carrier's license or certificate of authority.

154.06: Severability.

If any section or portion of a section of 211 CMR 154.00, or the applicability thereof to any person or circumstance is held invalid by any court competent jurisdiction, the remainder of 211 CMR 154.00, or the applicability thereof to other persons or circumstances, shall not be affected thereby.