

<b>Date:</b> April 27, 2018	<b>POLICY ANALYSIS</b> PREPARED FOR THE BOARD OF DIRECTORS	 OF NORTHERN LARIMER COUNTY
<b>Staff:</b> Alyson Williams		

## **HB18-1357: BEHAVIORAL HEALTH CARE OMBUDSPERSON PARITY REPORTS**

Concerning access to behavioral health care services, and, in connection therewith, establishing an ombudsperson for behavioral health access to care to assist consumers in accessing care and requiring health insurers and the commissioner of insurance to report on compliance with mental health parity laws.

### **Details**

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**Bill Sponsors:** House—*Michaelson Jenet (D)*  
Senate – *Gardner (R) and Williams A (D), Jahn (U)*

**Committee:** House Public Health Care & Human Services

**Bill History:** 4/4/2018- Introduced in House- Assigned to Public Health Care & Human Services  
4/17/2018- House Committee on Public Health Care & Human Services Refer Amended to Appropriations

**Next Action:** Hearing in House Committee on Appropriations

### **Bill Summary**

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This bill establishes the office for behavioral health access to care as an independent office in the Department of Human Services (DHS) to assist Coloradans in accessing behavioral health care. The bill also requires health insurers and the commissioner of the Division of Insurance (DOI) to report on issues related to mental health parity requirements.

### **Issue Summary**

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#### **Federal Law/Regulation**

The Mental Health Parity and Addiction Equity Act of 2008 (Parity Act) requires that certain health insurers provide mental health or substance use disorder benefits comparable to medical and surgical benefits.<sup>1</sup> The MHPAEA originally applied only to group health plans, but after the enactment of Affordable Care Act (ACA) the coverage was extended to individual health insurance coverage. The Parity Act does not include enforcement provisions to ensure that health plans and carriers are complying.<sup>2</sup>

The 21<sup>st</sup> Century Cures Act (Cures Act) was enacted in 2016 and incorporated the Helping Families in Mental Health Crisis Reform Act of 2016. The Cures Act included provisions in Title XIII to attempt to create guidance and standards to determine compliance (by payers and providers) with the parity requirements enacted in the Parity Act.<sup>2</sup> Compliance with the Parity Act has been recognized as being based on a subjective interpretation of the application of non-quantifiable treatment limitations (i.e. prior authorization, medical necessity, formulary content, etc.) for mental health and substance use disorder coverage by health plans and insurers.<sup>2</sup> The Cures Act requires the Assistant Secretary for Mental Health and Substance Use within the Department of Health and Human Services (HHS) to consult with the Secretaries of Labor and

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<sup>1</sup> The Center for Consumer Information & Insurance Oversight, Centers for Medicare and Medicaid Services (n.d.) *The Mental Health Parity and Addiction Equity Act (MHPAEA)*. Retrieved from [https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea\\_factsheet.html](https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/mhpaea_factsheet.html)

<sup>2</sup> Kolsrud, R & Moore, G. (Jan. 4, 2017). *The 21<sup>st</sup> Century Cures Act- Mental Health Parity*. Retrieved from [https://www.healthlawyers.org/Members/PracticeGroups/TaskForces/BH/alerts/Pages/The\\_21st\\_Century\\_Cures\\_Act\\_Mental\\_Health\\_Parity.aspx](https://www.healthlawyers.org/Members/PracticeGroups/TaskForces/BH/alerts/Pages/The_21st_Century_Cures_Act_Mental_Health_Parity.aspx)

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Treasury to devise a compliance program and create a guidance document. Compliance with the Parity Act and Cures Act is only briefly mentioned and allows health insurers to get four “free” violations, with the fifth violation sparking an audit of a plan or insurer the year following this violation.<sup>2</sup>

In April 2018, U.S. Senators from the Health, Education, Labor, and Pensions Committee sent a letter to HHS to inquire about the enforcement of the parity laws and the other provisions included in the Cures Act.<sup>3</sup> The Senators have set a deadline for answers of May 1, 2018.

### **Colorado Law/Regulation**

Colorado statute includes a parity provision that states, “Every health benefit plan [...], must provide coverage for the treatment of biologically based mental illness and mental disorders that is no less extensive than the coverage provided for a physical illness.”<sup>4</sup> These health benefit plans do not include: accident only, credit, dental, vision, Medicare supplements, disability income insurance, liability insurance.<sup>5</sup>

The Division of Insurance (DOI) mandates that carriers offering individual and small group health benefit plans (on or off the Exchange) must include the essential health benefits package of 13 categories.<sup>6</sup> The regulation includes a category of mental health, substance use disorders, and behavioral health treatment services. Under this category plans must provide benefits for treatment of alcohol and drug dependency and mental health services (including partial hospitalization and/or inpatient treatment outside of a hospital) to the extent provided under the medical or surgical benefit.

### **Mental Health Parity**

The National Alliance on Mental Illness released a report in 2017 that delineated there are still barriers to mental health care after the Parity Act of 2008.<sup>7</sup> The report found that of those respondents with private insurance, nearly 35 percent had difficulties finding any mental health therapist that accepted their insurance. Additionally, out-of-pocket costs that exceeded \$200 were 1.5 times more frequent for mental health therapists and psychiatric prescribers than for medical specialty care.

The 2017 Colorado Health Access Survey by the Colorado Health Institute found that 7.6 percent of Coloradans, or about 382,000 people, needed mental health care or counseling services in the past year but did not get them.<sup>8</sup> Additionally, approximately 67,000 Coloradans reported needing substance use disorder care in the past year but did not get it; most respondents did not access this care because they were concerned about the cost (54%) or did not think their health insurance would cover it (53%).

The Health District of Northern Larimer County’s 2016 Community Health Survey found that it is not always easy to access mental health care in Larimer County.<sup>9</sup> Of those respondents with a mental health problem, 16 percent reported their access to health care whenever they need it is less than good (i.e. fair, poor, or very poor). Additionally, the majority (54%) of this population has put off mental health care in the past 2

<sup>3</sup> Hellmann, J. (April 17, 2018). *Senators press administration on mental health parity*. Retrieved from <http://thehill.com/policy/healthcare/383518-senators-press-administration-on-mental-health-parity>

<sup>4</sup> § 10-16-104

<sup>5</sup> § 10-16-102(32)(b)

<sup>6</sup> CCR 702-4 Series 4-2

<sup>7</sup> National Alliance on Mental Illness (Nov. 30, 2017) *NAMI Releases Parity Report Which Finds Insurance Companies Still Discriminate Against Mental Health Care*. Retrieved from <https://www.nami.org/Press-Media/Press-Releases/2017/NAMI-Releases-Parity-Report-Which-Finds-Insurance>

<sup>8</sup> Colorado Health Institute. (2017). *Data*. Retrieved from <https://www.coloradohealthinstitute.org/data>

<sup>9</sup> Health District of Northern Larimer County (2016). *2016 Community Health Assessment*. Retrieved from <https://www.healthdistrict.org/2016-community-health-assessment>

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years due to cost. This delay in care can have a detrimental impact on individuals; of the respondents who put off care due to cost, 22 percent considered suicide in the past year.

### **This Legislation**

This bill creates the office of the ombudsperson for behavioral health access to care within the office of the Executive Director of the Department of Human Services. By January 1, 2019, the governor must designate an ombudsperson. The ombudsperson is to serve as a neutral party to help consumers (uninsured, publicly insured, privately insured, or insured by coverage not subject to state regulation) and providers (acting on their own behalf, a consumer's behalf, or a group of behavioral health provider's behalf) navigate and resolve issues that are related to accessing mental health care and substance use disorder care. The duties of the ombudsperson include:

- Interacting with consumers and providers that have concerns or complaints to resolve access and coverage issues;
- Identifying, tracking, and reporting concerns, complaints, and potential violations of state and federal law/regulations to the appropriate agency;
- Receiving and reporting concerns and complaints relating to inappropriate care, an emergency hold, and certifications for short-term and long-term treatment;
- Providing appropriate information to aid consumers in obtaining care;
- Developing appropriate points of contact for referrals to state and federal agencies;
- Providing appropriate information to help consumers or providers file appeals or complaints with the appropriate entity (i.e. insurers, state agencies, federal agencies).

The Commissioner of Insurance and the Executive Director of DHS are to appoint a liaison to the office of the ombudsperson to receive reports of concerns, complaints, and potential violations.

The ombudsperson must prepare and submit a report by September 1, 2020 and each September 1 thereafter, that includes information from the preceding fiscal year concerning actions taken by the ombudsperson that relate to the duties of the position detailed above. The report must be submitted to the Governor, Executive Director of DHS, Commissioner of Insurance, Senate Committee on Health and Human Services, House Committee on Health, Insurance, and Environment and House Committee on Public Health Care and Human Services.

Any carrier that offers a health benefit plan that is subject to the parity provision in state statute (§10-16-104(5.5)) must submit a report to the Commissioner of Insurance by January 1, 2019, then every January 1 thereafter. This report is mandated to include a variety of information regarding mental health and substance use disorder benefits. A description of the process used to develop or select the medical necessity criteria used in determining benefits for treatment of behavioral health, mental health, or substance use disorders and medical/surgical benefits must be provided in the report. The report must identify all of the nonquantitative treatment limitations that are put on benefits for both behavioral health benefits and medical/surgical benefits. A description of how the insurance carrier complies with the requirement of maintaining an adequate network of behavioral, mental health, and substance use disorder providers. The carriers must conduct analyses and report the results regarding the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health treatment compared to those for medical/surgical benefits. The report on the results of the analyses must include the factors used to determine whether a nonquantitative treatment limitation will apply to a benefit and the evidentiary standards used to define those factors. The carrier must provide the comparative analyses and the results that were performed.

Finally, the report must disclose the findings of and conclusions drawn from the analyses that indicate that each plan offered by the carrier complies with state and federal laws and regulations.

The Commissioner of Insurance may allow carriers to submit analyses for only a select number of nonquantitative treatment limitations to relieve carriers from the burden of performing analyses on every limitation for every plan. By March 1, 2019, and every March 1 thereafter, the Commissioner of Insurance must submit a report and present that report to the General Assembly. This report must be written in plain language and posted to the Division of Insurance's website. This report and presentation must include:

- The methodology used to verify that carriers are complying with state and federal parity regulations and laws;
- The market conduct examinations initiated, conducted, or completed in the previous year regarding compliance with state and federal parity regulations and laws;
- Any educational or corrective actions that have been taken to ensure carrier compliance.

### Reasons to Support

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An ombudsperson would mean that consumers have a resource on their side when they are having trouble accessing behavioral health services, scheduling an appointment, locating a provider, or they have a concern regarding coverage of behavioral health services. Currently, the process for remedying concerns, complaints, or possible violations is not always apparent to the consumer or the provider. Having a central source to aid in this process will ensure that the intent of state and federal regulations and laws is followed. This office would also allow the state to document the issues that are occurring in regards to parity and perhaps, in the future, address issues that are found through regulatory or statutory frameworks.

### Supporters

- Colorado Behavioral Healthcare Council
- Colorado Hospital Association
- Colorado Psychiatric Society
- Denver Human Services
- Jefferson County Human Services
- Mental Health Colorado
- National Alliance on Mental Illness

### Reasons to Oppose

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The cost of the office is expected to increase state expenditures by \$147,000 in FY2018-2019 and \$194,000 thereafter. As the Federal government is working on compliance with the 2008 Parity Act through the provisions in the 21<sup>st</sup> Century Cures Act, the state could await action to determine the best course of action to avoid expending unnecessary funds for an issue that may be addressed at the federal level. The U.S. Department of Health and Human Services has recently updated their parity help website, which now guides users to the appropriate resource to voice concerns, complaints, and possible violations.<sup>10</sup> Carriers might also claim that the reporting requirements are burdensome.

### Opponents

- No opposition has been made public at this time.

### About this Analysis

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This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and

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<sup>10</sup> U.S. Department of Health and Human Services (2018). *Mental Health and Addiction Insurance Help*. Retrieved from <https://www.hhs.gov/programs/topic-sites/mental-health-parity/mental-health-and-addiction-insurance-help/index.html>

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governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at [awilliams@healthdistrict.org](mailto:awilliams@healthdistrict.org).