DEPARTMENT OF COMMERCE AND INSURANCE
INSURANCE DIVISION

MENTAL HEALTH PARITY REPORT

PURSUANT TO PUBLIC CHAPTER 244 OF THE
112TH GENERAL ASSEMBLY

INTRODUCTION

The federal Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") mandates health insurance companies that cover mental health and substance abuse treatment must make the coverage equal to medical and surgical services.

The Tennessee Department of Commerce and Insurance ("TDCI"), Insurance Division, regulates companies selling insurance in Tennessee. In doing this, TDCI also ensures health insurance companies operating in Tennessee comply with the MHPAEA, federal parity laws at 45 CFR § 146.136 and 45 CFR § 147.160, state parity laws at Tenn. Code Ann. §§ 56-7-2601, 56-7-2602, and 56-7-230 generally referred to as "Mental Health Parity" in this report.

The Policy Analysis Section reviews health insurance policies that are not federally regulated to ensure they adhere to Mental Health Parity before the policies are approved.

Consumers and providers can file complaints to the Consumer Insurance Services Section if they believe their insurance company is violating Mental Health Parity. The Consumer Insurance Services Section reviews the insurance policy and mediates between the insurance company and the complainant. The Section then determines whether the company acted in accordance with the policy and the law. If the company is found to be in violation of the law, the case is referred to TDCI Office of Legal Counsel for review and determination if regulatory action is necessary and appropriate. If the company did not act in accordance with the policy or statute, the process may result in restitution for the consumer.

The Examinations Section performs full-scope examinations on insurance companies every five years and limited market reviews to assess a company's compliance with Mental Health Parity if the company provides a health insurance plan that covers mental health and substance use disorder services.

This report, provided pursuant to 2021 Tenn. Pub. Acts Ch. 244 and codified at T.C.A. § 56-7-2360, provides a thorough explanation of the Insurance Division's activities to ensure companies' compliance with Mental Health Parity. The report is subdivided into sections corresponding with the various subsections and subdivisions of T.C.A. § 56-7-2360.

MENTAL HEALTH PARITY REPORT

TCA § 56-7-2360(e) The department shall request from the United States department of labor and the United States department of health and human services copies of the NQTL analyses submitted to the departments the previous year in compliance with the federal Consolidated Appropriations Act of 2021 (Pub.L. 116-260) and incorporate these analyses into the report.

The Department requested copies of the most recent non-quantitative treatment limitations ("NQTL") analyses from the United States Department of Health and Human Services and the United States Department of Labor Employee Benefits Security Administration. The Department of Labor provided a link to the Mental Health Parity and Addiction Equity Act Comparative Analysis Report to Congress dated July, 2023. The report may be accessed under the Laws section of the Laws and Regulations section of the Department of Labor's Employee Benefits Security Administration website at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/mental-health-parity/report-to-congress-2023-mhpaea-comparative-analysissis

TDCI has also made this request of health insurance companies operating in Tennessee. No company reported fielding a request from the federal agencies.

TCA § 56-7-2360(e)(1) List health plans sold in this state and over which of these plans the department has jurisdiction

Individual (Plans a consumer purchases on their own instead of from an employer.)

- BlueCross BlueShield Tennessee
- Celtic/Ambetter/Centene Insurance Company
- Cigna Health and Life Insurance Company
- Oscar Insurance Company
- United Healthcare Insurance Company
- US Health Life & Insurance Company

Small Group (Plans for employers with 50 or less full-time employees.)

- Aetna Life Insurance Company
- BlueCross BlueShield Tennessee
- Cigna Health and Life Insurance Company
- Humana Insurance Company
- United Healthcare Insurance Company
- United Healthcare Insurance Company of River Valley

Large Group Fully Insured (Plans for employers with 51 or more full-time employees.)

- Aetna Health

- BlueCross BlueShield of TN
- Cigna Life and Health Insurance Company
- Cigna Healthcare Plan of TN
- Humana Insurance Company
- Humana Health Plan
- Nippon Insurance Company of America
- United Healthcare Insurance Company
- United Healthcare of TN
- United Healthcare Insurance Company of the River Valley

TCA § 56-7-2360(e)(2) Discuss the methodology the department is using to check for compliance with the MHPAEA, and any federal regulations or guidance relating to the compliance and oversight of the MHPAEA, including 45 CFR 146.136;

Policy Analysis Section

The Policy Analysis Section reviews policy rates, rules, and forms filed by insurance companies offering plans in Tennessee. Forms include policies, certificates, riders, declarations, amendments, endorsements, notices, disclosures, outlines of coverage, applications, and advertisement materials. Policies must be approved by this Section before they are offered in the Tennessee marketplace.

All forms are publicly available through the Insurance Division's website by selecting Consumer Resources, then selecting "Rate and Form Filings – SERFF." SERFF is an online filing system created by the National Association of Insurance Commissioners ("NAIC") for the use of states and insurance carriers.

During the form review process, the Policy Analysis Section reviews answers to the following questions to ensure compliance:

- Does the company have different cost sharing requirements for medical and mental health benefits, (copays, deductible, co-insurance)?
- Does the company have different visit limitations?
- Does the company impose non-quantitative treatment limitations ("NTQL") such as step therapy with drugs or procedures, different methods for determining usual and customary reimbursement, restrictions based on facility types or geographical location, standards for providing out-of-network providers, etc.?

Centers for Medicare & Medicaid Services ("CMS") also performs a nondiscrimination review of individual and small group filings for compliance and notifies the Policy Analysis Section if any noncompliance is identified. In 2023, no issues were identified by CMS.

Consumer Insurance Services Section

The Consumer Insurance Services ("CIS") Section reviews written complaints from consumers. When CIS receives a complaint, they review the consumer's policy to determine if the company

was acting in accordance with the policy and state statutes. If the CIS review determines the company is not acting in accordance with its policy or state or federal law when it comes to Mental Health Parity, the CIS Director transfers the complaint to the Examination Section's Market Conduct team and TDCI's Office of Legal Counsel.

If no violations occurred and the company refuses to overturn its initial decision, CIS sends the complainant a copy of the company's response for review. The complainant then has 10 days to file a rebuttal if the complainant has new evidence that has not already been reviewed. CIS will send the rebuttal to the company and request a response within 10 days of receipt. At the end of this mediation, if the company still refuses to overturn its initial decision, CIS will send a closing letter to the complainant.

CIS uses disposition codes to identify and track if there was a violation of a provision of the law or policy and keeps detailed records of all complaints. CIS follows code requirements established by the NAIC to maintain record of each complaint.

Examinations Section

As part of regularly conducted full-scope financial examinations of all health insurance companies, the Examinations Section requests and reviews any analysis the insurance company has already performed to assess its compliance with Mental Health Parity, including analyses done using the Self-Compliance Tool for the MHPAEA published by the Federal Departments of Labor, Health and Human Services, and the Treasury. The Self-Compliance Tool asks such questions as:

- Does the plan meet financial requirements or QTLs on Mental Health/Substance Use Disorder benefits?
- Does it meet parity requirements regarding NQTLs?
- Does it comply with the MHPAEA disclosure requirements?
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The tool can be found at the DOL's website, http://www.dol.gov.

If no prior analysis has been done, the Examinations Section uses the List of Examination Questions and Data Collection Tool contained in the NAIC Market Regulation Handbook ("Handbook"), Chapter 24B, to assess the company's compliance. The NAIC Market Regulation Handbook's List of Examination Questions and Data Collection Tool are very similar to the Federal Department of Labor's Self-Compliance Tool and are formatted in tables to allow regulators to cross reference coverage policies for MH/SUD benefits compared to medical and surgical benefits. The NAIC most recently revised the Handbook's examination guidelines for mental health parity at its 2022 Summer Meeting. The NAIC added definitions and new standards which include lists of documents to be reviewed along with new review procedures and criteria.

Examinations Section staff is pursuing additional education and training in assessing MHPAEA compliance. This has included attending seminars and NAIC Working Group meetings along with participation in the pilot Behavioral Health Parity Auditor (BHPA) training course developed by the Insurance Regulatory Examiners Society which recently completed its pilot.

Federal Developments in 2023

In June, CMS posted a bulleting advising that Congress made significant changes to the ability of self-funded, non-Federal governmental health plans to opt-out of the requirements of MHPAEA. That bulletin may be accessed at https://www.cms.gov/files/document/hipaa-opt-out-bulletin.pdf.

In late July, the "Tri-Departments" (Labor, Health, and Human Services) released a proposed, substantive update to MHPAEA rules. The proposal has updates to financial regulations and technical updates to NQTLs, specifically for network composition. Tennessee is part of the NAIC's Government Relations Leadership Council (GRLC). The GRLC submitted comments on the proposed rule on behalf of the NAIC in October and that letter may be accessed at https://content.naic.org/sites/default/files/health-reform-letter-cms-commnets-stld-fixed-indemnity-nprm.pdf.

TCA § 56-7-2360(e)(3) Discuss the methodology the department uses to check for compliance with this section and §§ 56-7-2601 and 56-7-2602

The discussion in the previous section of this report encompasses the Department's enforcement of state statutes specifically requiring parity in coverage for mental illness, alcoholism, and drug dependence at T.C.A. §§ 56-7-2601 and 56-7-2602, and the provisions of T.C.A. § 56-7-2360(a)(2) which further requires compliance with the MHPAEA and 45 CFR § 146.136 and 45 CFR § 147.160.

TCA § 56-7-2360(e)(4) Identify market conduct examinations and full scope examinations conducted or completed during the preceding twelve-month period and summarize the results of the examinations. Individually identifiable information must be excluded from the reports consistent with federal privacy protections, including, but not limited To, 42 U.S.C. § 290dd-2 and regulations found at 42 CFR § 2.1 through 42 CFR § 2.67. This discussion must include:

(A) The number of full scope examinations and market conduct examinations initiated and completed;

(B) The benefit classifications examined by each market conduct examination and full scope examination;

(C) The subject matter of each market conduct examination, including quantitative and non-quantitative treatment limitations;

(D) A summary of the basis for the final decision rendered in each market conduct examination; and

(E) Any examination regarding compliance with parity in mental health or alcoholism or drug dependency benefits under state and federal laws

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(A) The Examinations Section completed 13 full scope financial examinations in 2023. One of the insurance companies examined was subject to Mental Health Parity. At the end of 2023, the Section was conducting 10 open full scope financial examinations. Each examination includes a limited

market conduct review. The Examinations Section may perform targeted market conduct examinations to address specific issues when a regulatory concern is noted.

Currently, five of 63 insurance companies domiciled in Tennessee must comply with Mental Health Parity. The other Tennessee domiciled companies do not offer health insurance and are not subject to Mental Health Parity.

(B) A review for compliance with Mental Health Parity will be performed for any applicable company. Both quantitative and non-quantitative treatment limitations will be reviewed.

The examination will include a review of the details of the health plans that are being written to determine compliance within each classification of benefits. Under the MHPAEA regulations, the six classifications of benefits are: inpatient in-network, inpatient out-of-network, outpatient in-network, outpatient in-network, emergency room visits, and prescriptions.

(C) Standard market conduct reviews specifically look over the following subjects for each company:

- Operations and management
- Complaint/grievance handling
- Marketing and sales
- Producer licensing
- Policyholder service
- Underwriting and rating
- Claims handling

Examiners review the company's antifraud initiatives to prevent, detect and mitigate fraud; complaint data and the company's complaint handling manuals; the licensure of the company's producers; marketing materials; the company's response time to policyholder requests; fair methods of underwriting practices; and the company's claims handling practices. Additionally, examiners may review other company actions or practices.

In addition to the standard market conduct procedures, the Examination Section will evaluate each company's compliance using the federal Self-Compliance Tool, if applicable. If the company has not performed its own analysis, the Section will request completion of the questionnaire from the NAIC Handbook and review the company's responses.

(D) No discrepancies to Mental Health Parity were found during examinations in 2023.

(E) No companies currently under examination by the Insurance Division write business that is subject to Mental Health Parity. There are companies being examined that write only Medicare/Medicaid business, which are under CMS jurisdiction.

In addition, Tennessee, via TDCI's Examination Section, continues to participate in a multi-state market conduct examination of a health insurance company which has policies sold in Tennessee. Pennsylvania is the lead state for this examination. The multi-state market conduct examination follows a market conduct examination performed by the Insurance Department of the Commonwealth of Pennsylvania that found that the company failed on numerous occasions to provide comparative analyses of NQTLs applied to covered benefits, therefore not complying with Mental Health Parity requirements. Similar issues found in Illinois and Rhode Island contributed to the commencement of the multi-state examination.

The NAIC's Market Actions Working Group (MAWG) has asked other states to suspend any individual market regulation action related to these issues while a thorough, national examination is being performed. The final report will include findings from all the participating states and, if it results in a settlement, a portion of the penalty funds will be divided among the participating states based on the percentage of premium written in each state. Once the final report is complete, TDCI's Examination Section will review the report for accuracy and completeness and/or certification of the examination on a timely basis.

TCA § 56-7-2360(e)(5) Detail educational or corrective actions the department of commerce and insurance has taken to ensure health benefit plan compliance with this section, the MHPAEA,42 U.S.C. § 18031(j), and §§ 56-7-2601 and 56-7-2602

No legal actions have been made to enforce Mental Health Parity compliance.

The Consumer Insurance Services Section and the Education and Outreach Specialist have encouraged consumers and providers to file complaints if they suspect Mental Health Parity violations with a health insurance company in Tennessee.

The Policy Analysis Section reviews policies from health insurance companies to ensure parity compliance. If the policy is not in compliance, the Policy Analysis Section returns the policy to the company detailing the requirements that must be corrected before it is approved to ensure compliance. The Policy Analysis Section had 9 objections in 2022 and 0 in 2023. The Department believes this is an indication that companies are more successfully following MHPAEA at the time of filing.

TCA § 56-7-2360(e)(6) Detail the department's educational approaches relating to informing the public about mental health or alcoholism or drug dependence parity protections under state and federal law

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In 2023, the Insurance Division took numerous measures to better educate Tennessee consumers about Mental Health Parity.

- The TDCI Communications team created graphics for social media in May emphasizing TDCI's role during Mental Health Awareness Month.

- The Education and Outreach Specialist participated as a vendor in the National Alliance of Mental Illness (NAMI) Tennessee Convention in September and spoke with several leaders and consumers about Mental Health Parity.

- The Education and Outreach Specialist participated as an exhibitor in the Tennessee Association of Mental Health Organizations (TAMHO) annual conference in December of 2023.

- The Education and Outreach Specialist participated in the 988 Coalition's phone calls regarding the suicide hotline.

- A section on Mental Health Parity was included in the Insurance Division's 2024 consumer calendar, which was distributed statewide through libraries, health departments, and other organizations.

- In addition, the Division maintains information on MHPAEA on its website at https://www.tn.gov/commerce/insurance/consumer-edu/health.html

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TCA § 56-7-2360(e)(7) Describe how the department examines any provider or consumer complaints related to denials or restrictions for possible violations of this section, the MHPAEA, 42 U.S.C. § 18031(j), and §§ 56-7-2601 and 56-7-2602, including complaints regarding, but not limited to:

(A) Denials of claims for residential treatment or other inpatient treatment on the grounds that such a level of care is not medically necessary;

(B) Claims for residential treatment or other inpatient treatment that were approved but for a fewer number of days than requested;

(C) Denials of requests, authorizations, pre-authorizations, prior authorizations, concurrent reviews, or claims for residential treatment or other inpatient treatment because the beneficiary had not first attempted outpatient treatment, medication, or a combination of outpatient treatment and medication;

(D) Denials of claims for medications such as buprenorphine or naltrexone on the grounds that they are not medically necessary;

(E) Step therapy requirements imposed before buprenorphine or naltrexone are approved;

(F) Prior authorization requirements imposed on claims for buprenorphine or naltrexone, including those imposed because of safety risks associated with buprenorphine; and

(G) Denial of in-network authorization or denials of out-of-network services or claims where there is not an in-network provider within seventy-five (75) miles of the insured patient's home.

The Consumer Insurance Services (CIS) Section reviews complaints from consumers and providers, then investigates to see if the company was acting in accordance with the insurance policy and Mental Health Parity.

In 2023, Consumer Insurance Services received four (4) complaints related to Mental Health Parity. All four complaints were from patients.

One complaint was for a consumer's inability to find a provider close to home that would be covered by the consumer's insurance plan. The closest provider to accept the insurance was 79 miles away from the consumer's home. The complaint was resolved as the insurance company was able to find a provider 11 miles away from the consumer's home to accept insurance for the health service the consumer required.

One complainant was denied coverage for a Partial Hospitalization Program at a mental health facility. The complainant was unable to find another program that would accept the consumer's insurance or accept a single case agreement. This complaint was resolved as the health facility and the insurance company came to terms on a single case agreement and the consumer was able to receive care with coverage at parity.

One consumer filed a complaint and the Department discovered the consumer's insurance was purchased in another state. The Department transferred the information to the correct state's Department of Insurance.

One complaint was for a member of a self-funded health insurance plan not regulated by the Department.

(A) None of the consumer complaints received by Consumer Insurance Services in 2023 pertained to the medical necessity of residential or inpatient treatment.

(B) One of the consumer complaints received by Consumer Insurance Services in 2023 pertained to the length of stay for residential or inpatient treatment through the Partial Hospitalization Program.

(C) None of the consumer complaints received by Consumer Insurance Services in 2023 pertained to adverse determinations for residential or inpatient treatment due to a lack of outpatient treatment or medication.

(D) None of the consumer complaints received by Consumer Insurance Services in 2023 pertained to the medical necessity of buprenorphine or naltrexone.

(E) None of the consumer complaints received by Consumer Insurance Services in 2023 pertained to step therapy.

(F) None of the consumer complaints received by Consumer Insurance Services in 2023 pertained to prior authorizations of buprenorphine or naltrexone.

(G) One of the consumer complaints received by Consumer Insurance Services in 2023 pertained to denial of in-network authorization or out-of-network services for claims without an in-network provider within 75 miles of an insured patient's home.

While consumer complaints are confidential, the number of complaints against a company in each state is available by visiting the Department's website by accessing the Insurance Division's webpage and selecting "Complaint Data" under the Consumer Resources section. This data, collected by the NAIC, includes generic reasons the complaints were submitted.

The Department continues to work diligently to ensure Mental Health Parity compliance among applicable companies in Tennessee and to pursue more education and outreach opportunities for Tennessee consumers.

TCA § 56-7-2360(f) The report issued pursuant to subsection (e) must be written in non-technical, readily understandable language and be made available to the public by posting the report on the department's website and by other means as the department finds appropriate. The name and identity of the health insurance carrier must be given confidential treatment, may not be made public by the commissioner or another person, and are not subject to public inspection pursuant to § 10-7-503

The Department has attempted to publish this report in non-technical, readily understandable language. This report is accessible on the Insurance Division's website. No health insurance carriers are named in this report.

The Bureau of TennCare

There are three (3) health maintenance organizations that contract with the Division of TennCare as the managed care organizations ("MCO") that provide medical and surgical and mental health and alcoholism or drug dependence benefits to TennCare enrollees. This contract is referred to as the TennCare Contractor Risk Agreement ("CRA"). The MCOs are required to provide all covered benefits in accordance with the plan designed by the Division of TennCare and as set forth in the CRA.

As required by Tenn. Code Ann. § 71-5-154 the Division of TennCare receives and reviews on an annual basis a Behavioral Health Coverage Annual Report prepared by each MCO. This report contains information for enrollees in the TennCare program in accordance with regarding coverage of mental health and alcohol and drug dependence benefits. The report contains updated information about the MCOs' processes for determining prior authorizations and denials, medical necessity criteria and NQTLs across mental health, alcoholism or drug dependence, and medical and surgical benefits. The MCO also conducts an analysis of how these factors affect prior authorization outcomes and submit findings and conclusions demonstrated by these analyses.

After review of the 2023 reports, TennCare staff did not identify any deficiencies or parity imbalances, therefore no additional actions were taken. - TennCare staff will continue to receive and review the annual reports.

TDCI's TennCare Oversight Division coordinates with the Division of TennCare to ensure that the TennCare MCOs operate in compliance with applicable state and federal Mental Health Parity laws. Complaints by TennCare enrollees alleging mental health or alcoholism or drug dependence services have been denied, delayed, reduced, suspended, or terminated are referred to the appropriate MCO and the Division of TennCare's Member Services Section to initiate a medical appeal in accordance with established Tenncare procedures. In addition, the TennCare Oversight Division coordinates the review of the MCOs' provider agreements and provider manuals with the Division of TennCare to ensure the MCO's medical necessity criteria guidelines and non-quantitative treatment limitations comply with applicable state and federal Mental Health Parity laws.