



**Office of
Mental Health**

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New York State Office of Mental Health Parity Compliance Toolkit

April 2020



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A. Introduction

The federal government has recognized disparities between health plan coverage for mental health and substance use disorder (MH/SUD) benefits compared to their medical/surgical (M/S) counterparts. New York State (NYS) and the NYS Office of Mental Health (NYS OMH) are committed to addressing and ensuring MH/SUD parity compliance for every New Yorker needing or receiving MH/SUD care. The NYS OMH, in coordination with the NYS Department of Health (DOH), the NYS Department of Financial Services (DFS) and the NYS Office of Addiction Services and Supports (OASAS), is currently working on several initiatives to enforce MH/SUD parity compliance for NYS regulated health insurers.

The New York State Office of Mental Health Parity Compliance Toolkit is a compilation of Federal and State information and resources regarding MH/SUD parity in the state of New York. The following toolkit was developed to support insurers, providers, and consumers in understanding parity and NYS' efforts toward achieving MH/SUD parity compliance.

B. MHPAEA Parity Compliance for Medicaid Programs

The oversight, monitoring, and enforcement of the Mental Health Parity and Addiction Equity Act (MHPAEA) is currently taking place within NYS. MHPAEA requires many health insurance plans offering MH/SUD benefits to provide coverage for those services that is comparable to and no more restrictive than the predominant coverage for comparative medical or surgical (M/S) services.

The Centers for Medicare & Medicaid Services (CMS) final regulations (42 CFR Parts 438, 440 and 457), addressing the application of the MHPAEA, set forth Federal reporting requirements for State regulated Medicaid managed care organizations (MCOs), Medicaid Alternative Benefit Plans, and Children's Health Insurance Programs (hereafter Medicaid programs). The NYS OMH, in partnership with the NYS OASAS, the NYS DOH and the NYS DFS, is collecting and analyzing data to ensure MH/SUD parity compliance in NYS Medicaid programs.

MHPAEA and the CMS final regulations stipulate a defined set of rules, regulatory standards, and tests to evaluate parity compliance for all financial requirements (FRs), quantitative treatment limitations (QTLs), and non-quantitative treatment limitations (NQTLs) which apply to MH/SUD benefits. The parity compliance evaluation is being conducted in three phases, with emphasis on the review of 19 distinct NQTLs. NQTL reporting and NYS reviews concentrate on ensuring the standards and processes used to determine MH/SUD benefits and coverage are applied no more stringently than to M/S benefits and coverage.



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I. Phases of NYS MHPAEA Compliance for Medicaid Programs

1. Instructions and Technical Assistance:

- a. [Medicaid Managed Care NQTL Reporting Instructions](#)
- b. [NQTL Spreadsheet Guidance](#)

2. **Phase I:** NYS provided NQTL excel workbook templates and technical assistance requesting MCOs to conduct and provide parity analysis data on the first set of four NQTLs: prior authorization, concurrent review, medical necessity criteria, and formulary design.

- a. [Blank Phase I NQTL Workbook Template](#)
- b. [NYS Mental Health Parity and Addiction Equity Report](#) (April 2019)
- c. [NYS Parity Analysis Reporting - Phase 1 Results and Next Steps Webinar](#) (June 19, 2019)

3. **Phase II:** NYS provided NQTL excel workbook templates and technical assistance to complete their analysis on the following NQTLs: coding edits, out-of-network coverage standards, geographic restrictions, reimbursement, and provider type exclusion.

- a. [Blank Phase II NQTL Workbook Template](#)

4. **Phase III:** NYS provided MCOs with workbook document templates on the remaining NQTLs in spring 2020. The following NQTLs included in this phase are: retrospective review, outlier review, experimental/investigational determinations, exclusions for court-ordered treatment or involuntary holds, fail first, failure to complete, provider credentialing, certification requirements, unlicensed provider/staff requirements, and usual, customary and reasonable (UCR) rate determinations.

- a. [Blank Phase III NQTL Workbook Document Templates](#)

C. Mental Health Clinical Review Criteria

A second initiative related to MH/SUD parity is the examination and approval of mental health clinical review criteria. Chapter 57 of the Laws of 2019 (Part BB) added a new provision to the



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utilization review (UR) program standards in Insurance Law § 4902 and Public Health Law § 4902. The new provision requires that, when conducting UR for purposes of determining health care coverage for a mental health condition, health maintenance organizations and insurers, and their contracted UR agents (collectively, “UR Agents”), must utilize evidence-based and peer reviewed clinical review criteria. The clinical review criteria must be appropriate to the age of the patient and have been deemed appropriate and approved for use in determining health care coverage for the treatment of mental health conditions by the Commissioner of the NYS OMH, in consultation with the Commissioner of Health and the Superintendent of Financial Services. These provisions became effective January 1, 2020 and apply to health insurance policies issued or renewed on and after that date. The NYS OMH, in collaboration with the NYS DOH and the NYS DFS, is reviewing all current mental health clinical review criteria in use by NYS regulated commercial insurers and Medicaid programs.

The NYS OMH, in partnership with the NYS DOH and NYS DFS, initiated the review and approval of mental health clinical review criteria to ensure coverage determinations for mental health services are made in a manner consistent with accepted medical practices and Federal and State behavioral health parity laws. UR Agents were required to submit all clinical review criteria and policies and procedures used to determine coverage for treatment for mental health conditions, including medical necessity criteria and/or level of care tools, to NYS OMH for review and approval.

The NYS OMH developed the *Guiding Principles for the Review and Approval of Clinical Review Criteria for Mental Health Services* (Guiding Principles); having incorporated stakeholder feedback. The Guiding Principles are to assist UR Agents in understanding what constitutes an acceptable submission, specifically clinical review criteria. The Mental Health Clinical Review Criteria component of NYS’ parity compliance initiative is currently underway; however, the NYS OMH, in coordination with the NYS DOH and NYS DFS, will continue to review, approve, and monitor clinical review criteria on an ongoing basis. Ongoing reviews and monitoring will include newly established insurers and implementations of new or revised clinical review criteria.

- I. [Guiding Principles for the Review and Approval of Clinical Review Criteria for Mental Health Services](#)
- II. [Submission Instructions for Clinical Review Criteria, Policies, and Procedures](#)
- III. [Clinical Review Criteria, Policies, and Procedures Submission Coversheet](#)
- IV. [Clinical Review Criteria for the Treatment of Gender Dysphoria](#)



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D. Prohibition of Preauthorization and Concurrent Review During First 14 Days of an Inpatient Admission for a Mental Health Condition for Individuals under 18

Part BB of Chapter 57 of the Laws of 2019 added other provisions to the Insurance Law and Public Health Law to prohibit NYS regulated health insurance policies and contracts from requiring preauthorization for inpatient psychiatric hospital services for children up to age 18 when provided by in-state and in-network hospitals, as defined in the Mental Hygiene Law. Additionally, such health insurance policies or contracts may not subject inpatient psychiatric hospital services for children to concurrent review during the first 14 days of treatment, provided the facility notifies the health insurer of the admission and initial treatment plan within two business days of the admission and participates in periodic consultation with the health insurer. All care may be reviewed retrospectively and may be denied if not medically necessary. If coverage is denied retrospectively, the patient is held financially harmless, except for allowable co-pay and deductibles amounts.

I. Department of Financial Services

1. [Insurance Circular Letter No. 13](#) (December 20, 2019)

II. Department of Health

1. [Plan Circular Letter](#) (December 20, 2019)

III. Office of Mental Health

1. [Prohibition Against Preauthorization and Concurrent Review During First 14 Days of an Inpatient Admission for a Mental Health Condition for Individuals Under 18](#) (December 30, 2019)
2. [Addendum A: Two-Day Notification and Initial Treatment Plan – fillable PDF](#)

E. Parity Laws & Legislation

I. Federal Laws & Legislation

1. [The Mental Health Parity Addiction and Equity Act \(MHPAEA\)](#)
2. [Federal Register Vol. 81, No. 61 / Wednesday, March 30, 2016 / Rules and Regulations \(MHPAEA\)](#)
3. [Patient Protection and Affordable Care Act of 2010](#)



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II. State Laws & Legislation

1. [NYS Mental Health and Substance Use Disorder Parity Reporting Act of 2018](#)
2. [Chapter 57 of the Laws of 2019 \(Part BB\)](#)

F. Federal Toolkits and Materials

I. Department of Labor

1. [Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act \(MHPAEA\)](#)

II. Centers for Medicare & Medicaid Services

1. [Parity Compliance Toolkit Applying Mental Health and Substance Use Disorder Parity Requirements to Medicaid and Children's Health Insurance Programs](#)
2. [Compliance Assistance Materials Index](#)

G. New York State Reports

- I. [NYS Department of Financial Services Mental Health and Substance Use Disorder Parity Reports of 2017 and 2018](#)
- II. [NYS Attorney General Mental Health Parity Report](#) (May 2018)
- III. [NYS Mental Health Parity and Addiction Equity Report](#) (April 2019)

H. Informational Resources

- I. [NYS Attorney General Mental Health Parity Brochure](#)
- II. [NYS Department of Financial Services Chapter 57 of the Laws of 2019 FAQ](#)
- III. [Parity Terminology](#)



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I. Consumer Resources and Supports

- I. American Psychological Association Health Center - [Mental Health Insurance Coverage: Get the Whole Picture](#)
- II. [Community Health Access to Addiction and Mental Health Care Project \(CHAMP\): The NYS Behavioral Health Ombudsman Program \(Brochure\)](#)
- III. [Legal Action Center Parity Resource](#)
- IV. [NYS MH/SUD Parity Red Flag Resource](#)
- V. [Parity Enforcement Project Initiative](#)
- VI. [NYS DFS Insurance Company Search](#)

J. Parity Related Grievances

- I. New York Attorney General Health Care Bureau [Online Complaint Form](#)
Helpline: 1-800-428-9071
- II. New York Department of Financial Services [Online Complaint Form](#)
Consumer Assistance Unit: 1-800-342-3736
- III. New York Department of Health
Email: managedcarecomplaint@health.ny.gov
Phone: 1-800-206-8125

K. Questions

For questions related to Mental Health Parity in NYS, e-mail OMH.Parity@omh.ny.gov.