

Mental/Behavioral Health Parity

What it is, how to determine if you have been unfairly denied benefits, and what rights and protections you have.



COLORADO

Department of
Regulatory Agencies

Division of Insurance

A NOTE ON TERMINOLOGY: “MENTAL HEALTH” VS. “BEHAVIORAL HEALTH”

Mental health and behavioral health are sometimes used interchangeably, but they’re not quite the same. Mental health refers to a person’s psychological and/or emotional well-being, whereas behavioral health is an umbrella term that includes a variety of factors that impact a person’s well-being, development, and behavior. This includes, but is not limited to, mental health conditions, substance use disorders, eating habits, and external factors that influence a person’s well-being, like poverty, housing insecurity, and trauma.

+ What Is Mental Health Parity?

Parity is about comparable treatment for people who need mental and behavioral health care. Both federal and Colorado law provide protections for consumers accessing mental/behavioral health services – requiring health insurance companies to cover services for mental/behavioral health conditions like they cover other medical conditions, like diabetes or heart disease – this is called “parity.” Parity laws prohibit health plans from being more restrictive with mental health, behavioral health, and substance use disorder benefits than they would be for medical and surgical benefits, with respect to the following.

- ▶ **What you pay –**
Copays, coinsurance, deductibles, and out-of-pocket maximums (collectively referred to as cost-sharing)
- ▶ **How much treatment you can get –**
Limitations on the use of services, such as limits on the number of inpatient or outpatient visits that are covered
- ▶ **Use of management tools –**
Such as pre-authorization requirements
- ▶ **Which doctors you can see –**
Having adequate health care providers in-network to provide necessary services, coverage for out-of-network providers, and considerations for geographic location
- ▶ **Criteria used by insurance companies –**
The criteria used to determine what is and isn’t considered medically necessary treatment.

+ Is Your Health Insurance Required To Provide Mental Health Parity?

In many cases, yes. There are only a few exceptions of health plans that DO NOT have to follow federal parity laws.

- Most of Medicare. However, Medicare’s outpatient mental health services cost-sharing – what the consumer has to pay – and Medicare Advantage plans both have to follow parity laws.
- Health plans that were created and purchased before March 23, 2010. These are called “grandfathered” plans, as they were allowed to continue after the Affordable Care Act became law in 2010, or “grandfathered” under the old rules. These could be employer plans or individual (non-employer) plans.

All other types of health insurance plans must follow State and federal parity laws. These include employer plans (both large and small employer plans), individual plans (meaning not from an employer), student health plans, Colorado Medicaid (known as Health First Colorado) and Child Health Plan Plus (CHP+).

If your health insurance card has “CO-DOI” on it, your plan is regulated by the Colorado (CO) Division of Insurance (DOI). And that means there are additional protections for parity that are part of Colorado state law, on top of the federal protections.

If your plan is not regulated by the Division of Insurance, it may still have parity protections. Contact Colorado’s Behavioral Health Ombudsman of Colorado (behavioralhealthombudsman.colorado.gov) with questions, complaints, or support in seeking services at **303-866-2789** or ombuds@bhoco.org.

If you are unsure about what type of plan you have, ask your insurance company or agent, your plan administrator, your employer (specifically your human resources department), or the Colorado Division of Insurance – **303-894-7490 / 800-930-3745 / DORA_Insurance@state.co.us**.



+ Red Flags For Potential Parity Violations



While it should not be harder or more expensive to get mental/behavioral health treatment than physical health treatment, it can be hard to identify parity violations or know if you're being unfairly denied coverage. The following examples can help you to determine if there has been a violation of your mental/behavioral health protections.

RED FLAGS
■ You are charged a higher copay or coinsurance for mental/behavioral health services.
■ A limit is placed on the number of visits or days of mental/behavioral treatment, inpatient or outpatient.
■ Mental/behavioral health services have separate deductibles from medical services.
■ You can't get the level of behavioral care your doctor says you need, unless you try something less expensive first. Colorado State law further expands patient protections around such requirements, often called step-therapy or fail-first requirements.
■ Prescribed medications for behavioral health treatment cost more than medications for other kinds of conditions.
■ You are required to get prior authorization for behavioral health treatment, but that's not required for medical treatment. Or, you were able to start treatment, but have to keep getting authorization to continue.
■ Your doctor says you need residential treatment, but your plan won't pay for residential treatment for substance use disorder or mental health issues; or your plan won't pay for behavioral treatment outside of Colorado, even though you can get medical treatment outside of the state.

+ Have You Been Unfairly Denied Mental/Behavioral Health Benefits?

The following guidance was put together by Colorado Center on Law and Policy (cclponline.org) to share information about your options if you believe you have been unfairly denied benefits.

- ▶ Ask your health care provider to help find out why you have been denied treatment, denied reimbursement, or why your treatment has been reduced or limited. Your provider can submit a letter to the insurance company that explains why the requested treatment is medically necessary.
- ▶ You are also entitled to more information from your insurance company to help you decide whether you want to file an internal appeal.
 - A denial letter explaining the reason(s) for denial – Always ask for the denial in writing.
 - An explanation-of-benefits form that explains what was requested and denied – To help you consider whether the parity law has been violated, you can compare limitations for behavioral treatment with those for medical services.
 - The medical necessity criteria your insurer uses to decide whether a type of treatment is medically necessary – You and your health care provider can request this information, and can request not only the medical necessity criteria for behavioral benefits, but also



the criteria for comparable medical benefits, so that the standards can be compared. You will need any records and bills from your treatment to do this comparison.

- ▶ You may decide to file an appeal stating your insurance company violated parity laws. You can also file an appeal that claims the company did not make the right decision about what was medically necessary.
- ▶ You can also file a complaint with the Colorado Division of Insurance. Contact the Division at **303-894-7490 / 800-930-3745 / DORA_Insurance@state.co.us** or visit the Division's website, **doi.colorado.gov**.

+ How Is Mental Health Parity Enforced?

Both federal and Colorado state law provide protections for consumers accessing mental/behavioral health services.

■ MHPAEA

Mental Health Parity and Addiction Equity Act of 2008

(MHPAEA) — This federal law — also called the Parity Law — requires health insurance coverage for mental health and/or substance use disorder conditions comparable to what patients would receive for coverage of medical/surgical services.

■ ACA

Affordable Care Act (ACA) — While the ACA gave people better access to health insurance and health care, it also helps to further enforce mental health parity. It requires that all plans (except grandfathered plans created before the ACA) cover mental health and substance abuse services as essential health benefits, including behavioral health treatment, such as psychotherapy and counseling, mental and behavioral health inpatient services, and substance use disorder treatment. And it eliminated annual and lifetime spending limits.

■ HB19-1269

Behavioral Health Care Coverage Modernization Act

HB19-1269 — The Colorado State Legislature passed the Behavioral Health Care Coverage Modernization Act in 2019 to add to the State's mental health parity laws for private health insurance and the State Medicaid program, Health First Colorado. It gives the Division of Insurance additional authority over health insurance companies to enforce parity. The law also applies to Colorado Medicaid's program, Health First Colorado, which is administered by the Colorado Department of Health Care Policy and Financing (HCPF).



+ Additional Resources On Mental/ Behavioral Health and Parity

Behavioral Health Ombudsman of Colorado

The Behavioral Health Ombudsman interacts with consumers and health care providers to help them resolve behavioral health care access and coverage issues.

► Submit a complaint or inquiry: behavioralhealthombudsman.colorado.gov | 303-866-2789 | ombuds@bhoco.org.

Health First Colorado (Colorado Medicaid) and CHP+ Medicaid

Get behavioral health support through the state's Medicaid program. Find information on benefits and services in the members section of the website of the Department of Health Care Policy and Financing (which administers Health First Colorado) — hcpf.colorado.gov.

► Call the Department of Health Care Policy and Financing: 800-221-3943 | State Relay: 711 Fax: 303-866-4411

The Trevor Project

LGBTQ young people can receive crisis intervention and suicide prevention support — thetrevorproject.org.

► Call 866-488-7386, text START to: 678678, or use the chat feature on their website.

Trans Lifeline

Trans Lifeline is a transgender-led organization that connects trans people to the community, support, and resources they need to survive and thrive.

► Call the lifeline at 877-565-8860.

Behavioral Health Task Force

Gov. Jared Polis directed the Colorado Department of Human Services to spearhead Colorado's Behavioral Health Task Force. The mission of the task force is to evaluate and set the roadmap to improve the current behavioral health system in the state. It developed a "*Behavioral Health Blueprint*" to guide the implementation of a new behavioral health system in Colorado.

► More information can be found at cdhs.colorado.gov/behavioral-health-reform.

The Kennedy Forum

The Kennedy Forum (thekennedyforum.org) works to drive change in our health care system. It partners with mental health and addiction advocates, policymakers, and business leaders around key opportunities for progress, including provider accountability, integration and coordination, technology, and brain fitness and health.

ParityTrack

ParityTrack (paritytrack.org) is a collaborative forum that works to aggregate and elevate the parity implementation work taking place across the country. It seeks to help consumers understand their rights under the Federal Parity Law and state parity laws and to empower consumers to exercise those rights.



IF YOU ARE EXPERIENCING A MENTAL OR BEHAVIORAL HEALTH CRISIS:

Call 911 or

Contact Colorado Crisis Services:

- **844-493-8255,**
- text **TALK** to: **38255,**
- or access their chat function at **coloradocrisiservices.org**



If you are unsure about what kind of health insurance you have, or how it covers mental health needs, or need to ask questions or file a complaint, contact the Colorado Division of Insurance.

- 303-894-7490 / 800-930-3745
- DORA_Insurance@state.co.us
- doi.colorado.gov



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