



Behavioral Health Ombudsman of Colorado

To: Kim Bimestefer

From: Office of the Behavioral Health Ombudsman of Colorado (BHOCO)

Date: 2-11-2020 [UPDATED with agency response 2-20-2020]

RE: Issue Summary and requested response – CCHA provider rate cuts and potential parity violations

I. Background

Between October 2019 and February 2020, the Ombudsman office (BHOCO) was contacted by multiple providers, legislators and advocacy organizations concerning a notice from the Colorado Community Health Alliance (a Medicaid RAE/Regional Accountable Entity), which states that certain behavioral health providers will have their reimbursement rates cut from 100% to 80%.

II. Complaint

As BHOCO understands it, the processes for setting provider reimbursement rates are considered “nonquantitative treatment limitations” (NQTLs) under federal (and state) mental health parity laws and regulations (see MPHAEA and related regs), which ensure that both quantitative and nonquantitative treatment limits are no more stringent for mental health coverage than for “medical/surgical” coverage.

We asked one of the mental health providers that we spoke with on the phone if he was aware of any similar cuts on the med/surg side. He told us that he was informed by [Anthem/CCHA](#) that they do not know anything about the “fee-for-service” reimbursement rates on the med/surg side because they are not in charge of that. Based on this (relayed) information, it was unclear whether parity was being met or monitored, and if so, by whom.

We (BHOCO) filed a complaint with HCPF and asked them to look into whether the CCHA rate cuts complied with parity laws. They scheduled a phone call to discuss this. During this phone call, we asked how HCPF ensures that behavioral health provider reimbursement rates comply with parity, and HCPF stated “we don’t get involved in reimbursement for managed care providers.”

We also asked for an explanation of which NQTLs are measured by HCPF for parity compliance, and they (HCPF) directed us to [HCPFs 2019 analysis](#). Within this analysis, HCPF references federal regulations regarding parity requirements:

"The state of Colorado determined that the robust mental health and substance use disorder benefits offered by the state’s Medicaid program and CHIP satisfy the requirements of MPHAEA as detailed in the final rule issued by the Centers for Medicare & Medicaid Services in 42 CFR Parts 438, 440, 456, and 457."

Finally, during the call, HCPF noted that this rate cut wasn’t unique to CCHA, and that CCHA was actually the last RAE to reduce some provider rates to 80%, using a “tiered rate” approach. At this time, based on this information, we expressed concern regarding whether *any* of the RAEs and/or HCPF were complying with parity laws and regulations regarding provider reimbursement rate processes.

III. Additional research

A review of the specific regulations that HCPF self-indicates they are satisfying (per the 2019 analysis, cited above, specifically 42 CFR Parts 438, 440 and 457) appears to indicate that provider reimbursement rate processes are considered a nonquantitative treatment limitation:

42CFR Part 438.910(b)(2)(d)(2)(iv): Standards for provider admission to participate in a network, including reimbursement rates;

42 CFR Part 457.496(d)(4)(ii)(D)): Standards for provider admission to participate in a network, including reimbursement rates;

42CFR Part 440.395(b)(4)(ii)(c): Standards for provider admission to participate in a network, including reimbursement rates;

Additionally, CO HB19-1269 (applicable after the above-mentioned 2019 analysis) requires HCPF to submit an annual report beginning June 1, 2020, "regarding behavioral, mental health, and substance use disorder parity," including (in part below):

- "The results of analyses demonstrating that, for the medical necessity criteria described in subsection (1)(a) of this section and each nonquantitative treatment limitation identified in subsection (1)(b) of this section, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral, mental health, and substance use disorders within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits within the corresponding classification of benefits;" and
- "Disclose the specific findings and conclusions that indicate that the state is in compliance with this section and with the MHPAEA."

IV. Follow-up Complaint

Based on BHOCO's belief that HCPF asserts they are satisfying federal parity regulations (as outlined above), we reached back out to HCPF with the following questions. BHOCO's questions are in black, HCPF responses are in blue:

1. Without monitoring provider reimbursement rates, how can you be sure that RAEs are complying with federal and state parity requirements, which is also required as part of their contracts? **RAEs are not responsible for the Med/Surg services- just those services under the capitated behavioral health benefit. As a managed care organization they have the ability to negotiate those rates.**

2. Additionally, since you have been actively presented with this particular concern/complaint from our office as a potential parity violation, what steps will HCPF take to investigate whether RAEs--including but not limited to CCHA--are in compliance with parity re: provider reimbursement rates? **The Department has determined this is not a parity violation. RAEs have the ability to negotiate rates for the capitated behavioral health benefit.**

3. I appreciate the emails with your responses to Rep Lontine and others. Re: the "tiered rate approach," are you able to provide us with documentation re: how this approach would compare with med/surg provider rate approaches/rate setting processes under Colorado's Medicaid

structure? We do not have a single MCO that covers both med/surg and behavioral health services comprehensively. The RAEs negotiate rates with providers under the capitated behavioral health benefit. Med/surg services are paid under FFS according the Medicaid fee schedule.

V. Concerns/questions

Based on the above responses to the follow-up complaint, BHOCO continues to be seriously concerned about 1) whether CCHA is complying with parity laws and regulations regarding provider reimbursement rates, 2) whether *all* the RAEs are complying with parity laws and regulations, and 3) whether anyone (RAEs or HCPF) are actually monitoring whether Colorado’s Medicaid system is in compliance with parity regulations—or at the very least, with what HCPF claims they are complying with in their 2019 parity analysis. We are interested in answers to the following questions:

1. Based on federal and state parity laws and regulations and Colorado’s unique capitated behavioral health system, who is ultimately responsible for determining parity compliance—HCPF, or the RAEs (who also have parity listed as part of their contracts)?
2. Based on federal and state parity laws and regulations, are CCHA and Colorado’s other RAEs in compliance regarding provider reimbursement rate setting processes?
3. If no one is comparing provider reimbursement rate processes for the capitated BH organizations with the med/surg processes, is the state violating any federal or state mandates that direct them to assess parity compliance?
 - a. If not, is the state misleading the public by stating in their 2019 analysis that they satisfy federal requirements?
4. Given the state’s capitated payment system for behavioral health, is it *possible* under the current funding structure and current RAE contracts to appropriately monitor federal and state parity compliance for provider reimbursement rates?
5. Given the state’s capitated system, is it possible under the current funding structure and current RAE contracts to monitor federal and state parity compliance for *any* NQTLs?
 - a. NOTE: we have complaint history re: billing codes, medical necessity denials, prior authorization requirements, audit triggers, and other potential NQTL compliance issues.
6. Finally, if it is deemed *possible* under current structures to appropriately monitor parity compliance, is it happening?
 - a. Does HCPFs 2019 parity analysis actually demonstrate compliance, in light of the statements that RAEs do not monitor some or all of the med/surg payment processes, and that HCPF does not monitor some or all of the RAE capitated payment processes?
 - b. Is the state currently monitoring parity compliance for NQTLs, including provider reimbursement rate setting processes, as per current requirements and pending June 2020 reporting requirements?

AGENCY RESPONSE:

From HCPF, February 19, via email in response to a follow-up email regarding this briefing:

“The Department looked into the issue and determined that it was not a parity concern. We have additionally responded to legislator[s] to address this concern.”