

## Behavioral Health Parity

Both state and federal law have long required “parity” for insurance coverage of behavioral health conditions, when compared to physical health coverage for both commercial insurance policies and Medicaid. These parity protections apply to both quantifiable and non-quantifiable treatment limitations. While quantifiable treatment limitations are relatively easy to compare (e.g., co-pays, deductibles, visit limits), non-quantifiable treatment limitations (e.g., medical necessity, rate calculations, network adequacy) can be more complex and more difficult to enforce.

On December 7, 2023, Attorney General James issued a report, indicating that the behavioral health provider networks of the insurance plans in New York State are woefully inadequate ([see the press release and full report here](#)).

**According to the report, only 14% of mental health providers who were contacted offered appointments, and just 8% of the providers offered in person appointments.** The report also recounted many previous findings that behavioral health provider network in the state were inadequate. Perhaps the most disturbing part of the report was buried in **footnote # 32**, which stated that the OAG had “**not identified any enforcement actions related to provider directory accuracy by DFS or DOH....**” (Note: it is unclear what efforts OAG made to identify any such enforcement actions).

### Recommended actions:

#### **1. Enforcement:**

The state and federal parity laws have been on the books for at least 15 years. At a time, when mental health needs and services have never been greater, particularly for children and youth, arguably the need for enforcement of these laws has never been greater. It is our understanding from discussions with providers and recipients in the past that DFS and DOH have been responsive to consumer complaints. However, compliance with state and federal parity laws, particularly for non-quantifiable limitations, are very complex and difficult for the average person to even understand in order to make a complaint. Further, it is unclear whether such complaints have resulted in more widespread audits or investigations to determine whether such problems are systemic, and whether additional enforcement actions should be taken.

*A. It is imperative that the state oversight agencies (DFS and DOH) devote sufficient resources to enforcing the laws that have been in effect for many years, and conduct investigations or audits to ensure full compliance.*

*B. Consider whether and what extent the OMIG currently has jurisdiction to adequately investigate health plans for violations of state or federal parity laws within the Medicaid program. If current OMIG jurisdiction is inadequate, enact additional statutory changes.*

**2. Executive Budget statutory changes:**

In last year's Executive Budget, Governor Hochul proposed a number of changes in the Health & Mental Hygiene Article VII bill (Part II), to close loopholes and to ensure better commercial insurance and Medicaid coverage for behavioral health services. The legislature adopted some of those proposals, modified some, and rejected others.

*A. It is recommended that the Governor consider re-introduction of those behavioral health insurance proposals which were rejected or modified by the legislature. (MHANYS takes no position on one of the proposals that was rejected by the legislature, a private right of action for enforcement).*

**3. Commercial Insurance Rates for behavioral health services:**

Many behavioral health providers, particularly those that are not associated with larger hospital systems, do not have a sufficient number of covered lives, nor negotiating power, to ensure adequate commercial insurance rates for behavioral health services. Importantly, reimbursement rate calculation equity between behavioral health and physical health services is one of the non-quantifiable limitations that parity laws are intended to address. (Note: At times in the past, because commercial behavioral health rates were inadequate, there were instances in which the state has expended additional funding to ensure adequate behavioral health services.)

*A. It is recommended that commercial insurance rates for all behavioral health services be required to be equal to the Medicaid rates for comparable health services.*

*B. In the alternative, commercial insurers could apply for pre-approval from the state oversight agencies for rates that are lower than the Medicaid rate, but only if they provide full documentation of how such rates were calculated, and it is determined that such rates are both adequate to ensure necessary services will be provided and do not violate applicable state or federal laws.*

**4. Recommended Actions in the OAG report:**

The AG's report included a recommendations section to address the network adequacy problems identified in the report, however, at least some of the recommendations could be applied in a similar manner to identify other potential violations of health parity laws.

*A. Review the Recommendations section of the AG's report and apply similar methodologies to identify any additional violations of parity laws.*