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New York Did Not Ensure That Selected Medicaid Managed Care Organizations Complied With Mental Health and Substance Use Disorder Parity Requirements Related to Prior Authorization

REPORT HIGHLIGHTS

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Why OIG Did This Audit

- Individuals seeking care for mental health and substance use disorder (MH/SUD) conditions often find that treatment operates in a separate, and often very disparate, system than treatment for medical/surgical (M/S) care, even under the same health insurance coverage.
- Federal statute and regulations prohibit coverage limitations that apply more restrictively to MH/SUD benefits than to M/S benefits; these are called parity requirements. A prior OIG audit found that CMS did not ensure that eight selected States complied with Medicaid managed care MH/SUD parity requirements.
- This audit determined whether New York ensured that three selected Medicaid managed care organizations (MCOs) complied with parity requirements related to prior authorization for MH/SUD services provided to their Medicaid enrollees during calendar year 2023.

What OIG Found

Although New York implemented a parity compliance program, it did not ensure that all three selected Medicaid MCOs complied with parity requirements related to the prior authorization for MH/SUD services. We found that:

- The selected MCOs' analyses comparing denial rates for MH/SUD services to M/S services in the same benefit classification were not sufficiently supported or indicated that denial rates for MH/SUD services were not comparable to denial rates for M/S services, which could indicate potential noncompliance with parity requirements.
- The selected MCOs' denial rates for MH/SUD services exceeded New York's established threshold.
- The selected MCOs continued to be noncompliant with MH/SUD parity requirements related to prior authorization more than 6 years after the October 2017 compliance deadline.

What OIG Recommends

We made two recommendations to New York, including that it improve its policies and procedures for monitoring MCOs' ongoing compliance with parity requirements related to prior authorization of MH/SUD services and that it continue to utilize available corrective action measures to address instances in which MCOs do not consistently meet parity requirements related to prior authorization. The full recommendations are in the report.

New York did not indicate concurrence or nonconcurrence with our recommendations but detailed steps it has taken and plans to take in response to our recommendations.

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INTRODUCTION

WHY WE DID THIS AUDIT

In 2024, 61.5 million adults in the United States experienced some form of mental illness and an estimated 48.4 million people aged 12 or older had a substance use disorder. Individuals seeking care for mental health and substance use disorder (MH/SUD) conditions often find that treatment operates in a separate, and often very disparate, system than treatment for medical and surgical (M/S) care, even under the same health insurance coverage. Federal regulations implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) were put in place to make it easier for people with MH/SUD conditions to access treatment and services by prohibiting coverage limitations that apply more restrictively to MH/SUD benefits than to M/S benefits (i.e., parity in how the two types of benefits are covered by health insurers, including Medicaid managed care).

A prior Office of Inspector General (OIG) audit found that the Centers for Medicare & Medicaid Services (CMS) did not ensure that eight selected States complied with Medicaid managed care MH/SUD parity requirements.[1] OIG is conducting a series of audits to determine whether some of the States covered in our prior report and their Medicaid managed care organizations (MCOs) complied with parity requirements for MH/SUD benefits related to prior authorization.[2] Our prior audit identified that prior authorization was the most frequent nonquantitative treatment limitation (NQTL) area of noncompliance.[3] We are conducting this series of audits as part of Congressionally requested OIG work that addresses enrollees' access to MH/SUD services. We selected New York based on findings related to NQTLs from our prior audit.

OBJECTIVE

Our objective was to determine whether the New York State Department of Health (State agency) ensured that its MCOs complied with parity requirements related to prior authorization for MH/SUD services provided to their Medicaid enrollees.

[1] OIG, *CMS Did Not Ensure That Selected States Complied With Medicaid Managed Care Mental Health and Substance Use Disorder Parity Requirements*, (A-02-22-01016), issued Mar. 25, 2024.

[2] Prior authorization is a cost-control process in which advance approval from a health plan is required before a service is performed and subsequently paid.

[3] NQTLs are restrictions on services that are not expressed numerically but that otherwise limit the scope and duration of benefits, including limiting benefits based on medical necessity, medical management policies (e.g., prior authorization), and standards for provider participation in a network.

BACKGROUND

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

The MHPAEA was intended to promote equal access to treatment for people with MH/SUD conditions by prohibiting coverage limitations that apply more restrictively to MH/SUD benefits than they do to M/S benefits. Such limitations may include higher copayments, separate deductibles, and stricter preauthorization or medical necessity reviews, as compared to other covered medical treatments.

Mental Health and Substance Use Disorder Parity Requirements

CMS issued a final rule in March 2016 that addressed how the MH/SUD parity requirements of the MHPAEA apply to coverage offered by MCOs to Medicaid enrollees.[4] The regulations require States to ensure that all services delivered to MCO enrollees comply with parity requirements. States and their MCOs were required to comply with the requirements by October 2, 2017 (the compliance date).[5] Specifically, States or their MCOs are required to conduct ongoing parity analyses to assess whether MH/SUD benefits are covered in a way that is no more restrictive than M/S benefits.[6] The parity analyses compare limitations on MH/SUD benefits with those for M/S services in four benefit classifications: inpatient, outpatient, prescription drugs, and emergency care.[7]

NQTLs are restrictions on services that are not expressed numerically but that otherwise limit the scope or duration of benefits. NQTLs include, but are not limited to, medical necessity criteria, medical management protocols (e.g., prior authorization and concurrent review), and reimbursement rates. The regulations require that an MCO not impose limitations, including prior authorization for MH/SUD benefits, unless the limitations applied to MH/SUD benefits in any classification—under the policies and procedures of the MCO "as written" or "in operation"—are comparable to, and applied no more stringently than, the limitations applied to M/S benefits in the same benefit classification.

New York State Mental Health and Substance Use Disorder Parity Compliance Program

To comply with Federal requirements, New York is required to conduct a parity analysis to ensure that MCOs comply with parity requirements because the full scope of MH/SUD services

[4] 81 Fed. Reg. 18390 (Mar. 30, 2016).

[5] Section 1932(b)(8) of the Social Security Act and implementing regulations at 42 CFR § 438.930.

[6] 42 CFR § 438.920.

[7] 42 CFR §§ 438.905, 438.910, and 438.915. Parity does not mandate coverage of MH/SUD services. However, when coverage for MH/SUD services is provided, coverage must be provided in every classification in which M/S services are provided.

are not provided through the MCOs. The State agency has established a multi-year strategy to ensure that limits MCOs impose on MH/SUD services are comparable to and no more stringently applied than those for M/S services. As part of this strategy, the State agency developed a compliance program that requires MCOs to implement a system for ongoing compliance with MH/SUD parity requirements that must include reviews that compare coverage within each benefit classification for MH/SUD benefits to M/S benefits.[8] Specifically, the program requires MCOs to (1) establish corporate governance for MH/SUD parity compliance, (2) identify discrepancies in coverage of services for the treatment of MH/SUD conditions, and (3) ensure appropriate identification and remediation of any improper practices. On an annual basis, MCOs must certify compliance with Federal and State parity requirements.

The State agency's policies and procedures for ensuring compliance include requiring MCOs to conduct comparative analyses to ensure that the standards and processes used to determine MH/SUD benefits and coverage are applied no more stringently than those for coverage of M/S benefits. The comparative analyses include the MCOs' practices "as written" related to the authorization and provision of MH/SUD services and treatments compared to its practices for the authorization and provision of M/S services and treatments. In addition, MCOs' comparative analyses include "in operation" analyses that compare denial rates for MH/SUD services to denial rates for M/S services in the same benefit classifications. The State agency reviews each MCO's comparative analysis for compliance.[9] Findings of noncompliance are issued to MCOs through Statements of Deficiency that include required corrective action plans to remediate the identified deficiencies.

In addition, as part of the State agency's monitoring activities related to prior authorization, it collects monthly claims denial information for MH/SUD services and compiles this information into a denial summary report for each MCO for the calendar year (CY).[10] The reports group MH/SUD services by rate codes to identify denial rates for specific types of MH/SUD services. According to the State agency, it follows up with MCOs to address possible issues related to high denial rates of MH/SUD services based on an established threshold of 20 percent (the threshold). The State agency explained that it performs these follow-up activities through ad-hoc communication and operational surveys performed in coordination with New York's behavioral health agencies.[11] The State agency also provides guidance through training

[8] 10 NYCRR § 98-4.4(a)(4).

[9] The State agency utilizes a contractor to assist in the review and evaluation of the MCOs' comparative analyses.

[10] Each MCO completes a monthly claims denial summary report documenting total claims, paid claims, and denied claims for specific MH/SUD service groups. These reports do not include claims denial information for M/S services.

[11] The operational surveys provide technical assistance and action plans as part of New York's overall monitoring of MCOs. Reviews of MCOs' compliance with parity requirements are part of the operational surveys.

webinars and written communication that includes providing comparative analysis templates with instructions and links to CMS's Parity Toolkit.

HOW WE CONDUCTED THIS AUDIT

We selected a nonstatistical sample of 3 of the 14 MCOs in New York with contracts to provide access to MH/SUD services. The selected MCOs covered approximately 42-percent of New York's Medicaid managed care enrollees. Our audit period included MH/SUD services provided to Medicaid enrollees during CY 2023, which was part of the most recent 5-year MCO contract period at the beginning of our audit.[12] We selected the MCOs based on an analysis of risk factors that included: (1) prior authorization NQTL noncompliance identified in multiple benefit classifications (e.g., inpatient, outpatient, and prescription drugs), (2) number of enrollees served by the MCO, and (3) the MCOs' use of subcontractors for claims adjudication and denials of service.[13] We reviewed the State agency's oversight of its MCOs' compliance with parity requirements for MH/SUD services related to prior authorization of those services compared to M/S services in the same benefit classifications.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology.

FINDINGS

The State agency did not ensure that the selected MCOs complied with parity requirements related to the prior authorization of MH/SUD services. The selected MCOs' written policies and practices for providing MH/SUD benefits indicated compliance with parity requirements related to prior authorization. However, the selected MCOs' comparative analyses were not sufficiently supported or denial rates for MH/SUD services were not comparable to M/S services in the same benefit classification;[14] the MCOs' denial rates for MH/SUD services

[12] The 5-year contract period was Mar. 1, 2019, through Feb. 29, 2024.

[13] In coordination with New York's behavioral health agencies, the State agency conducts focus surveys (link here) that have found that specific MH/SUD services were denied at a higher rate when a subcontractor adjudicated or denied claims. One of our three selected MCOs utilized a subcontractor to adjudicate and deny claims for MH/SUD services.

[14] An MCO's comparative analysis includes a comparison of denial rates for MH/SUD services to denial rates for M/S services in the same classification (e.g., outpatient services). A higher rate of denial for MH/SUD services does not necessarily mean noncompliance with parity requirements. Rather, it could be an indicator of potential noncompliance.

exceeded the State agency's threshold;[15, 16] and the selected MCOs continued to be noncompliant with MH/SUD parity requirements related to prior authorization more than 6 years after the compliance date.

The State agency did not always provide clear and uniform guidance to MCOs on how to develop their comparative analyses. Further, the MCOs did not maintain data supporting their comparative analyses. In addition, the State agency did not have a written policy to formally establish its 20-percent denial rate threshold and did not follow up timely with MCOs when denial rates exceeded the threshold. Also, the State agency did not effectively utilize its right to impose available corrective action measures on MCOs that consistently have not met parity requirements.

As a result, the State agency did not have adequate information from MCOs' comparative analyses and denial rate reports to monitor MCOs' compliance with MH/SUD parity requirements. Also, since certain MCOs still had not demonstrated compliance with parity requirements, access to MH/SUD services for their enrollees may have been limited compared to access for M/S services. This may have increased the risk that Medicaid enrollees would encounter delays or barriers to needed MH/SUD treatment.

SELECTED MANAGED CARE ORGANIZATIONS' PRACTICES AS WRITTEN COMPLIED WITH PARITY REQUIREMENTS RELATED TO PRIOR AUTHORIZATION FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES

States or their MCOs are required to conduct parity analyses to assess whether MH/SUD benefits are covered in a way that is no more restrictive than M/S benefits.[17] States must ensure that all services are delivered to MCO enrollees in compliance with parity requirements.[18] As part of the State agency's comparative analyses, it requires that each MCO evaluate its practices "as written" related to the authorization and provision of MH/SUD services and treatments compared to its practices for the authorization and provision of M/S services and treatments.[19]

[15] The State agency utilizes claims denial summary reports as part of its ongoing monitoring of MH/SUD parity compliance, which analyzes denial rates for specific MH/SUD services (e.g., community psychiatric support and treatment services).

[16] As described earlier, during CY 2023, the State agency utilized a threshold of 20 percent or higher to require follow up with the MCOs.

[17] 42 CFR § 438.920.

[18] 42 CFR § 438.920(b).

[19] The "as written" analysis describes and compares information about the processes, strategies, evidentiary standards, and other factors used to develop and implement each NQTL, including prior authorization of MH/SUD and M/S services in each benefit classification.

We determined that all three selected MCOs' practices as written for prior authorization of MH/SUD services complied with parity requirements. For example, one MCO's practices as written described that the authorization and provision of MH/SUD outpatient services (e.g., partial hospitalization) were covered in a way that was no more restrictive than M/S outpatient services (e.g., hospice).

SELECTED MANAGED CARE ORGANIZATIONS' COMPARATIVE ANALYSES WERE NOT SUFFICIENTLY SUPPORTED OR INDICATED HIGHER DENIAL RATES FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES

States or their MCOs are required to conduct parity analyses to assess whether MH/SUD benefits are covered in a way that is no more restrictive than M/S benefits. States must ensure that all services are delivered to MCO enrollees in compliance with parity requirements. MCOs with Medicaid health insurance plans are also required to comply with MH/SUD parity requirements. MCOs may not impose NQTLs, such as prior authorization restrictions, for MH/SUD benefits in any classification unless such limitations are comparable to and applied no more stringently than M/S benefits in the same classification.[20] To comply with Federal regulations, the State agency required MCOs to conduct a comparative analysis that includes the MCOs' practices "as written" and an "in operation" analysis covering MH/SUD services.[21, 22]

As part of the State agency's test for "in operation" compliance, MCOs are required to implement a system that includes a review of denials to ensure coverage criteria for MH/SUD services have been applied comparably to—and no more stringently than—criteria for M/S services within each benefit classification.[23] This system includes comparative analyses of prior authorization denial rates for MH/SUD services and denial rates for M/S services. MCOs are also required to maintain a health information system that collects and maintains all financial and statistical data, as well as data describing services provided to Medicaid enrollees.[24] Further, MCOs must submit MH/SUD parity reports to the State agency and attest that these reports are accurate and complete.[25] In addition, Federal regulations require MCOs to make all collected data available to the State agency and upon request to CMS.[26]

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[20] 42 CFR § 438.910(d).

[21] 10 NYCRR § 98-4.4(a)(2) and (4).

[22] The State agency's most recent parity report (dated March 2022) required MCOs to provide comparative analyses used to determine "as written" and "in operation" comparability and equivalent stringency between MH/SUD and M/S benefits.

[23] 10 NYCRR § 98-4.4(a)(4).

[24] New York's MCO Model Contract §§ 18.1(a), 19.1 (a)(i) and (ii), and 19.2.

[25] New York's MCO Model Contract § 18.5(a)(xxii).

[26] 42 CFR § 438.242(b)(4).

Selected Managed Care Organizations Did Not Maintain Claims and Denial Data to Support Comparative Analyses

All three selected MCOs did not maintain documentation to support their comparative analyses of MH/SUD benefits and M/S benefits in each benefit classification. Specifically, the MCOs did not maintain supporting claims and denial data for their "in operation" analyses of services requiring prior authorization during our audit period. The supporting data provided by the MCOs did not reconcile to the number of denials for services requiring prior authorization detailed in the MCOs' comparative analyses. The MCOs indicated that they did not maintain all the data used to create their analyses.[27] Rather, the MCOs stated that they developed the analyses using real-time data that could not be replicated because of subsequent claim adjustments or timing differences.

In addition, the data comprising each MCO's analyses were not uniform. For example, one MCO combined information for both mental health and substance use disorder services requiring prior authorization in their analyses and compared the information to the same data for M/S services. However, the other two MCOs' analyses separately compared prior authorization for mental health services and substance use disorder services to M/S services.

These deficiencies occurred because the MCOs did not have procedures to maintain data supporting their comparative analyses. Further, the State agency did not request or obtain data from the MCOs to support the MCOs' comparative analyses. Instead, the State agency relied on MCOs' attestations that the analyses were accurate and reliable to support compliance with parity requirements. In addition, the State agency did not always provide clear and uniform guidance to MCOs on how to (1) develop their comparative analyses, (2) maintain their supporting data, and (3) remedy issues of noncompliance.

As a result, the State agency would not have been able to perform its own independent comparative analysis of denial rates for MH/SUD services and M/S services that require prior authorization reported by the MCOs because the MCOs could not reproduce the data to support their analyses. Further, the State agency could not compare denial rates for certain MH/SUD services across MCOs to identify potential systemic issues because the comparative analyses were not uniform.

One Managed Care Organization's Supporting Data Indicated Higher Denial Rates for Mental Health Services Than Those for Medical/Surgical Services

One selected MCO maintained supporting data for the final 3 quarters of 2023. Our analysis of the data indicated a substantially higher denial rate for outpatient out-of-network mental

[27] As detailed on the following page, one of the three MCO maintained reliable data to support its analysis for the final 3 quarters of 2023.

health services that required prior authorization than the denial rate for outpatient out-of-network M/S services.[28, 29] The table (below) details these denial rates.

Table: One Selected MCO's Denial Rates for Outpatient Out-of-Network Services, by Quarter (CY 2023)

Calendar Quarter	Denial Rate	
	Mental Health	Medical/Surgical
Quarter 2	69.8%	24.9%
Quarter 3	69.9%	28.9%
Quarter 4	72.7%	30.0%

Note: The MCO did not maintain data to support its analysis for Quarter 1.

The State agency was not aware of the substantially higher denial rates for outpatient out-of-network mental health services compared to the denial rates for outpatient out-of-network M/S services because it did not request and review the MCO's comparative analyses for CY 2023 or the associated supporting claims information. Therefore, it did not follow up with the MCO to determine whether coverage criteria for outpatient out-of-network MH/SUD services were applied comparably to and no more stringently than coverage criteria for outpatient out-of-network M/S services.[30]

SELECTED MANAGED CARE ORGANIZATIONS' CLAIMS DENIAL SUMMARY REPORTS IDENTIFIED DENIAL RATES FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES THAT EXCEEDED THE STATE AGENCY'S ESTABLISHED THRESHOLD

MCOs must implement a system for ongoing compliance with MH/SUD parity requirements.[31] MCOs are required to maintain a health information system that collects and maintains all financial and statistical data, as well as data describing services provided to Medicaid enrollees.[32] The State agency's parity compliance program requires MCOs to identify discrepancies in coverage of services for the treatment of MH/SUD conditions, and ensure appropriate identification and remediation of any improper practices. As part of its monitoring of ongoing compliance, the State agency's review of its MCOs' denial summaries identifies denial rates at or exceeding the State agency's established threshold of 20 percent.

[28] The remaining two MCOs were unable to provide data supporting their comparative analyses for CY 2023. Therefore, we could not compare the denial rates for MH/SUD and M/S services.

[29] A higher rate of denial for MH/SUD services does not necessarily mean noncompliance with NQTL requirements. Rather, it could be an indicator of potential noncompliance.

[30] The State agency's most recent parity report (dated March 2022) required that it review and analyze the MCOs' in-operation analyses regarding NQTL compliance with parity requirements.

[31] 10 NYCRR § 98-4.4(a)(4).

[32] New York's MCO Model Contract §§ 18.1(a), 19.1 (a)(i) and (ii), and 19.2.

All three of the selected MCOs' annual denial summary reports for CY 2023 identified denial rates for certain MH/SUD services that exceeded the State agency's established threshold. For example:

- For one selected MCO, the annual denial rate for community psychiatric support and treatment (CPST) services was 42 percent.

- For another selected MCO, the annual denial rate for partial hospitalization services was 37 percent.

- For the remaining selected MCO, the annual denial rate for continuing day treatment services was 20 percent.

The State agency did not always review the data supporting the MCOs' claims denial summary reports. Additionally, the State agency did not have a written policy to formally establish the threshold or follow up with MCOs when denial rates exceeded the threshold, which it references in its guidance to MCOs. The State agency indicated that it follows up with MCOs to address issues related to denial rates of MH/SUD services through ad-hoc communication and its operational surveys. However, the State agency did not promptly follow up with the selected MCOs to address denial rates higher than the State agency's established threshold, which could indicate potential noncompliance with parity requirements for MH/SUD services related to prior authorization.[33]

SELECTED MANAGED CARE ORGANIZATIONS CONTINUED TO BE NONCOMPLIANT WITH PRIOR AUTHORIZATION PARITY REQUIREMENTS MORE THAN 6 YEARS AFTER THE COMPLIANCE DATE

All MCO contracts must provide for services to be delivered in compliance with MH/SUD parity requirements at 42 CFR part 438 subpart K, when applicable.[34] Contracts with MCOs offering Medicaid State plan services to enrollees had to comply with parity requirements by the compliance date (October 2017).[35] MCOs may be subject to sanctions and civil monetary penalties if they misrepresent information provided to the State agency, do not comply with contract terms, or violate any State or Federal laws.[36]

[33] We noted that, after our audit period, the State agency followed up with the three selected MCOs and inquired about the high denial rates. Specifically, the State agency requested additional information about the high denial rates, and a description of the MCOs' planned actions to remedy these high denial rates.

[34] The relevant provisions regarding parity requirements from 42 CFR part 438 subpart K are 42 CFR §§ 438.905 and 438.910.

[35] 42 CFR § 438.930.

[36] New York's MCO Model Contract §§ 27.1, 27.2(a)(iv), (ix), and (x), and 27.3(a)(i).

During the State agency's most recent reviews of the MCOs' compliance with parity requirements, conducted during 2022 through 2024, two of the three selected MCOs continued to be noncompliant with MH/SUD parity requirements related to prior authorization—more than 6 years after the compliance date (October 2017). Specifically:

- The State agency's parity report indicated that one selected MCO failed to provide a sufficient comparative analysis and provided only "general statements of compliance" for prior authorization parity requirements. Specifically, the MCO's analyses addressing prior authorization for out-of-network inpatient and outpatient services were insufficient and incomplete. The corrective action plan developed by the State agency indicated that the MCO must document a sufficient comparative analysis that included identifying factors and evidentiary standards triggering prior authorization. In addition, the State agency required the MCO to revise its policies and procedures and improve its training and monitoring to ensure compliance with parity requirements. We determined that during our audit period, the MCO's practices as written complied with parity requirements related to prior authorization for MH/SUD services. However, the MCO did not maintain data to support its in-operation analysis for CY 2023; therefore, we were unable to compare denial rates for MH/SUD and M/S services.

- The State agency determined the other selected MCO to be partially compliant. Specifically, the State agency noted that the MCO corrected prior issues of noncompliance related to prior authorization for inpatient services and prescription drugs. However, the State agency noted that the MCO failed to demonstrate compliance for prior authorization related to outpatient services. The State agency's corrective action plan stated that the MCO must update in-operation compliance regarding prior authorization for outpatient services. We determined that the MCO did not maintain data to support its in-operation analysis for CY 2023 and we were unable to compare denial rates for MH/SUD and M/S services.

Although the State agency determined that the remaining selected MCO complied with parity requirements regarding prior authorization, we determined that the MCO's denial rate related to prior authorization for outpatient out-of-network mental health services was substantially higher than the denial rate for outpatient out-of-network M/S services.[37]

These issues of noncompliance still existed as of the end of our audit period because the State agency did not effectively utilize its right to impose available corrective action measures on MCOs that consistently have not met parity requirements. As a result, since these MCOs still have not demonstrated compliance with these requirements more than 6 years after the October 2017 compliance date, access to MH/SUD services for their enrollees may have been limited compared to access for M/S services. This may have increased the risk that Medicaid enrollees would encounter delays or barriers to needed MH/SUD treatment.

[37] A higher rate of denial for MH/SUD services does not necessarily mean noncompliance with parity requirements. Rather, it could be an indicator of potential noncompliance.

CONCLUSION

The State agency developed a parity compliance program that entailed a multi-year strategy to ensure that MCO-imposed limits on MH/SUD services are comparable to and no more stringently applied than those for M/S services. As part of its compliance program, the State agency provides technical guidance, including training webinars and written communication, to MCOs. However, we determined that the State agency did not adequately ensure that all the selected Medicaid MCOs complied with parity requirements related to prior authorization for MH/SUD services during our audit period. We found that (1) the State agency did not obtain or review the selected MCOs' comparative analyses; (2) the State agency did not always follow up with the selected MCOs when the denial rates for MH/SUD services detailed in their claims denial summary reports exceeded the State-established threshold; and (3) the selected MCOs continued to be noncompliant with MH/SUD parity requirements related to prior authorization more than 6 years after the compliance date.[38]

RECOMMENDATIONS

- We recommend that the State agency improve its policies and procedures for monitoring MCOs' compliance with parity requirements, including: (1) collecting and reviewing supporting data from MCOs for their comparative analyses; (2) providing clear, uniform guidance to MCOs regarding maintaining and providing accurate and consistent data to support and complete their comparative analyses, and correcting issues of noncompliance with parity requirements; and (3) establishing a formal, written policy that includes its denial rate threshold and indicates what actions MCOs are to take when denial rates exceed the threshold.

- We recommend that the State agency continue to utilize available corrective action measures, such as imposing sanctions, to address instances in which MCOs do not consistently meet parity requirements related to prior authorization.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency did not indicate concurrence or nonconcurrence with our recommendations but described steps it has taken or plans to take to address them. The State agency detailed several of its oversight activities, including monitoring MCO utilization management practices, reviewing denial rates, issuing citations, and requiring MCOs to maintain an internal parity compliance program. The State agency acknowledged that, even with these frameworks in place, MCOs in New York have continued to exhibit parity violations related to prior authorization. The State agency's comments are included in their entirety as Appendix B.

[38] In the State agency's most recent parity report (dated March 2022), it identified prior authorization as a significant area of NQTL noncompliance by its MCOs and described actions it planned to take to address it.

STATE AGENCY COMMENTS

Regarding our first recommendation, the State agency indicated it will take steps to enhance its policies and procedures for monitoring MCO compliance with parity requirements to ensure MCOs maintain, produce, and can reproduce accurate and consistent data to support their comparative analyses. The State agency indicated that it does not believe it is responsible for MCOs' inability to complete comparative analyses due to a lack of clear and comprehensive State guidance, which included technical assistance (including access to the State agency's contractor for parity compliance), templates for conducting comparative analyses, and individualized feedback on MCOs' initial NQTL workbook submissions. However, according to the State agency, since our audit identified that selected MCOs were unable to reproduce the data previously provided to the State agency to support their comparative analyses, it will emphasize in its future instructions and directives for MCOs to maintain these data.

The State agency also indicated that its parity compliance program exceeded regulatory requirements. Specifically, the State agency explained that it conducts surveys and evaluations of MCOs related to multiple NQTLs, including prior authorization, and is currently conducting a follow-up survey on operational parity compliance. The State agency detailed that these surveys require MCOs to provide supporting data and documentation for the NQTLs under review, which included the MCOs' policies and procedures, sample claims, list of services requiring prior authorization, and comparative analyses.

Regarding our second recommendation, the State agency indicated it will continue to utilize available corrective action measures, such as imposing sanctions, to address and deter parity noncompliance. The State agency noted that, as of July 2026, it issued 151 citations for parity violations and collected $1.7 million in sanctions. Finally, the State agency indicated that it appreciates the importance of accountability and reaffirmed its commitment to applying sanctions and other enforcement measures to address improper prior authorization practices and issues involving inadequate data maintenance.

OFFICE OF INSPECTOR GENERAL RESPONSE

We commend the State agency on the actions it has taken and plans to take to address our recommendations, including enhancing policies and procedures for monitoring MCO compliance with parity requirements and to continue to utilize corrective action measures for MCOs that demonstrate noncompliance with parity requirements. While we acknowledge that the State agency has a comprehensive parity compliance program, our audit identified deficiencies in MCO compliance with MH/SUD parity requirements related to prior authorization. Therefore, we maintain that our recommendations are valid.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We selected a nonstatistical sample of 3 of the 14 MCOs in New York with contracts to provide access to MH/SUD services. These selected MCOs covered approximately 42-percent of New York's Medicaid managed care enrollees. Our audit period included MH/SUD services provided to Medicaid enrollees during CY 2023, which was part of the most recent 5-year MCO contract period at the beginning of our audit. We selected the MCOs based on an analysis of risk factors that included: (1) prior authorization NQTL noncompliance identified in multiple benefit classifications (e.g., inpatient, outpatient, and prescription drugs),[39] (2) number of enrollees served by the MCO,[40] and (3) the MCOs' use of subcontractors for claims adjudication and denials of service.[41]

We reviewed the State agency's oversight of its MCOs' compliance with parity requirements for MH/SUD services related to prior authorization of those services compared to M/S services in the same benefit classifications. To determine whether MCOs may have imposed limits on certain MH/SUD services requiring prior authorization that were not comparable to, or more restrictive than those applied to M/S services in the same classifications, we reviewed the selected MCOs' related policies and practices as written and in-operation.

We did not review the overall internal control structure of the State agency or the MCOs. Rather we limited our review of internal controls to those applicable to our objective. Specifically, we reviewed the State agency's and selected MCOs' policies and procedures for prior authorization requirements, denial of claims, and ongoing compliance with MH/SUD parity requirements.

We conducted our audit work from May 2024 through May 2026.

METHODOLOGY

We took the following steps to accomplish our objective:

- Reviewed applicable Federal and State laws, regulations, and guidance
- Met with State agency officials to gain an understanding of their oversight policies and procedures to ensure MCOs compliance with parity requirements

[39] We obtained this information from the State agency's parity report, dated March 2022.

[40] We obtained enrollment data from the State agency.

[41] See footnote 13.

- Obtained enrollment data from the State agency for each of its MCOs

- Reviewed the State agency's analyses of MCO parity compliance and its parity reports[42] to determine whether the analyses identified issues of noncompliance with parity requirements, and if the State agency or MCOs took action to address any issues of noncompliance

- Selected a nonstatistical sample of three MCOs for review based on an analysis of risk factors

- Met with the selected MCOs to:

    - gain an understanding of the MCOs' policies for providing MH/SUD benefits to enrollees, specifically for services that require prior authorization

    - review benefit handbooks and other plan records to determine the MCOs' practices as written for providing MH/SUD and M/S benefits that require prior authorization

    - obtain claims denial data and associated MCO records for CY 2023 to review rates of denial for MH/SUD and M/S services requiring prior authorization

    - obtain their comparative analyses and supporting data, if available, and

    - reconcile claims denial data to MCOs' denial summaries provided to the State agency

- Discussed the results of our audit with State agency officials

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[42] The parity reports evaluated and documented compliance and identified potential parity issues that required corrective action. The State agency prepared these reports to comply with CMS's final rule (81 Fed. Reg. 18390 (Mar. 30, 2016)).

APPENDIX B: STATE AGENCY COMMENTS

NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

July 13, 2026

Jennifer Webb
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: A-02-24-01011

Dear Jennifer Webb:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report A-02-24-01011 entitled, "New York Did Not Ensure That Selected Medicaid Managed Care Organizations Complied With Mental Health and Substance Use Disorder Parity Requirements Related to Prior Authorization"

Thank you for the opportunity to comment.

Sincerely,

Johanne E Morne

Johanne E. Morne, M.S.
Executive Deputy Commissioner

Enclosure

cc: Melissa Fiore
Amir Bassiri
Jacqueline McGovern
Jennifer Danz
James Dematteo
James Cataldo
Brian Kiernan
Timothy Brown
Amber Gentile
Michael Lewandowski
OHIP Audit
DOH Audit

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New York State Department of Health
Comments on the Department of Health and Human Services Office of Inspector General Draft Audit Report A-02-24-01011 entitled, "New York Did Not Ensure That Selected Medicaid Managed Care Organizations Complied With Mental Health and Substance Use Disorder Parity Requirements Related to Prior Authorization"

The following are the New York State Department of Health's (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-24-01011 entitled, "New York Did Not Ensure That Selected Medicaid Managed Care Organizations Complied With Mental Health and Substance Use Disorder Parity Requirements Related to Prior Authorization."

General Comments

The Department appreciates the opportunity to address how it has proactively worked to remove insurance barriers and improve access to mental health and substance use disorder services in both Medicaid and private insurance coverage. The Department enacted parity legislation exceeding federal standards in 2006 (NYS Ch. 748 (2006) "Timothy's Law"), prior to the enactment of the Mental Health Parity and Addiction Equity Act (MHPAEA). Following enactment of Timothy's Law in 2006, the Department has continued to expand mental health and addiction coverage protections. Current law expressly prohibits prior authorization requirements for in-network inpatient mental health services and inpatient and outpatient addiction services.[1] Through provisions in its contract with Medicaid Managed Care Organizations (MCOs), the Department also prohibits plans from conducting prior authorization for many outpatient mental health services, including clinic services and specialty services for children and youth for a predetermined number of visits.[2] New York State law also requires the State mental health and addiction agencies (Office of Mental Health and Office of Addiction Services and Supports) review and approve all medical necessity criteria that the plans use to perform any permitted utilization management activities. For addiction services, plans must use the State's own developed criteria called the NYS LOCADTR 3.0.[3]

Notwithstanding these legal restrictions on utilization management practices, the Department has closely monitored MCO utilization management practices for mental health and substance use disorder services since 2015, when the Department began transitioning mental health services for the majority of Medicaid beneficiaries into managed care. Early research at the New York State Office of Mental Health confirmed that systemwide clinical denial rates for mental health services were less than 2% in 2017-2018.[4] As demonstrated during the OIG's audit, the State has continued to require plans submit information regarding denial rates for mental health services to enable timely remediation of issues resulting in inappropriate claim denials. The Department has issued over 50 citations to MCOs regarding excessive administrative denials for behavioral health services. These efforts supplement and reinforce our parity-specific compliance activities, which are further detailed herein.

The Department also promulgated regulations in 2020 requiring MCOs to maintain internal parity compliance programs. The regulations define "improper practices" which must be

[1] NYS Insurance Law §§ 4303(g)(8), 4303(k), 4303(l)(5), 4303(l-1), and 4303(l-2)
[2] "Utilization Management Guidance," available at https://omh.ny.gov/omhweb/bho/policy-guidance.html
[3] NYS Ins. Law §§ 4902(1)(i), (j) and NYS Public Health Law §§ 4902(a)(9), (12)
[4] https://openurl.ebsco.com/EPDB%3Agcd%3A14%3A4957822/detailv2?sid=ebsco%3Aplink%3Ascholar&id=ebsco%3Agcd%3A155169705&crl=c&link_origin=scholar.google.com

remediated within 60 days and reported to State regulators, affected beneficiaries, as well as publicly to deter noncompliance. NYS defined one such improper practice prohibiting plans from imposing prior authorization requirements on a higher percentage of mental health or substance use disorder benefits as compared to medical or surgical benefits. These regulations promote parity compliance with respect to prior authorization for both in and out of network coverage in Medicaid managed care.[5]

The State acknowledges that despite its legal and regulatory compliance framework, enacted prior to and during the MHPAEA compliance period for Medicaid managed care, MCOs in the State of New York have continued violations with respect to prior authorization. While we have adopted a robust compendium of guidance and routinely conduct comprehensive examinations of parity compliance that has continued to exceed regulatory requirements, we appreciate the OIG's attention to this important matter in which New York has a strong record of activity over the past decade.

Recommendation #1

We recommend that the State agency improve its policies and procedures for monitoring MCOs' compliance with parity requirements, including: (1) collecting and reviewing supporting data from MCOs for their comparative analyses; (2) providing clear, uniform guidance to MCOs regarding maintaining and providing accurate and consistent data to support and complete their comparative analyses, and correcting issues of noncompliance with parity requirements; and (3) establishing a formal, written policy that includes its denial rate threshold and indicates what actions MCOs are to take when denial rates exceed the threshold.

Response #1

The Department appreciates OIG's partnership and will take steps to enhance our robust policies and procedures for monitoring MCO compliance with parity requirements. These improvements focus on ensuring MCOs maintain, produce, and can reproduce accurate and consistent data to support their comparative analyses for nonquantitative treatment limitations (NQTLs).

While there is always room for improvement with respect to policies and procedures providing clear, uniform guidance to MCOs regarding the data MCOs use to support their comparative analyses, please note that the Department has provided extensive technical assistance to all MCOs before and throughout the focused survey process through which the State assessed MCO parity compliance. This included written and publicly posted guidance, webinars, published federal reporting guidelines, a State-developed Parity Compliance Toolkit, individual technical assistance sessions, and template workbooks to assess parity compliance for nonquantitative treatment limitations (NQTLs). The templates included step-by-step instructions as well as examples of what kind of information needed to be included in each step of the analysis. In addition to the written materials linked below, the State has also consistently provided MCOs with individual access, upon request, to the State's contractor for parity compliance for technical assistance.

Since 2017, the Department has continued to utilize an evaluation process to monitor parity compliance that is informed by, and consistent with, the Centers for Medicare & Medicaid Services (CMS) "Parity Compliance Toolkit Applying Mental Health and Substance Use

[5] 10 NYCRR Part 98-4.4

Disorder Parity Requirements to Medicaid and Children's Health Insurance Programs" and the "Self-Compliance Tool for Compliance with MHPAEA" developed by the United States Departments of Labor, Health and Human Services and Treasury, updated October 2020. The Department has maintained a consistent evaluation and reporting process to ensure MCOs remain informed and have the tools and knowledge to effectively demonstrate parity compliance through the templated workbooks and requested supporting documentation and data. As such, the Department does not accept the premise that it bears any responsibility for MCOs' inability to complete comparative analyses due to a lack of clear and comprehensive State guidance. Further, the Department provided clear guidance to MCOs regarding correcting issues of noncompliance through corrective action plans with the MCOs.

In addition, the Department also issued MCOs individualized feedback on initial NQTL workbook submissions. During the review of the initial survey submissions, the Department identified that the quality of MCO submitted workbooks did not enable an appropriate evaluation of parity compliance and that, in general, MCOs were not actively analyzing all NQTLs for parity compliance. During this initial phase, the Department also issued four citations to four MCOs for failing to provide a submission to the Department. The Department provided further technical assistance, including individualized written feedback, and requested the resubmission of NQTL workbooks.

The Department's comprehensive examination of parity compliance has continued to exceed regulatory requirements. The Department remains committed to the review and evaluation of 19 distinct NQTLs, including prior authorization, and is currently conducting its second follow-up survey to confirm and ensure parity compliance in operation. These surveys require MCOs to provide supporting data and documentation for the NQTLs and demonstrate through their comparative analyses comparability and no more stringent application of the NQTL to behavioral health services. Supporting data and documentation requests are tailored to each NQTL. For example, requested data for prior authorization includes, but is not limited to, the number of prior authorizations requested, number of prior authorizations approved, number of prior authorizations denied based on medical necessity determinations, and percentage of prior authorization claims that were auto-adjudicated, while supporting documentation includes policies and procedures, sample claims, list of services requiring prior authorization, amongst others. Noting that the selected MCOs identified by OIG were unable to reproduce the data previously provided to the State for the OIG during the course of this audit and to address this recommendation, the Department will emphasize in its instructions and directives for MCOs to maintain the data associated with the data request.

Note all guidance and template materials provided to all MCOs are available in the State's *Compliance with the Mental Health Parity and Addiction Equity Act Comprehensive Report: New York Medicaid Managed Care, Alternative Benefit Plan, and Children's Health Insurance Program* report (https://omh.ny.gov/omhweb/bho/docs/nys-mhpaea-report.pdf), including:

1. NQTL Spreadsheet Guidance, including examples of how to complete the NQTL template: (pg. 65 and https://omh.ny.gov/omhweb/bho/docs/nqtl-spreadsheet-guidance.pdf)
2. Reporting Instructions, including explanations of each step of the NQTL analysis: (pg. 72 and https://omh.ny.gov/omhweb/bho/docs/medicaid-managed-care-nqtl-reporting-instructions.pdf)
3. Technical Assistance Webinar Slides (pg. 75)

4. Phase III Reporting Guidance (pg. 79)
5. NYS OMH Parity Toolkit (pg. 80 and https://omh.ny.gov/omhweb/bho/parity-compliance-toolkit.pdf)
6. MHPAEA Testing Workbooks for Nonquantitative Treatment Limitations (pg. 85 and https://omh.ny.gov/omhweb/bho/docs/blank-phase-i-nqtl-workbook-template.xlsx, Phase 1)

Recommendation #2

We recommend that the State agency continue to utilize available corrective action measures, such as imposing sanctions, to address instances in which MCOs do not consistently meet parity requirements related to prior authorization.

Response #2

As of this writing, the Department has issued 151 total citations for parity violations and collected $1.7 million in sanctions. The Department routinely utilizes pathways to address corrective action measures and commits to continuing to do so to continue addressing parity compliance in Medicaid Managed Care with respect to NQTLs, including prior authorization. The Department appreciates the importance of accountability and will continue to investigate, remediate, and utilize corrective action measures to address instances in which MCOs report higher rates of claims denials for behavioral health services due to lack of prior authorization. Lastly, the Department is always interested in mechanisms to hold MCOs accountable to their core function of serving New Yorkers, including MCO sanctions to address and deter parity noncompliance and failure to maintain and verify data requested by the Department.

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