

Mental Health Parity: Don't Take "No" For An Answer

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Disability Rights California

EACH
MIND
MATTERS

California's Mental
Health Movement



What this training will cover

I. DRC

II. Stigma and Discrimination

III. Overview of mental health parity under state and federal laws

IV. Enforcement agencies

V. Appeals



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About Disability Rights California (DRC)



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About DRC

- California's Protection & Advocacy System
- Mission Statement:
Advocate, educate, investigate, and litigate to advance and protect the rights of Californians with disabilities.



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DRC Services

General DRC services include:

- Intake & Referral
- Self-help materials and other publications
- Training
- Public policy & legislative advocacy
- State hospital patients' rights advocates



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DRC Services

- Clients' rights advocates for clients of regional centers
- Legal counsel & advice
- Representation of individuals with disabilities in priority areas
- Systemic litigation



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Stigma and Discrimination



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What is “Stigma”

Webster’s dictionary defines stigma as a set of negative and often unfair beliefs that a society or group of people have about something.

Types of stigma:

1. Public Stigma
2. Institutional Stigma
3. Self Stigma

What is “Discrimination”?

Discrimination occurs when people act on stigma in ways that deprive others of their rights and life opportunities.

Unjust deprivation of rights and opportunities due to stigma includes

- Exclusion or marginalization of people
- Denial of equal health / insurance benefit
- Less chance of full participation in life

Overview of Mental Health Parity Laws



Why focus on parity?

Historical lack of equal coverage

- fewer types of services (e.g. no intermediate care)
- more restrictions on accessing treatment (e.g. stricter prior approval requirements)
- higher costs for treatment (e.g. copays)

Parity Means Equality

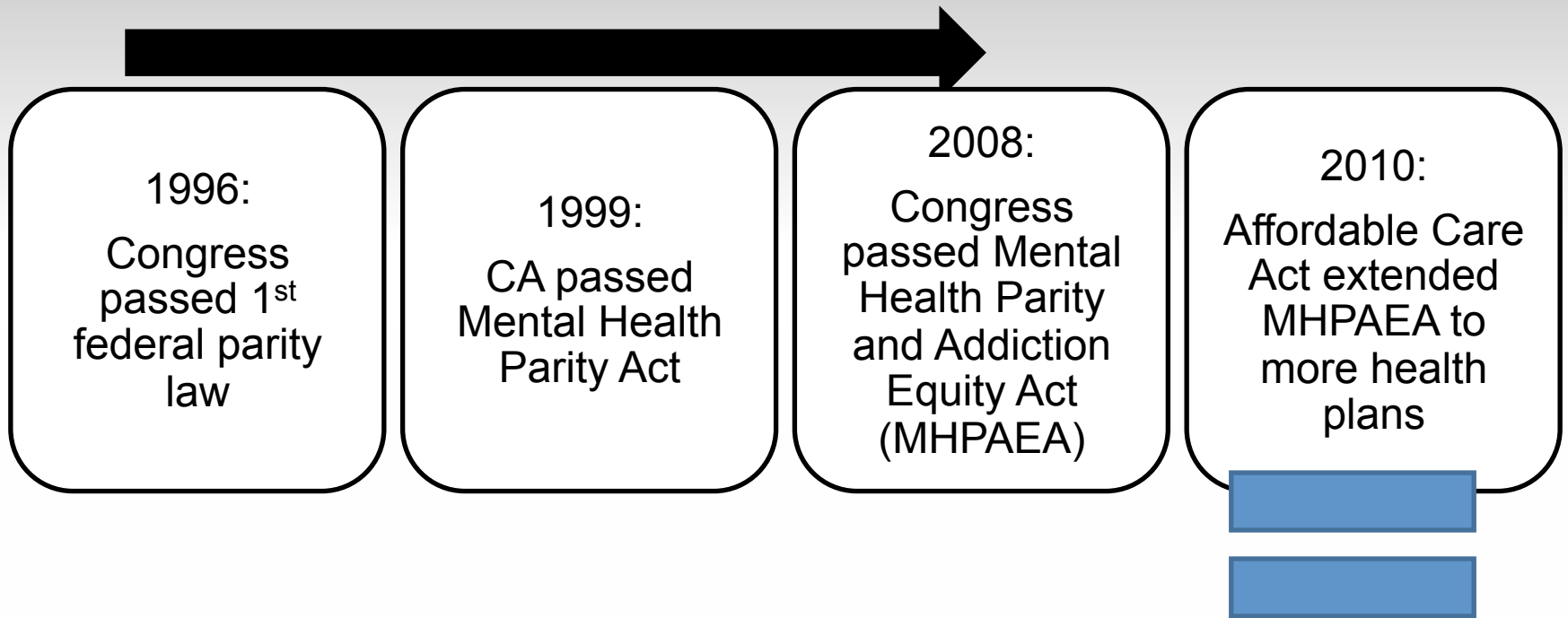
Mental health parity laws:

- created in response to unequal coverage and discrimination
- require health insurance plans to provide equal coverage for physical and mental health (including substance abuse disorders)



Image from www.nourishcoaching.com.au

Moving Towards Parity





CALIFORNIA PARITY LAW

CA Mental Health Parity Act

Applies to:

Groups of people:

- adults who have “severe mental illnesses”
- children who have “severe emotional disturbances”

Types of plans:

- health plans that are regulated by the state (individual and small group plans; “fully insured” large group plans)

CA Mental Health Parity Act

Does not apply to:

Types of plans:

- “self-funded” plans (many large employers and unions offer these type of plans)
- Medicare
- Medi-Cal
- Veterans Administration health plans

CA Mental Health Parity Act

Covered conditions (for adults):

- Major depression
- Bipolar disorder
- Schizophrenia
- Schizoaffective disorder
- Anorexia
- Bulimia
- Panic disorder
- Obsessive-compulsive disorder
- Autism or pervasive developmental disorder

CA Mental Health Parity Act

Severe emotional disturbances (for children):

1. has one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders *and*
2. Meets the criteria in W&I Code section 5600.3(a)(2)

CA Mental Health Parity Act

Coverage mandate: **All** “medically necessary” treatment for the listed “severe mental illnesses” must be covered under the same terms applied to physical illnesses.

CA Mental Health Parity Act

Coverage must be equal in terms of:

- Maximum lifetime benefits
- Copayments
- Deductibles

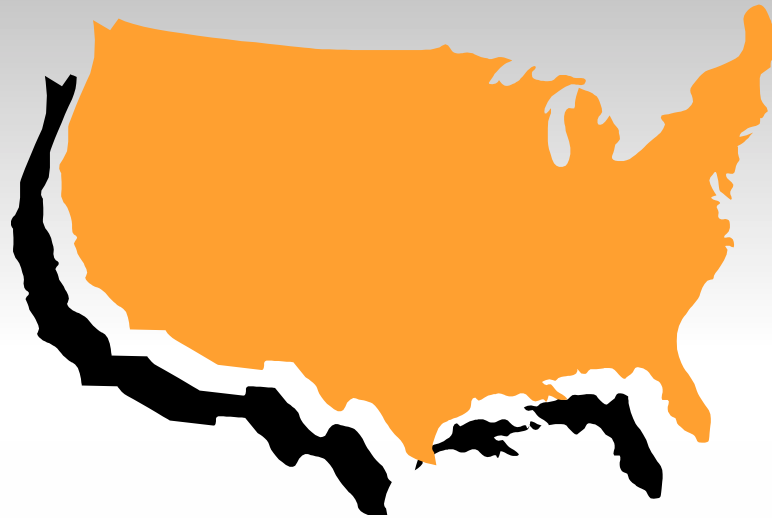
Coverage includes:

- Outpatient services
- Inpatient services
- Partial hospital services
- Prescription drugs* (*if the plan covers any prescription drugs)

CA Mental Health Parity Act

Recent case law

- Harlick v. Blue Shield of California, 686 F.3 699 (2012).
- Burton v. Blue Shield of California Life & Health Insurance Co., 2012 WL 242841 (C.D.Cal.)(2012).
- Rea v. Blue Shield of California, 2014 WL 2584433, Cal.App. 2 Dist., June 10, 2014.



FEDERAL PARITY LAW

Affordable Care Act (ACA)

ACA creates Essential Health Benefits.

- There are now 10 categories of required health coverage for Qualified Health Plans

- 1 of the 10 categories is “**mental health and substance use disorder services**”

Must comply with federal parity laws

MHPAEA

MHPAEA=Mental Health Parity and Addiction Equity Act (2008)

Applies to:

Types of plans:

- employer-based plans (with more than 50 members)
- Qualified Health Plans - plans offered on the Exchange (i.e. Covered California) and the same plans offered outside of the Exchange
- all individual plans

MHPAEA

Applies to: (con't)

- most small group plans (including all plans subject to the California mental health parity law)
- Medi-Cal Managed Care Plans
- Medi-Cal Alternative Benefit Plans (Affordable Care Act Medi-Cal expansion)

MHPAEA

Does not apply to:

Types of plans:

- grandfathered* small group plans (plans from before March 23, 2010)
- Medicare Part A and B
- Veteran's Administration health plans
- Tricare

MHPAEA

If a health plan offers any **mental health** or **substance use** benefits, the plan must provide these benefits **at parity** to medical and surgical benefits. Unlike California law, there is no coverage mandate. However, if another law, such as the California law, mandates coverage, federal parity requirements apply.

Six categories of benefits (benefits must be equal in each category for physical and mental health):

1. Inpatient; in-network
2. Inpatient; out-of-network
3. Outpatient; in-network
4. Outpatient; out-of-network
5. Emergency care
6. Prescription drugs

MHPAEA

Quantitative limits: Limits that have some numerical value

1. Copays
2. Deductibles
3. How often one gets care
4. Number of visits
5. Days of treatment

MHPAEA

Non-Quantitative limits – limitations that are not based on numbers

1. Formulary design
2. Utilization review
3. Step therapy
4. Geographic Proximity
5. Timely access to care

Medi-Cal Expansion

As part of the ACA, Medi-Cal coverage of SUD and MH benefits were expanded.

Starting on January 1, 2014, Medi-Cal beneficiaries will receive expanded SUD services through county alcohol and drug programs, and MH services through managed care plans.



ENFORCEMENT AND APPEALS

Health care service plans v. health insurance

- Health care service plans are prepaid health plans, which contract to provide services when needed. HMOs are health care service plans. Regulated by Department of Managed Health Care.
- Health insurance is a type of indemnity insurance, which means that reimbursement for health care costs is on a “fee for service” basis. Regulated by California Department of Insurance, except for Blue Cross and Blue Shield PPOs. (Blue Cross and Blue Shield PPOs are regulated by DMHC.)

Other enforcement agencies

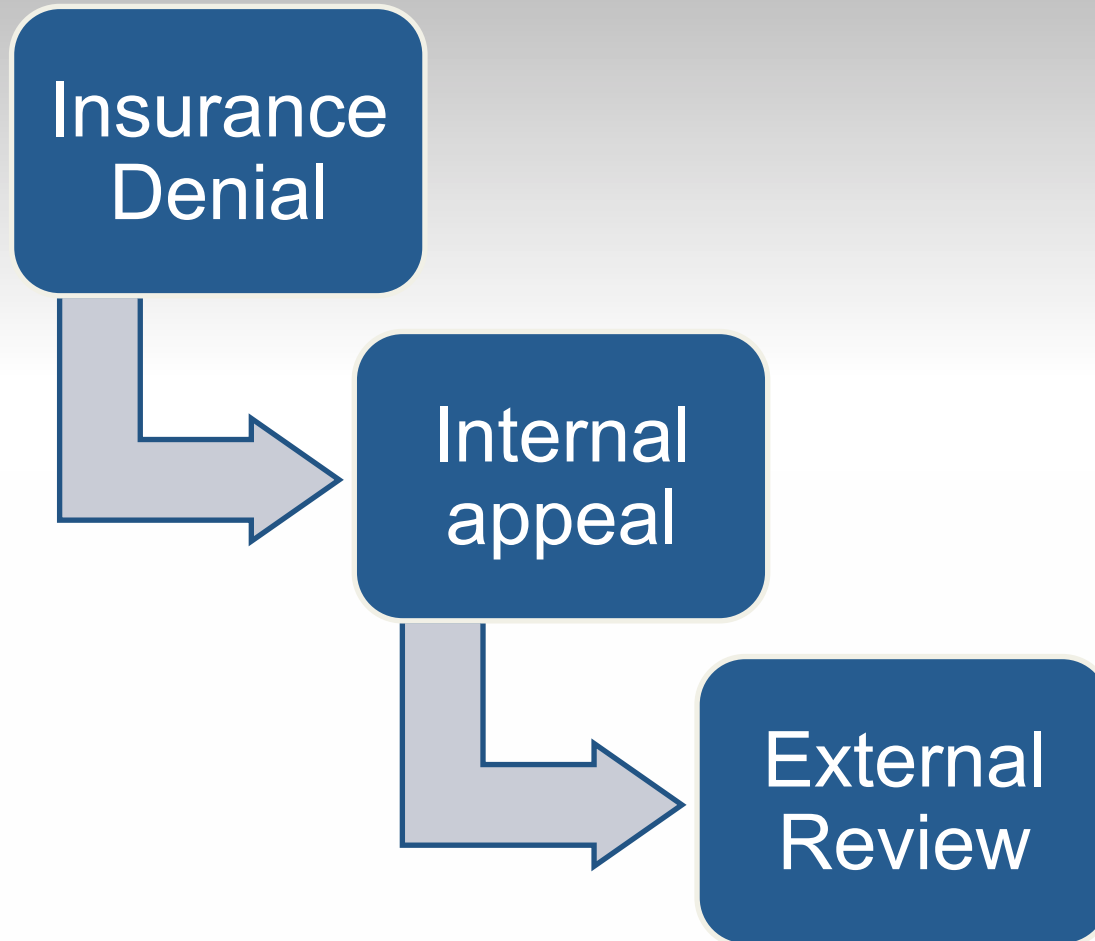
Responsibility of

1. IRS (Internal Revenue Service within Department of Treasury)
2. EBSA (Employee Benefits Security Administration within Department of Labor)
3. CMS (Centers for Medicare and Medicaid Services)



APPEALS PROCESS

Appeals Process



Internal Appeals

Information to include on your written appeal:

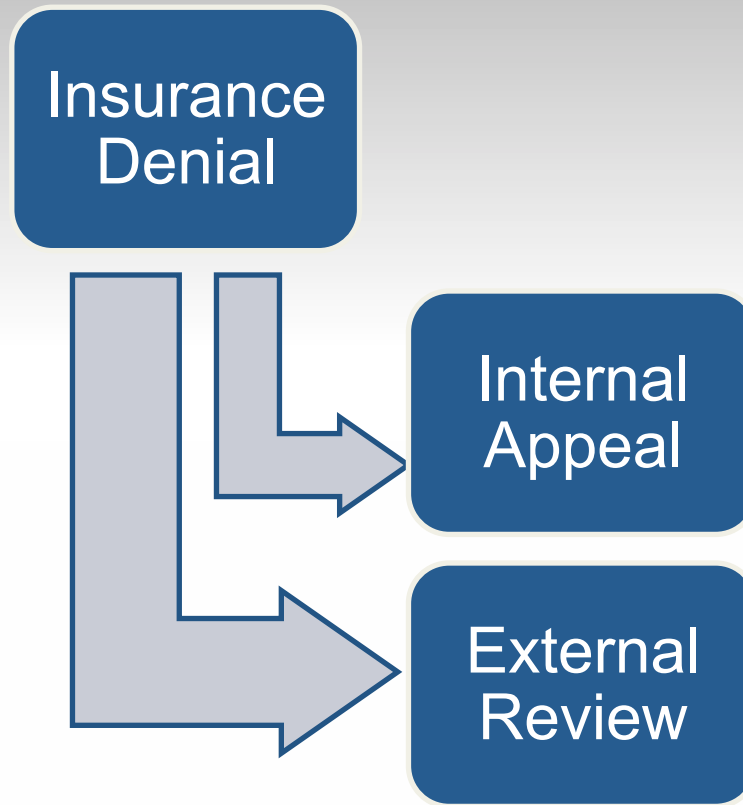
- name
- claim number
- insurance ID number
- your contact information
- your provider's name
- information supporting why the service should be covered

External Review

You can apply for an IMR if your Health care services plan denies, changes, or delays a service or treatment because:

- The plan determines it is not medically necessary;
- The plan will not cover an experimental or investigational treatment for a serious medical condition;
- The plan will not pay for emergency or urgent medical services that you have already received.

Appeals Process: Urgent Health Situations

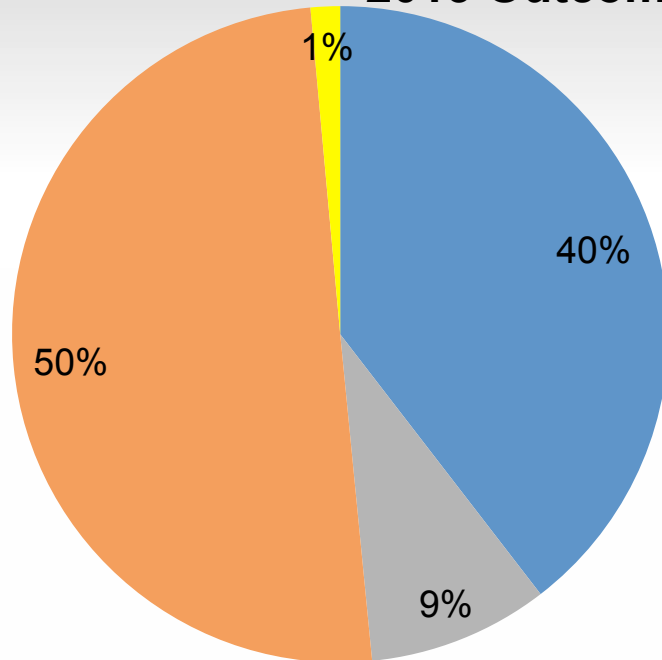


Tips for Appeals

- Keep asking and appealing—denials frequently get overturned at every stage of the appeal process
- Keep your appeals factual and brief
- Meet all deadlines
- Keep detailed records
- Ask for help from your health providers

External Review Outcomes

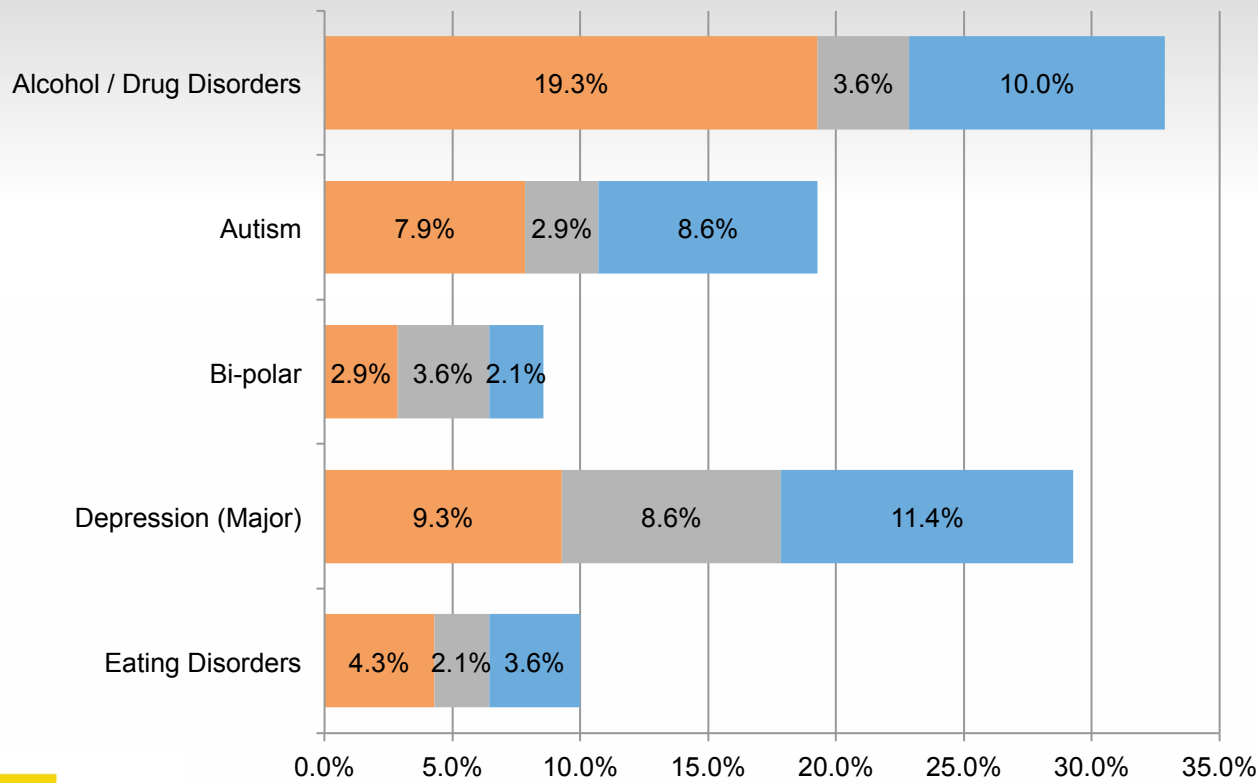
California Department of Insurance (CDI) Independent Medical Review (IMR) 2013 Outcomes (Total: 483)



- Denial Overturned by IMR
- Denial Partially Overturned by IMR
- Denial Upheld by IMR
- Complaint Withdrawn

Data compiled from: <http://www.insurance.ca.gov/01-consumers/101-help/Independent-Medical-Review-Program.cfm>

Overturn rates for the five most common mental health illnesses CDI (2013)



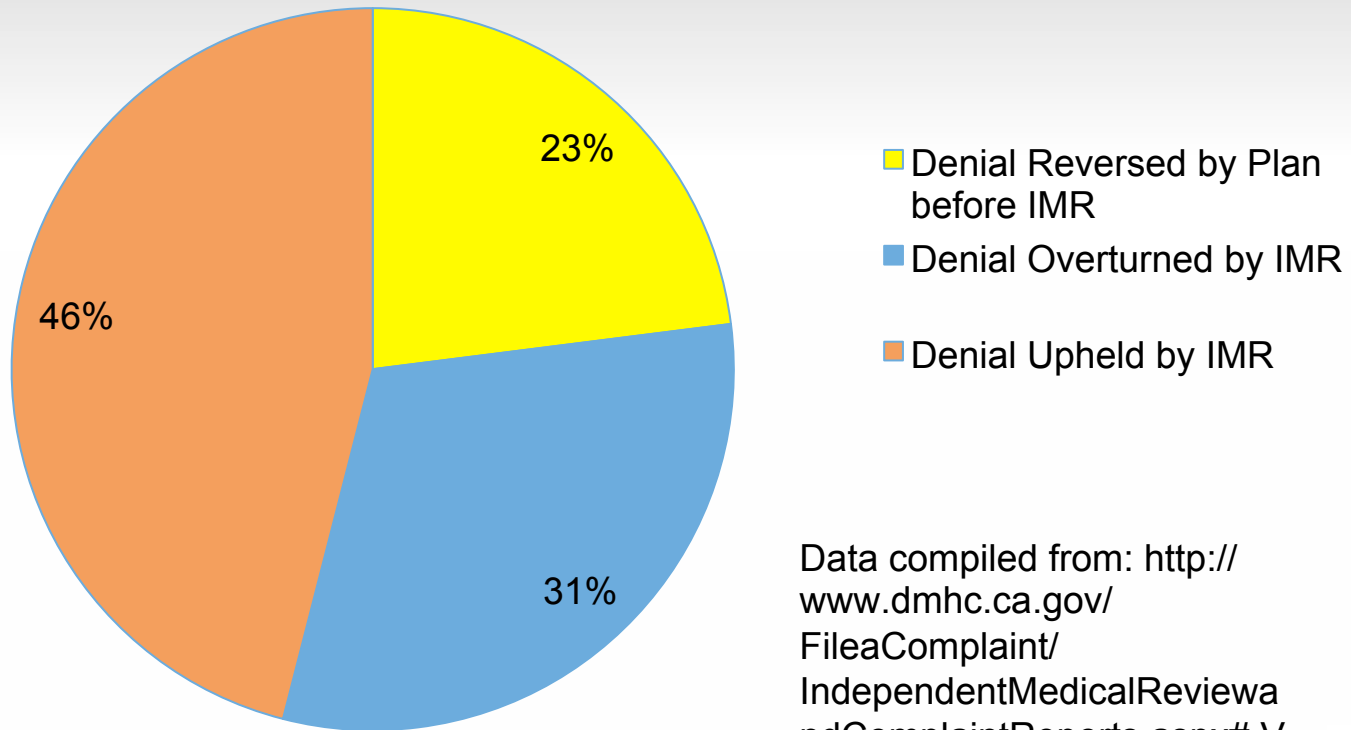
- Denial Upheld by IMR
- Denial Partially Overturned by IMR
- Denial Overturned by IMR

The rates are based on the percentage from the grand total, not the individual diagnosis

Data compiled from: <http://www.insurance.ca.gov/01-consumers/101-help/Independent-Medical->

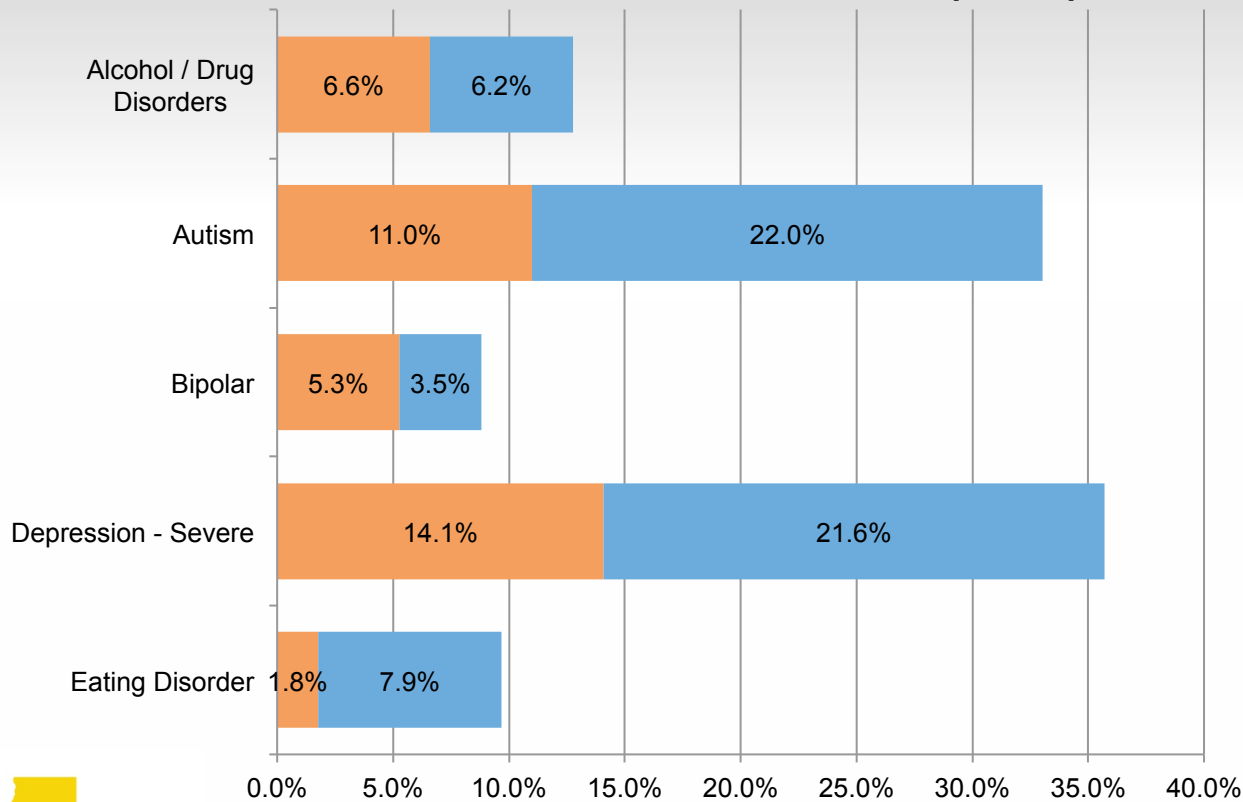
External Review Outcomes

Department of Managed Health Care (DMHC) Independent Medical Review (IMR) 2013 Outcomes (Total: 1547)



Data compiled from: <http://www.dmhc.ca.gov/FileaComplaint/IndependentMedicalReviewandComplaintReports.aspx#.V>

Overturn rates for the most common mental health illnesses DMHC (2013)



- Denial Upheld by IMR
- Denial Overtured by IMR

The rates are based on the percentage from the grand total, not the individual diagnosis

Data compiled from: <http://www.dmhc.ca.gov/FileaComplaint/IndependentMedicalReviewComplaintReport>

Disclaimer

This area of the law is rapidly developing. These provisions are not intended to include all federal and state laws, regulations, policy directives or other relevant references. Further legal research is required. The intent here is to provide a general overview of these topics.

MH/SUD Resources

CaMHSA: <http://calmhsa.org/>

Disability Rights CA: Toll Free 800.776.5746 / TTY 800.719.5798
<http://www.disabilityrightsca.org/>

Each Mind Matters: <http://www.eachmindmatters.org/>

CaIMHSA

The California Mental Health Services Authority (CaIMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CaIMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.

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