



Senator Scott Wiener, 11th Senate District

Senate Bill 855 – Mental Health as a Medical Necessity

SUMMARY

Senate Bill 855 strengthens the California Parity Act to require that insurers cover medically necessary treatment for all mental health and substance use disorders (MH/SUD) to ensure individuals receive the comprehensive care they need to treat their underlying conditions.

BACKGROUND

The California Parity Act was a groundbreaking piece of legislation enacted in 1999. It requires that, for nine mental illnesses and serious emotional disturbances of a child, health plans cover them as medically necessary treatment. Parity in health care is fundamentally grounded in ensuring mental health and substance use disorders are treated at the same level, frequency, and availability as other medical and surgical services. Unfortunately there is a major flaw in the law: the California Parity Act applies neither to all mental health conditions nor to substance use disorders. This omission leaves out the lion's share of mental health conditions.

Additionally, the lack of a definition for “medically necessary treatment” has created ambiguity. While several court decisions – *Harlick v. Blue Shield of California* and *Rea v. Blue Shield of California* – have interpreted this phrase broadly, there remains a need to establish a definition with the best clinical standards to ensure Californians are able to obtain the mental health and substance use treatment services they need.

Wit v. United Behavioral Health found that United Behavioral Health created deeply flawed level of care criteria that wrongly denied needed coverage. The court held that United Behavioral Health's criteria were inconsistent with generally accepted standards of mental health and addiction care. The use of such flawed proprietary criteria is common. In many cases, these criteria have not been externally validated, and are not publicly available or even fully accessible to patients.

ISSUE

California is currently experiencing a mental health and substance use crisis, which has been exacerbated by the COVID-19 pandemic. According to the Centers for Disease Control, COVID-19 is disproportionately affecting poor and vulnerable populations. Patients with serious mental illnesses or substance use disorders will be among the hardest hit demographics in the wake of the virus. The negative psychological and social dimensions of this epidemic caused by mandated social distancing, unemployment and financial stress will be felt by Californians for years to come. Given that employment in California may not return to its previous peak levels until late 2022, we need to prepare to help individuals deal with the long-term mental health impacts of the crisis.

It's also likely — given increased stress levels, isolation and loss — that people who have never experienced mental illness or substance use disorder will face these challenges for the first time. As California will face an increased need for MH/SUD services, existing access for MH/SUD services has proven to be inadequate. As seen in *Wit v. United Behavioral Health*, Californians are denied coverage for treatment of their MH/SUD because it's deemed to not be medically necessary. These same insurers determine what MH/SUD treatment is medically necessary and the end-result leaves patients with inadequate access to effective care and forces patients to pay out-of-pocket or forgo care all together.

Expanding access to MH/SUD services must be one of the highest priorities for California. Coverage for care should not be denied when it is medically necessary. Homelessness, housing, education and criminal justice challenges are exacerbated when our health care system doesn't provide adequate mental health and substance use disorder treatment services to those who desperately need it.

SOLUTION

Senate Bill 855 requires insurers to cover “medically necessary treatment” for all mental health and substance use disorders. It also defines medically necessary treatment and requires the medical necessity determinations be consistent with generally accepted standards of care. It also prohibits limiting benefits or coverage to short-term or acute treatment.

SB 855 requires plans, for level of care determinations, to use treatment criteria developed by the non-profit, clinical professional association of the relevant clinical specialty. It requires plans to meet requirements relating to the implementation and usage of these criteria. SB 855 also prohibits plans from denying medically necessary services on the basis that they should be or could be covered by a public entitlement program.

SUPPORT

- The Kennedy Forum (*Co-sponsor*)
- Steinberg Institute (*Co-sponsor*)
- Alkermes, Inc.
- American Foundation for Suicide Prevention
- Anaheim Lighthouse
- Angels at Risk
- APLA Health
- Association of Regional Service Agencies
- Autism Deserves Equal Coverage
- Board of Behavioral Sciences
- California Academy of Child and Adolescent Psychology
- California Academy of Physician Assistants
- California Access Coalition
- California Alliance of Child & Family Services
- California Association of Alcohol and Drug Program Executives, Inc. (CAADPE)
- California Association of Local Behavioral Health Boards and Commissions
- California Association of Marriage and Family Therapists (CAMFT)
- California Association of Public Hospitals and Health Systems
- California Association of Veteran Service Agencies (CAVSA)
- California Children’s Hospital Association
- California Children’s Trust

SUPPORT CONT.

- California Consortium of Addiction Programs and Professionals (CCAPP)
- California Council of Community Behavioral Health Agencies
- California Insurance Commissioner, Ricardo Lara
- California Judges Association
- California LGBTQ Health and Human Services Network
- California Narcotic Officers Association
- California Pan-Ethnic Health Network
- California Psychiatric Association
- California Psychological Association
- California State Association of Counties
- California State PTA
- California Society of Addiction Medicine
- Cal Voices
- Children Now
- City of San Jose
- City of Santa Monica
- Crestwood Behavioral Health Inc.
- Congress of California Seniors
- Consumer Attorneys of California
- County Behavioral Health Directors Association of California (CBHDA)
- Depression and Bipolar Support Alliance California
- Didi Hirsch Mental Health Services
- Disability Rights California
- Drug Policy Alliance
- Friends Committee on Legislation of California
- GLIDE
- Hathaway-Sycamores
- Health Access
- HealthRIGHT 360
- Helpline Youth Counseling Inc.
- Latino Coalition for a Healthy California
- Legal Action Center
- Los Angeles Board of Supervisors
- Los Angeles LGBT Center
- Los Angeles Reentry Partnership
- Mental Health America of California
- Mental Health America of Los Angeles
- Mental Health and Autism Insurance Project
- Mental Health Association of San Francisco

SUPPORT CONT.

- Mental Health Oversight and Accountability Commission (MHOAC)
- Momentum United
- National Association of Social Workers
- National Alliance on Mental Illness, California (NAMI-CA)
- NAMI Sonoma County
- NAMI Yolo County
- National Health Law Program
- National Center for Youth Law
- National Union of Healthcare Workers
- Orange County Recovery Collaboration
- Planned Parenthood Affiliates of California
- San Francisco AIDS Foundation
- SEIU California
- Shatterproof
- Sutter Health
- Western Center on Law and Poverty

FOR MORE INFORMATION

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