



## Senator Scott Wiener, 11<sup>th</sup> 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 restricts the interruption of a course of treatment initiated out of network due to network inadequacy if in-network services subsequently becomes available. 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
- American Psychological Association
- Anaheim Lighthouse
- Autism Deserves Equal Coverage
- California Academy of Physician Assistants
- California Access Coalition

- California Alliance of Child & Family Services
- California Association of Alcohol and Drug Program Executives, Inc.
- California Association of Local Behavioral Health Boards and Commissions
- California Association of Marriage and Family Therapists (CAMFT)
- California Consortium of Addiction Programs and Professionals (CCAPP)
- California Council of Community Behavioral Health Agencies
- CA Insurance Commissioner Ricardo Lara
- California Narcotic Officers Association
- California Pan-Ethnic Health Network
- California Psychiatric Association
- California State Association of Counties (CSAC)
- California State PTA
- California Society of Addiction Medicine
- Children Now
- City of San Jose
- Crestwood Behavioral Health Inc.
- Congress of California Seniors
- County Behavioral Health Directors Association of California (CBHDA)
- Depression and Bipolar Support Alliance California
- Disability Rights California
- Drug Policy Alliance
- Friends Committee on Legislation of CA
- GLIDE
- Health Access
- Helpline Youth Counseling Inc.
- Latino Coalition for a Healthy California
- Legal Action Center
- Los Angeles Board of Supervisors
- Los Angeles LGBT Center
- Mental Health America of California
- Mental Health and Autism Insurance Project
- Mental Health Association of San Francisco
- National Association of Social Workers, CA

- National Alliance on Mental Illness California (NAMI-CA)
- National Health Law Program
- National Center for Youth Law
- National Union of Healthcare Workers
- Orange County Recovery Collaboration
- Planned Parenthood Affiliates of California

- Service Employees International Union (SEIU) California
- Western Center on Law and Poverty

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**FOR MORE INFORMATION**

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**SB 855 (Wiener) FAQ**  
*As amended May 19, 2020*

**What is “mental health parity?”** Parity means “equal to.” Mental health parity means related services are delivered at the same cost, frequency, and availability as medical and surgical services. For example, one form of cost parity is imposing the same co-pay for an office visit with a mental health clinician as for one with a primary care physician.

**What is the California Mental Health Parity Act?** The 1999 act requires health insurers to provide medically-necessary treatment for nine severe mental illnesses: schizophrenia, schizoaffective disorder, major depression, panic disorder, obsessive compulsive disorder, anorexia, bulimia, pervasive developmental disorder/autism, and bipolar disorder. It does not include substance use disorders or any other mental illnesses. (See Health & Safety Code § 1374.72 and Insurance Code § 10144.5)

**What is “medically-necessary” treatment?** Treatment that prevents, diagnoses, or treats a disorder or its symptoms in a way that meets the needs of the patient and is consistent with scientific evidence and professional standards. For example, medication-assisted treatment for opioid use disorder is considered the gold standard of care. Similarly, there are evidence-based standards of care to prevent long-term disability for young people experiencing a first episode of psychosis. Clinical specialty societies like the American Society of Addiction Medicine develop recommendations reflecting scientific evidence and clinical experience.

**Who determines whether treatment meets this standard and how?** Under California law, insurers rely on their own criteria. In some cases, they use proprietary “black box” systems not available to regulators or patients for review.

**How does SB 855 change California’s parity law?** First, it applies the act to the full range of mental illnesses and substance use disorders identified in the most recent version of the American Psychiatric Association’s Diagnostic and Statistical Manual (DSM). This provision would ensure a person suffering from moderate depression or opioid addiction that significantly interferes with her daily life could obtain appropriate care without

incurring crippling debt or worse.

Second, SB 855 establishes a uniform definition of “medically-necessary treatment” developed by the American Medical Association. Currently, insurers have wide latitude in determining medical necessity and often use criteria that are inconsistent with the accepted standards of care for behavioral health. SB 855 instead creates a level playing field for all insurers, purchasers, and consumers.

For specific questions involving which *level* of care is appropriate, e.g. inpatient or outpatient, the bill directs insurers to rely on specified criteria developed and updated regularly by professional associations.

**Why are medical necessity criteria central to consumers’ ability to access appropriate treatment?** Because they are the primary tool through which insurers deny coverage and ration care, as found in court decisions across the country. For example, in the 2019 *Wit* decision, the Northern California federal court found that United Behavioral Health used flawed medical necessity criteria to deny mental health and substance use coverage over a 7-year period to more than 50,000 enrollees<sup>1</sup>.

Among other reprehensible practices, United Behavioral Health rationed treatment by addressing acute episodes but not the underlying chronic condition. For example, a woman who had struggled for years with a serious eating disorder sought treatment. Her plan told her she did not meet their criteria for inpatient care, because she weighed 100 pounds, 10 pounds higher than what they considered dangerous. This, despite the fact she was eating only 100 calories a day. She was forced to switch plans and still underwent an arduous process to secure the treatment she needed.

**Will SB 855 save consumers money?** Yes. Parity laws provide powerful and effective financial protections for the 1 in 5 Americans touched by brain illnesses<sup>2</sup>. Under SB 855, a family seeking medical treatment for a 19-year old son experiencing a first episode of schizophrenia can lean on its health insurance to cover the appropriate treatment – just as they could if he were diagnosed with stage 2 lung cancer instead.

**Will SB 855 increase premiums noticeably?** No. According to the California Health Benefits Review Program (CHBRP) analysis, SB 855 will increase premiums by a miniscule .002% (two thousandths of one percent). This does a great deal for achieving real parity for mental health and substance use treatment.

**Will SB 855 increase health plans’ costs?** No. Research has demonstrated that increasing parity has not resulted in higher costs.<sup>3</sup> A New England Journal of Medicine study concluded, “When coupled with management of care, implementation of parity in insurance benefits for behavioral

<sup>1</sup> *Wit v. United Behavioral Health*, No. 14-CV-02346-JCS, 2019 WL 1033730 (N.D. Cal. Mar. 5, 2019).

<sup>2</sup> National Institute of Mental Health, [Mental Illness Statistics](#)

<sup>3</sup> See Colleen Barry, Richard Frank, and Thomas McGuire, *The Costs of Mental Health Parity: Still An Impediment?* Health Affairs 25, no. 3 (2006) and Howard Goldman, et al, *Behavioral Health Insurance Parity for Federal Employees*, New England Journal of Medicine, 2006;354:1378-86

health care can improve insurance protection without increasing total costs.” As further evidence, no health care plan has *ever* applied for the exemption allowed under the federal parity law if their costs increased more than 2%.

**How will SB 855 affect the state budget?** Minimally, if at all. Enforcement and regulatory costs will be covered by the Managed Care Fund, which is funded by fees on plans. In the first year, they'll run \$473,000; with 55 plans in the state, that's \$8,600 per plan.

There will be virtually no increase in the state's health care costs, according to the California Health Benefits Review Program analysis. If anything, SB 855 may reduce state costs. Private insurers occasionally encourage eligible patients to switch to Medi-Cal, because it provides superior coverage and treatment for mental illness and substance abuse disorders. When people get the mental health and addiction care they need, they are less likely to become disabled, unemployed, homeless, or go onto Medi-Cal.

**Doesn't the Federal Parity Act already require health plans to cover mental health and addiction benefits or offer medically necessary treatment?** No, it doesn't. Instead, federal law says that *if* a plan covers mental health and addiction benefits, it must do so at parity with medical/surgical benefits. This law does *not* require plans to cover mental health or addiction benefits.

**Doesn't the Affordable Care Act guarantee that needed mental health and addiction care is covered?** No. The Affordable Care Act requires individual and small group plans to offer mental health and addiction coverage. However, plans can, and do, use practices such as medical necessity determinations to deny services. SB 855 closes this major loophole that perpetuates consumers' lack of access to vital health care treatment.

**Why cover so many illnesses?** Insurers don't discriminate against different types of physical conditions like cancer or lung disease. Likewise, they shouldn't discriminate against other mental health conditions or substance use disorders. Currently, conditions like opioid addiction, post-traumatic stress disorder, and anxiety disorders are not included in the California Mental Health Parity Act. Additionally, neurological symptoms that have been reported with COVID-19 patients would also fall under a DSM diagnosis and thus be covered by SB 855's expansion.

**Will the out-of-network provisions encourage balance billing?** No. Senate Health Committee amendments clarify that patient costs will be limited to in-network cost sharing.

**Will the out-of-network provisions encourage providers to remain out-of-network?** No. It will encourage insurers to fix inadequate networks by paying providers more. Employment 101: If you can't attract the workforce you need, you should increase pay.

**Will the out-of-network provisions allow fraudulent or low quality providers to evade accountability?** No. SB 855 will *improve* the quality of care and coverage by requiring health plans to make coverage determinations in a manner consistent with generally accepted standards of care. If a provider's services are inconsistent with these standards of care, the insurer can deny payment.