



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), not just emergency care.

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.

California is currently experiencing a mental health and substance use crisis. Expanding access to MH/SUD services must be one of the highest

priorities for California. 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 defines MH/SUD services as “medically necessary treatment”. This treats MH/SUD as a covered service that aligns with what is recommended by the treating provider, furnished in sufficient amount, discretion, and scope to meet the patient's comprehensive needs, and consistent with generally accepted standards of practice. It also prohibits limiting benefits or coverage for chronic conditions to short-term or acute treatment.

SB 855 requires plans, for level of care determinations, to use the non-profit, clinical professional association criteria identified in the *Wit* case as consistent with generally accepted standards of mental health and addiction care, as well as specified criteria for autism spectrum disorder. It requires plans to meet requirements relating to the implementation and usage of these criteria.

SB 855 states that if required services are not available, health plans must immediately cover services out-of-network at in-network rates. It also continues to allow plans to impose geographic restrictions on care, but clarifies only when service areas are within timeliness standards. 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*)
- California Alliance of Child & Family Services
- National Health Law Program
- Mental Health and Autism Project
- Autism Deserves Equal Rights
- California Council of Community Behavioral Health Agencies

FOR MORE INFORMATION

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