

NCADD-MD - 2024 SB 684 FAV - Parity Compliance Rep

Uploaded by: Ann Ciekot

Position: FAV



**Senate Finance Committee
February 28, 2024**

**Senate Bill 684
Health Insurance - Mental Health and Substance Use Disorder Benefits –
Sunset Repeal and Modification of Reporting Requirements
Support**

NCADD-Maryland supports Senate Bill 684, which would codify a series of recommendations made by the Maryland Insurance Administration (MIA) in its report on carriers' compliance with the federal Mental Health Parity and Addiction Equity Act (the Parity Act).

We believe the recommendations from the MIA are strong in their attempt to hold carriers accountable to complying with the Parity Act, a law passed in 2008. It was clear from the MIA's report and subsequent recommendations, that many carriers are failing to not only comply with the Parity Act, but also with the reporting requirements this General Assembly enacted in 2020.

Compliance with the Parity Act is not an exercise in policy wonkiness. The law was designed to ensure that mental health and substance use disorders services are covered no less generously than other health issues. Its impact is significant. According to the Kaiser Family Foundation, "Strengthening behavioral health parity protections is just one part of a larger policy discussion that includes addressing the behavioral health workforce shortage, rising behavioral health treatment needs among children and youth, an inadequate health care infrastructure to address those in crisis, and the need for improved coordination and integration of primary care and behavioral health care in the health care delivery system."¹

Along with these important system implications, Parity is about ensuring people have access to the services they need. This impacts people's lives every day. This Committee and the whole General Assembly have worked for many years now trying to improve the quality of services and access to them. Strengthening compliance reporting requirements will force carriers to do better. We ask you to hold insurance carriers accountable by giving a favorable report to Senate Bill 684.

¹ <https://www.kff.org/mental-health/issue-brief/mental-health-parity-at-a-crossroads/>

MC Federation of Families Testimony in Support of

Uploaded by: Celia Serkin

Position: FAV



**Montgomery County Federation of Families for
Children's Mental Health, Inc.**

Colesville Professional Center
13321 New Hampshire Avenue, Terrace B
Silver Spring, MD 20904
301-879-5200 (phone) ♦ 301-879-0012 (fax)
info@mcfof.org
www.mcfof.org (website)

**SB 684 Health Insurance – Mental Health and Substance Use Disorder Benefits –
Sunset Repeal and Modification of Reporting Requirements**

Senate Finance Committee

February 28, 2024

POSITION: SUPPORT

I am Celia Serkin, Executive Director of the Montgomery County Federation of Families for Children's Mental Health, Inc. (MC Federation of Families), a family peer support organization serving diverse families in Montgomery County who have children, youth, and/or young adults with mental health, substance use, or co-occurring challenges. Our Certified Family Peer Specialists are parents who have raised or are currently raising children with mental health, substance use, and/or co-occurring challenges. I am a Montgomery County resident and have two children, now adults, who have struggled since childhood with mental health challenges. My son has debilitating depression. My daughter has co-occurring challenges.

MC Federation of Families is pleased to support **SB 684 Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements.**

SB 684 requires altering certain reporting requirements on health insurance carriers relating to compliance with the federal Mental Health Parity and Addiction Equity Act; altering requirements for certain analyses of nonquantitative treatment limitations required of health insurance carriers; authorizing the Maryland Insurance Commissioner to exercise discretion to review subsets of nonquantitative treatment limitations under certain circumstances; etc.

State and federal law require Maryland health insurers to provide non-discriminatory health coverage for mental health and substance use disorder treatment and document compliance with the Mental Health Parity and Addiction Equity Act. The Maryland Insurance Administration (MIA) is unable to enforce these consumer protections because Maryland insurers have not complied with their legal obligations to submit reports demonstrating that their coverage is equitable. After lengthy review, the MIA found that the carrier reports "were uniformly and significantly inadequate, impeding the [MIA's] ability to reach parity determinations." As a result, the MIA has urged the General Assembly to strengthen Maryland's 2020 compliance reporting law (Ins. § 15-144) so that it can do its job – determine whether state-regulated health plans provide coverage for and access to mental health and substance use disorder benefits at the same level as other medical benefits.

<https://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/2023-Interim-Report-on-Nonquantitative-Treatment-Limitations-and-Data-MSAR-12745.pdf>

MC Federation of Families supports SB 684 because it would adopt the MIA's recommendations to enhance its enforcement authority and also conform Maryland's standards to federal law. The bill would:

- Require carriers to prepare and submit annual compliance reports and provide all information and data required under federal law and regulations. (MIA Rec. 2 and 5).
- Require carriers to conduct an analysis of all nonquantitative treatment limitations (NQTLs) and give the MIA discretion to select a subset of NQTLs for review, based on identified criteria. (MIA Rec. 4).
- Require carriers to conduct an analysis of all factors and evidentiary standards used to design or apply an NQTL regardless of whether those items were adopted before enactment of the Parity Act (i.e. "legacy" standards). (MIA Rec. 3).
- Give the MIA greater discretion to identify outcome data that carriers must submit to evaluate NQTL operational compliance. (MIA Rec. 6).
- Strengthen the MIA's enforcement authority by:
 - Placing the burden of persuasion on carriers to demonstrate parity compliance in its reports and in individual disputes. (MIA Rec. 8).
 - Requiring a finding of a substantive parity violation if reports are incomplete.
 - Giving the MIA authority to order the carrier to cease implementation of the NQTL (MIA Rec. 8) and impose liquidated damages for failure to submit a complete report.
- Remove the reporting law's 2026 sunset and require updated regulations no later than December 2024.

For the aforementioned reasons, the MC Federation of Families urges this committee to pass SB 684.

SB0684_FAV_GWSCSW_HI - MH & SUD Ben. - Sunset Repe

Uploaded by: Christine Krone

Position: FAV



Greater Washington Society for Clinical Social Work

TO: The Honorable Pamela Beidle, Chair
Members, Senate Finance Committee
The Honorable Malcolm Augustine

FROM: Judith Gallant, LCSW-C, Director, GWSCSW Legislation and Advocacy

DATE: February 28, 2024

RE: **SUPPORT** – Senate Bill 684 – *Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements*

The Greater Washington Society for Clinical Social Work (GWSCSW) was established in 1975 to promote and advance the specialization of clinical practice within the social work profession. Through our lobbying, education, community building, and social justice activities, we affirm our commitment to the needs of those in our profession, their clients, and the community at large. On behalf of GWSCSW, we **support** Senate Bill 684.

GWSCSW recognizes the importance of mental health and substance use parity in ensuring equitable access to essential care. Mental health and substance use disorders are pervasive, affecting individuals of all ages, backgrounds, and socioeconomic statuses. Despite the significant advancements in understanding and treating these conditions, disparities persist in accessing adequate and timely care. Achieving parity between mental health, substance use, and physical health services is critical. GWSCSW advocates for policies that mandate health insurance plans to provide coverage for mental health and substance use services on par with coverage for physical health conditions. This includes equitable payment rates, limits on cost-sharing, and comprehensive coverage for evidence-based treatments. An important component is ensuring compliance with federal and state parity laws. As such, GWSCSW recognizes that there are several bills introduced to streamline and strengthen requirements. We support this effort and the process that will take place to determine the best path forward.

As clinical social workers committed to advancing the wellbeing of individuals and communities, we are steadfast in our support for parity policies. By working together, we can ensure that all individuals have access to the care and support they need.

For more information call:

Christine K. Krone
Pamela Metz Kasemeyer
Danna L. Kauffman
410-244-7000

Greater Washington Society for Clinical Social Work: www.gwscsw.org

Contacts: Director, Legislation & Advocacy Program: Judy Gallant, LCSW-C; email: judy.gallant@verizon.net; mobile (301) 717-1004
Legislative Consultants: Christine K. Krone and Pamela Metz Kasemeyer, Schwartz, Metz, Wise & Kauffman, PA,
20 West Street, Annapolis, MD 21401

Email: ckrone@smwpa.com; mobile (410) 940-9165 ; pmetz@smwpa.com; mobile (410) 746-9003

2024-02-28 - MD - Pyramid Healthcare Senate Financ

Uploaded by: Collan Rosier

Position: FAV

February 28, 2024

Delivered Via [MyMGA Witness Signup Platform](#)

The Hon. Pamela Beidle, Chair
Senate Finance Committee
Maryland General Assembly
3E Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

The Hon. Katherine Klausmeier, Vice Chair
Senate Finance Committee
Maryland General Assembly
123 James Senate Office Building
11 Bladen Street
Annapolis, MD 21401

RE: Pyramid Healthcare Testimony In Favor of Senate Bill 684 – An Act Concerning the “Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements”

Dear Chair Beidle, Vice Chair Klausmeier, and distinguished members of the Senate Finance Committee:

On behalf of the Pyramid Healthcare, Inc. (“Pyramid Healthcare”) family of companies thank you for the opportunity to submit testimony in favor of SB 684. This bill would amend the reporting requirements that health insurance carriers must meet to demonstrate compliance with the federal Mental Health Parity and Addiction Equity Act (“Parity Act”) and state parity requirements, and place the burden of proving compliance with this law squarely on Maryland’s insurers. The bill would put stronger and more comprehensive reporting standards in place that relate to whether mental health and substance use disorder (“SUD”) care are truly accessible to Marylanders. Furthermore, the legislation would ensure the Maryland Insurance Administration (“MIA”) can meaningfully enforce a consumer’s right to non-discriminatory coverage of and access to mental health and substance use disorder care, when carriers fail to submit sufficient information to demonstrate they are complying with the law.

Pyramid Healthcare is an integrated behavioral healthcare system serving Medicaid and commercial clients in 9 states across a continuum of residential and outpatient substance abuse, mental health, autism, and eating disorder treatment services. We employ over 3,600 team members across our 80+ active facilities which treat approximately 12,000 clients on any given day.

In Maryland, we operate four locations: a withdrawal management (detoxification) & residential and an outpatient treatment center in California, a detox and residential treatment center in Charlotte Hall, and a detox & residential treatment center in Joppa. We have over 170 SUD residential treatment beds for adult Medicaid clients across the state. We are currently under construction on our new Prince George’s facility and expected to begin operations in mid-2024 with approximately 75 detox and residential treatment beds for adults with SUD. That facility will be located in outside of Bowie and will serve the residents of Prince George’s County, Anne Arundel County, and throughout central Maryland.

We provide withdrawal management, residential, and outpatient SUD treatment for adult Medicaid beneficiaries throughout Maryland. We routinely face significant barriers, however, when treating or attempting to treat Marylanders with private health insurance, which may violate federal and state mental health parity and addiction equity laws. Stronger parity compliance reporting requirements would put the burden on insurers to demonstrate that they are complying with the law, and ensure that any violations of the law could be effectively addressed to allow us to better serve our patients. Therefore, we urge the Committee to favorably report SB 684.

When attempting to join a private insurer's provider network, we have experienced significant delays or been told that the network was full, despite knowing that the current network cannot meet the need for these services. We struggle to negotiate fair reimbursement rates with insurers that cover the cost of the care we deliver. The reimbursement rates we are offered are too low for us to treat our patients and maintain our operations. Insurers require us to submit extensive paperwork and information to get prior authorization, or continuing authorization, for treatment, which is overly burdensome and time consuming. Prior authorizations and continuing authorizations are often denied, even when a patient meets the medical necessity criteria for treatment. Insurers often deny coverage of care, without providing a clear reason for why they refuse to pay for the treatment.

While some of these treatment barriers may be occurring for medical and surgical providers as well, we have no way of knowing the insurer's practices and whether they apply more restrictive standards for mental health and SUD care. The insurers have access to all of this information, as well as outcome data that would reflect how these barriers affect access to care. That is why it is so vital that the insurers submit complete reports to the MIA detailing the comparative analysis required in federal and state laws. As providers, we cannot meaningfully challenge insurance practices that seem out of line with medical practices – such as the inability to join networks, unfair reimbursement rates, or limitations on patient care – without this information. Full and comprehensive parity analyses will allow the MIA to require insurers to eliminate any barriers to care that are more restrictive for SUD and mental health providers and patients, and Marylanders can get the care they need.

Maryland private health insurers are only required to submit two reports demonstrating their compliance with the Parity Act over a four-year period. The MIA found that, in the first set of reports, not one single insurer submitted sufficient information for agencies to determine that their plans complied with the Parity Act. The MIA imposed approximately \$1 million in fines against the largest insurers, and made a number of recommendations for how to improve the insurers' compliance with these reporting requirements, consistent with this legislation. SB 684 would ensure that the MIA can do its job to audit compliance and that state regulators continue to audit compliance beyond 2026. Annual reporting and clarified reporting requirements through this legislation are necessary to root out the ongoing discrimination that Marylanders face in their private insurance when they need access to SUD and mental health treatment and ensure that insurers do not discriminate in the future.

Thank you for considering our views. We urge the Committee to issue a favorable report on SB 684. Thank you for your support of behavioral health providers – including those in both mental health and substance use disorder treatment – in Maryland and for considering our policy proposals and recommendations on behalf of Pyramid Healthcare. If we can provide any additional information or materials, please contact me at crosier@pyramidhc.com or 667-270-1582. In addition, we invite you or a member of the staff to reach out and schedule a visit to one of our Maryland locations sometime soon to learn more about our programs and services.

Sincerely,

Dominic Barone, LSW, LCADC, CCS, CPRS
Vice President of Operations (Residential)

Collan B. Rosier
Vice President of Government Relations

Cbergan_SB684_Support.pdf

Uploaded by: Courtney Bergan

Position: FAV

February 28, 2024

Senate Finance Committee Hearing

Senate Bill 684

Support

Dear Madame Chair and Members of the Committee:

My name is Courtney Bergan. I am an attorney and an individual living with serious mental illness. Maryland's lack of parity compliance and enforcement has precluded me from accessing the care I needed to thrive.

I support Senate Bill 684, implementing reporting standards for parity compliance and enforcement. I struggle with severe mental illness and obtaining appropriate care for my condition has required a disproportionate investment of time and effort when I compare it to my experiences seeking medical care. When seeking medical care, I don't have to think twice about basing my provider selection on network affiliation; I can simply choose the best specialist for my condition. I have repeatedly made significant sacrifices to obtain insurance coverage that is most likely to cover appropriate psychiatric care. Not only that, there are significant differences in how I see carriers reimbursing medical and psychiatric providers for the exact same services, with insurers allowing for greater reimbursement to medical providers. These disparate standards for the coverage of medical versus psychiatric care have had a significant impact on my health and my ability to participate in my life.

Due to the complexities involved in treating my psychiatric condition, there are few providers who are both able and willing to assume my care. There are even fewer who take insurance due to reimbursement rates that are not commensurate with the complexity of the care required for my condition. You may recognize me and my story, since I testified before this committee previously, after I spent more than 4 months contacting over 60 providers, desperately trying to locate an in-network provider who had the availability and expertise to assume my care. Accessing out-of-network psychiatric care is well beyond my means, as psychotherapy alone would have cost more than 50% of my income.

Due to my inability to access in-network mental health care, I began seeing a non-network specialist, who agreed to request a single case agreement with my carrier. The request for a single case agreement was initially denied within hours of my provider's request, with my carrier citing that I was not eligible for a single case agreement, despite the fact that my plan documents indicated I was. The day following my testimony before this committee, I finally received approval of the single case agreement that had been requested nearly two months earlier. Had I not received approval of that single case agreement, I am not sure I would be still be here and sitting before you again today.

Courtney Bergan-SB 684-Support

While I was relieved to receive approval of the single case agreement with my psychologist, my relief was short lived, as I was then notified that the University of Maryland Baltimore's student health insurance would be changing, leaving me without access to any of my outpatient providers under my new carrier. As a result, I spent more than 4 months in the hospital, since I couldn't even find a psychiatrist who would prescribe my medications. This had significant personal costs to me, as I ended up having to drop out of social work degree due to my hospitalization and it also posed unnecessary costs to Maryland taxpayers. Maryland Medical Assistance is my secondary insurer, and they ended up paying for the portion of my inpatient stay that wasn't covered by my primary payor.

5 years after this initial battle to access appropriate in-network care, the situation only appears to have worsened as I just spent five months trying to negotiate new single case agreements on my new insurance coverage because access to in-network care is even further out of reach, with long waitlists and the reality that most in-network providers are unwilling to work with individuals like me who have complex needs. I could maintain continued access to my mental health providers because in-network care remains unavailable. Only after I helped my providers write letters using my legal knowledge on Parity, did the single case agreement get approved. No one should need to be a lawyer to be able to obtain the care they need.

Furthermore, I also continue to struggle to obtain coverage of psychiatric medications, some of which are common, low-cost generic medications. Due to my inability to obtain timely approval from my insurer. For one of these medications, I ran out of my medication and I had a seizure as a result of the sudden withdrawal.

My experience demonstrates that discriminatory standards are still being applied to the coverage of behavioral health conditions when compared to those applied to the coverage of other medical conditions, despite state and federal Parity laws barring such discrimination. I should not be prohibited from participating in my education or community because insurers refuse to cover adequate care for my psychiatric conditions, nor should I have to invest more time or money in seeking mental health care than I do in seeking other medical care. Yet currently that is the case, because without parity compliance and enforcement, I am left with no other option.

I support SB 684 so that health insurance carriers are required to demonstrate that they are not discriminating against individuals with behavioral health conditions, and they have an incentive to comply with existing Parity laws. The lives of too many Marylanders hang in the balance to continue ignoring this unlawful discrimination.

Sincerely,



Courtney Bergan, J.D.

DRM_SB 684_Support.pdf

Uploaded by: Courtney Bergan

Position: FAV



Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211

Phone: 410-727-6352 | Fax: 410-727-6389

www.DisabilityRightsMD.org

Senate Finance Committee

Senate Bill 684: Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements

February 28, 2024

Position: Support

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. In the context of mental health disabilities, we advocate for access to person-centered, culturally responsive, trauma-informed care. DRM supports Senate Bill 684, which requires health insurance carriers operating in Maryland to annually report their compliance with the Mental Health Parity and Addiction Equity Act. SB 684's protections are crucial to guaranteeing our clients have access to the mental health care they need.

Maryland's health insurers must be required to demonstrate that they offer non-discriminatory coverage of and access to mental health and substance use care by submitting annual reports that prove their insurance practices are equitable. If this burden is not placed on the carriers, it inevitably falls to individuals who are seeking care, creating barriers that bar people from obtaining the care they need to thrive in their communities.

Many Marylanders with disabilities lack access to clinically appropriate mental health care that is covered by their insurance due to inadequate provider networks, which leads to unnecessary hospitalization and socioeconomic instability. Properly analyzing nonquantitative treatment limitations is vital to ensuring adequate provider networks given the impacts that inadequate reimbursement rates and excessive administrative burdens have on network adequacy; and thus our clients access to appropriate care. Parity compliance reporting must also include transparent and thorough analysis of medical necessity criteria used to ensure insurance companies are applying comparable standards to those used for somatic healthcare services.

Without the reporting identified in SB 684, Marylanders are likely to be improperly denied authorization for services and medications or unable to find network providers. Strong enforcement of the Parity Act can address many of these barriers to care without further burdening our clients, who are often ill-equipped to navigate the complexities of insurance coverage, especially if they are experiencing a crisis.

DRM urges you to support SB 684 to ensure health insurance carriers are held accountable for providing equitable coverage of mental health and substance use care so that all Marylanders can access the mental health care they need to thrive in our communities. Please contact Courtney Bergan, Disability Rights Maryland's Equal Justice Works Fellow for more information at CourtneyB@DisabilityRightsMd.org or 443-692-2477.

SB0684_MHAMD_FAV.pdf

Uploaded by: Dan Martin

Position: FAV

Senate Bill 684 Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements

Finance Committee

February 28, 2024

Position: SUPPORT

Mental Health Association of Maryland (MHAMD) is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health and substance use disorders (collectively referred to as behavioral health). We appreciate the opportunity to provide this testimony in support of Senate Bill 684.

SB 684 would strengthen reporting requirements for health insurance companies (carriers) related to their compliance with state and federal behavioral health parity laws¹ and enhance the Maryland Insurance Administration's (MIA) parity enforcement authority. It would remove the sunset on carrier reporting requirements, requiring carriers to continue submitting reports every year; require carriers to conduct and document comparative analyses for legacy processes impacting nonquantitative treatment limitations (NQTL)² that were implemented prior to passage of the federal Parity Act; give the MIA additional enforcement options; place the burden of persuasion on carriers in demonstrating parity compliance; and provide that failure to submit a complete report shall be considered a parity violation.

The revisions in SB 684 were developed pursuant to recommendations from the MIA's [2023 Interim Report on Nonquantitative Treatment Limitations and Data](#), which summarizes the findings of reviews of parity reports submitted by carriers pursuant to new reporting requirements established by the General Assembly in 2020 ([SB 334/](#)[HB 455](#))³. After determining that the reports submitted by carriers were "uniformly and significantly inadequate, impeding the ability to reach parity determinations," the MIA recommended new reporting requirements and enforcement options similar to those outlined in SB 684 as a way of "improving the ability of regulators to reach substantive conclusions on parity compliance."

It has been 30 years since Maryland passed the first state mental health parity law in the nation and 15 years since passage of the federal Parity Act, but discriminatory practices and failure among payers to comply with statutory requirements continue unabated while the unmet demand for mental health and substance use care continues to increase. The General Assembly has an opportunity with SB 684 to take a significant step toward ensuring the appropriate implementation and enforcement of these critical anti-discrimination laws, and we urge a favorable report.

¹ Maryland state law and the federal Mental Health Parity and Addiction Equity Act of 2008 require health insurers to provide coverage for mental health and substance use care that is on par with and no more restrictive than the coverage they provide for physical health care.

² NQTLs are processes, strategies, evidentiary standards, or other criteria that limit the scope or duration of benefits for services provided in a health insurance plan, including things like prior authorization, concurrent review, network adequacy, and provider reimbursement.

³ Following passage of SB 334/HB 455 in 2020, the MIA established a parity reporting framework that has been cited by the federal government as a model for other states.

For more information, please contact Dan Martin at (410) 978-8865

SB0684_FAV_MedChi_HI - MH & SUD Ben. - Sunset Repe

Uploaded by: Danna Kauffman

Position: FAV

MedChi

The Maryland State Medical Society

1211 Cathedral Street
Baltimore, MD 21201-5516
410.539.0872
Fax: 410.547.0915

1.800.492.1056

www.medchi.org

TO: The Honorable Pamela Beidle, Chair
Members, Senate Finance Committee
The Honorable Malcolm Augustine

FROM: Danna L. Kauffman
Pamela Metz Kasemeyer
J. Steven Wise
Andrew G. Vetter
Christine K. Krone
410-244-7000

DATE: February 28, 2024

RE: **SUPPORT** – Senate Bill 684 – *Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports the goals of Senate Bill 684**. This bill makes changes to the 2020 parity law that requires carriers by March 1, 2022, and March 1, 2024, to identify the five health benefit plans with the highest enrollment for each product offered by the carrier in the individual, small, and large group markets and submit a report to the Commissioner to demonstrate the carrier's compliance with the Parity Act. In addition, the 2020 law requires each carrier to conduct a comparative analysis for the nonquantitative treatment limitations identified in the compliance report as those limitations are written and in operation, which demonstrates that the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to mental health and substance use disorder benefits in each Parity Act classification are comparable to, and are applied no more stringently than, those used for medical and surgical benefits.

Senate Bill 684 makes the current reporting permanent (annually on or before March 1, 2025). In addition, the bill expands on the reporting requirements for the nonquantitative treatment limitations and provides the Insurance Commissioner with additional discretion to review a subset of the nonquantitative treatment limitation. According to the 2023 Interim Report issued by the Maryland Insurance Administration "*Report on Nonquantitative Treatment Limitations and Data*" (December 1, 2023), the purpose of the mental health parity report is "to require carriers to demonstrate that any limitations applied to benefits for mental health and substance use disorders under insured health benefit plans are comparable to, and applied no more stringently than, the limitations applied to medical and surgical benefits." According to the Commissioner's report, the reports submitted by the carriers were found to be deficient, including reports being both late and incomplete.

Therefore, MedChi supports the goals of Senate Bill 684 to make changes to the current reporting requirements to be better able to review and ensure that carriers are compliant with the parity laws. MedChi understands that there is more than one bill addressing this issue and looks forward to working with the committee to ensure that Marylanders have full access to mental health/substance use disorder coverage.

MD_SB 684 FAV_Inseparable Testimony_2024 02 28.pdf

Uploaded by: David Lloyd

Position: FAV

inseparable

409 7th St Northwest, Suite 305
Washington, D.C. 20004
February 28, 2024

Senate Finance Committee
Maryland General Assembly
3E Miller Senate Building
Annapolis, MD 21401

Via electronic submission

RE: SUPPORT FOR SB 684

Dear Chair Beidle, Vice-Chair Klausmeier, and Members of the Committee:

On behalf of Inseparable, I am testifying in favor of SB 684. Inseparable is a national nonprofit focused on closing the treatment gap for people with mental health and substance use conditions, improving crisis response, and supporting prevention and early intervention. I recently joined Inseparable after having been the Chief Policy Officer at The Kennedy Forum, an organization founded by former Congressman Patrick J. Kennedy, author of the Mental Health Parity and Equity Act of 2008 (Federal Parity Act). Over the past eight years, I have become a national parity expert and have worked with numerous states and the federal government to improve parity laws and make parity a reality.

Without parity, access cannot be a reality. That is why Inseparable is grateful to Delegate Bagnall for her commitment to ensuring parity and for being the prime sponsor of SB 684. More than 15 years after its enactment, insurers continue to violate the law, as evidenced by two recent reports to Congress from the Departments of Labor, Health and Human Services, and Treasury (tri-agencies) that found widespread violations.¹ Indeed, these Departments found overwhelming non-compliance with the Federal Parity Act's requirements, and many health plans have not been conducting the parity compliance analyses that the law requires.

Yet, despite this increased federal activity, states have primary enforcement authority over individual marketplace and fully insured employer-sponsored (ERISA) plans. Thus, it is imperative that legislators and the Maryland Insurance Administration (MIA) make compliance and enforcement a top priority to increase access during the ongoing mental health and addiction crisis.

¹ See [2022](#) and [2023](#) MHPAEA Reports to Congress.

To ensure the intent of parity is realized, it is critical that Maryland adopt policies that will hold insurers and plans accountable. Therefore, we support language in SB 684 that will improve the ability of Maryland residents to access needed MH/SUD care. Key provisions include:

- **Ensuring annual plan reporting on all non-quantitative treatment limitations (NQTLs).** The Federal Parity Act’s requirements apply to each individual plan. This includes federal requirements that, for each plan, insurers conduct detailed parity compliance analyses for every NQTL that the plan imposes on MH or SUD benefits. Calculations to assess compliance with the Federal Parity Act’s requirements for financial requirements and quantitative treatment limitations must also be done at the plan level. Therefore, it is critical that Maryland not establish a lesser standard. Twenty-five states require insurers to submit parity compliance and/or outcomes data reports, and over half of these (16) require annual reports. Of the 17 states that identify the scope of the NQTL report, all but one requires reporting on all NQTLs. Therefore, we support provisions in SB 684 that would align Maryland law with both federal law and with other state laws. These standards exist at the federal level and in other states because they protect people with MH and SUD: they require insurers to analyze and document how they comply with the Federal Parity Act so that any discriminatory barriers to MH and SUD treatment can be removed.
- **Facilitate in-depth reviews by the Maryland Insurance Administration (MIA) while holding plans accountable.** Of course, we recognize that regulators must prioritize their NQTL reviews to ensure compliance and increase access to care most effectively. After insurers have submitted all NQTL compliance analyses, we encourage MIA to prioritize their enforcement efforts across insurers’ various product lines to the extent that there are no differences in the design or implementation between plans within a given product. We support SB 684’s emphasis on broad insurer accountability that does not alert insurers which NQTLs will be reviewed in advance. There is ample evidence in the tri-agencies reports to Congress that plans are engaging in elaborate *post hoc* justifications of their discriminatory NQTLs.
- **Retain and expand data reporting requirements.** The Federal Parity Act requires compliance both “as written” in plan documents and “in operation.” Key to assessing “in operation” compliance is collecting quantitative data relating to MH/SUD and physical health coverage. Indeed, new proposed federal parity rules to improve implementation of the Federal Parity Act that are likely to be finalized soon will significantly expand data reporting requirements. Therefore, we support provisions in SB 684 that ensure alignment with expected changes to Federal Parity Act rules and that gather quantitative data to show how insurance standards affect access to MH and SUD care.
- **Improve enforcement authority.** A near-constant theme of parity compliance is the inability of regulators to hold insurers sufficiently accountable. We support SB 684’s enforcement provisions, including an explicit provision that failure to file complete parity compliance analyses is itself a violation of the parity requirements and that, when an insurer does not demonstrate compliance, consumers and providers subject to that treatment limitation obtain relief.

Inseparable is grateful to Delegate Bagnall for prioritizing mental health parity. We are proud to support SB 684 to finally hold insurers accountable and help realize the promise of mental health and addiction parity.

Thank you for the opportunity to testify.

Respectfully,

A handwritten signature in blue ink that reads "David Lloyd". The signature is written in a cursive, flowing style.

David Lloyd
Chief Policy Officer

Legal Action Center Testimony SB684_FAV_Sunset Rep

Uploaded by: Ellen Weber

Position: FAV

**Health Insurance – Mental Health and Substance Use Disorder Benefits –
Sunset Repeal and Modification of Reporting Requirements (SB 684)**

Finance Committee

February 28, 2024

FAVORABLE

Thank you for the opportunity to submit testimony in support of SB 684, which would strengthen Maryland’s Parity Act compliance reporting standards and repeal a sunset of the reporting requirement to ensure that Marylanders have equitable coverage and access to mental health and substance use disorder treatment through their state-regulated insurance. This testimony is submitted on behalf of the Legal Action Center, a law and policy organization that has worked for 50 years to fight discrimination, build health equity and restore opportunities for individuals with substance use disorders, arrest and conviction records, and HIV or AIDs. In Maryland, we convene the Maryland Parity Coalition and work with our partners to ensure non-discriminatory access to mental health (MH) and substance use disorder (SUD) services through enforcement of the Mental Health Parity and Addiction Equity Act (Parity Act). The Parity Coalition advocated for the parity compliance and data reporting standards enacted in 2020, (HB455/SB 334), and worked to establish strong regulatory standards to implement the law. SB 684 would update those standards in response to the Maryland Insurance Administration’s (MIA) [Interim Report to the General Assembly](#) that found “**uniform and significant**” noncompliance by all carriers.

Nearly four years after the enactment of Maryland’s reporting law, Marylanders are no closer to knowing whether they are paying for and receiving non-discriminatory coverage of MH and SUD services. Our overdose and mental health crises have harmed too many Marylanders to allow carriers to flaunt federal and state law and undermine the MIA’s enforcement obligations.

I. Carrier Failure to Comply with State and Federal Compliance Reporting Requirements

The federal Parity Act – a civil rights law that requires coverage of MH and SUD benefits on the same level as medical/surgical benefits – bars Maryland’s carriers from selling health plans that do not comply with federal non-discrimination standards. Recognizing that carriers have exclusive possession of all the information needed to prove that their health plans comply with the law, federal law requires Maryland’s carriers “to perform and document comparative analyses of the design and application of NQTLs [non-quantitative treatment limitations]” and submit them to the MIA upon request. 42 U.S.C. § 300gg-26(a)(8). Maryland’s parity reporting law, Ins. § 15-144, enacted eight months before the federal reporting standard, requires carriers to submit only two reports over four years, with a sunset of the reporting requirement in July 2026.

After substantial and time-consuming efforts to address carrier reporting deficiencies and secure the required information, **the MIA found that the carrier reports “were uniformly and significantly inadequate, impeding the [MIA’s] ability to reach parity determinations.”** Report at 1. The MIA levied penalties again 6 carriers for failing to submit timely reports and 8 carriers for submitting incomplete reports totaling nearly \$1 million. The MIA also issued recommendations to strengthen its enforcement authority and streamline its review process.

SB 684 would implement the MIA’s recommendations and strengthen enforcement in three key ways:

- Require carriers to submit an **annual** compliance report on **all** NQTLs and related outcomes data and give the MIA discretion to review a subset of NQTLs based on specific guidelines.
- Place the burden of persuasion squarely on the carriers to demonstrate compliance in their reports and in individual complaints and authorize the MIA to take additional remedial actions against carriers if they file insufficient compliance reports.
- Ensure state law reporting requirements require the MIA to incorporate any future changes in federal reporting standards, including additional tests for parity compliance and data reporting.

II. Require Submission of Annual Compliance Reports on All NQTLs and Outcomes Data and Give MIA Authority to Streamline Report Review

A. Annual Reporting

SB 684, which would update Maryland’s law to require **annual rather than biennial** compliance reporting, aligns with federal standards and those of most states. State-regulated plans are sold or renewed on an annual basis and, under federal law, Maryland’s carriers cannot offer a plan that does not comply with the Parity Act standards, either as written or in operation (the design or application of the NQTL). 45 C.F.R. § 146.136(h). Carriers should already be conducting an **annual review** of compliance, and they would face no greater burden if required to submit their reports annually. Biennial reporting is an outlier across the twenty-five (25) states that have enacted parity compliance laws: 16 of 25 states require annual reporting, 7 states require reporting on a different submission schedule, and 2 states do not designate a submission schedule. (Legal Action Center’s 50-State Survey of Compliance Reporting Standards – on file and available upon request). Even the handful of states that do not authorize reporting on an annual basis require carrier submissions of any NQTL changes in the off-years and attestation of parity compliance (ARIZ. REV. STAT. ANN. § 20-3502(E)) or parity reporting for any significant medical management protocols (DEL. CODE ANN. Tit. 18, §§ 3571U, 3343(g)). The MIA has proposed revisions to the compliance reporting provisions in HB 1085, which would retain biennial reporting. This standard is not consistent with federal standards or other state practices.

An annual compliance report is also essential to ensure that consumers or providers that seek to challenge a carrier’s decision as violative of the Parity Act have ready access to their carrier’s compliance report. Plan members are entitled to receive the carrier’s compliance report for the relevant NQTL and supporting plan documents in an internal grievance process. 45 C.F.R. § 146.136(d)(3). Absent the carrier’s report, neither the plan member nor the MIA will have essential information to investigate the carrier’s practices, resulting in a significant delay in access to care. One goal of compliance reporting is to place the burden of compliance squarely on the carrier – rather than on a member-driven complaint process – since the carrier has designed and implements its plan. The carriers’ demonstrated failure to submit complete reports in March 2022 means that information that is essential to resolve a denial of care has not been available.

While carriers may assert that they make minimal changes from one year to the next in the design of a plan’s standards, the breadth of NQTLs and the inevitable changes in how those plan design features are implemented require an annual review. For example, NQTLs encompass every plan design feature that can limit access to MH or SUD benefits, including reimbursement rate

standards, network adequacy standards and network admission standards, utilization review standards and prescription drug coverage and utilization standards – each of which can change annually or be applied differently from one year to the next. Changes in the carrier’s staff that carry out utilization review, network admission reviews and reimbursement rate negotiations can affect the outcome data that are essential to identify possible disparities in implementation for MH and SUD benefits.

B. Analysis and Submission of All NQTLs and Outcomes Data

SB 684 would address the MIA’s recommendation (MIA Recommendation 4) to reduce the number of NQTLs that it must review, while establishing sufficient guardrails to ensure carriers conduct an analysis of all NQTLs as required by federal law and consistent with current state law. Federal regulators have made it crystal clear that federal law requires state-regulated health plans to “perform and document comparative analyses for *all NQTLs imposed*,” even if the regulator reviews a subset of the NQTLs. [FAQs About Mental Health and Substance Use Disorder Parity Implementation and the Consolidated Appropriations Act, 2021, Part 45](#), FAQ 8 (April 2, 2021) (emphasis added). Requiring carriers to submit their analyses of all NQTLs, as currently required by state law, imposes no greater burden on them. This standard also aligns with virtually all states that identify the scope of NQTL reporting: 16 of 17 states require insurers to report on all NQTLs and only 1 state (Georgia) identifies a process for identifying the NQTLs to be reported annually.

Absent the submission of a comparative analysis of all NQTLs, the MIA, current and future plan members and providers will have no way to ensure that carriers are actually conducting and documenting the required comparative analysis. Federal regulators have observed that health plans routinely fail to conduct comparative analyses, even after federal law imposed that requirement, and typically prepare reports only after they have been asked to submit their documentation. [MHPAEA Comparative Analysis Report to Congress, July 2023](#). **Post-hoc carrier analysis is inconsistent with federal law and defeats the fundamental purpose of compliance reporting – to identify and remove discriminatory standards before a plan is offered.** As noted above, the availability of an analysis of each NQTL is also essential to ensure that carrier information is readily available for the investigation and timely resolution of individual complaints.

Following the submission of the carrier reports, we support the MIA’s recommendation to *review* a subset of NQTLs. SB 684 would establish a transparent process and timeline by which the MIA would select a representative sample of NQTLs (e.g. no less than 10) and inform carriers and the public of the NQTLs it intends to review for each review period. Announcing the NQTLs post-submission will ensure the greatest accountability when coupled with other proposed standards, as a carrier will be incentivized to prepare a complete analysis for all NQTLs or risk an MIA order barring it from implementing an NQTL.

In contrast, we have strong reservations about the proposed standard in the MIA’s bill (HB 1085) that would require the submission of only 4 pre-identified NQTLs. The very small number of NQTLs offers no guarantee of a sufficiently broad selection of different plan features that affect access to care and will not adequately test carrier compliance. For example, the MIA could select 4 NQTLs – all of which address authorization standards – to the exclusion of other critically important features that limit access to care, such as network adequacy, reimbursement rate setting or scope of benefit coverage. **Indeed, the utter failure of every carrier to submit a complete comparative analysis for any NQTL demonstrates carriers are not meeting their legal obligations to offer parity-compliant plans and argues for retaining the existing level of NQTLs submission by carriers, rather than reducing oversight requirements.**

Finally, an essential component of NQTL compliance analysis – submission and review of outcomes data – would be strengthened in SB 684, consistent with the MIA’s recommendation. (MIA Recommendation 3). SB 684 would retain the law’s existing data metrics related to service authorization requests, approvals and denials and claims denials and, additionally, allow the Commissioner to identify additional outcomes data points. The bill would also ensure that the MIA’s standards stay current with and require consistency the federal regulatory requirements on outcomes data, in anticipation of the adoption of heightened data standards by federal regulators. *See* Departments of Labor, Health and Human Services and Treasury, [Technical Release 2023-01P](#). While we support the MIA’s efforts to require additional standardized data submissions to evaluate NQTLs, we are concerned that the provision it has proposed in HB 1085 would remove the existing data standards – which are among the most commonly reviewed metrics – and offer no guarantee that it would require reporting of any new federal guidelines.

III. Strengthen the MIA’s Enforcement Standards and Timely Resolution of Discriminatory Practices by Placing the Burden of Persuasion on Carriers.

The carriers’ blatant refusal to submit complete parity compliance information has effectively prevented the MIA from identifying discriminatory carrier standards, holding carriers accountable for noncompliance, and correcting discriminatory practices. To provide real enforcement teeth, the MIA has recommended that the reporting law explicitly impose the burden of persuasion on carriers, which it also proposed in the 2020 bill. (MIA Recommendation 8). SB 684 would establish this persuasion standard for both the compliance plan report and in individual matters that assert a Parity Act violation and clearly establish that a carrier’s failure to submit complete compliance information in either context would constitute noncompliance with the Parity Act.

In our view, this proposed standard would be the most effective way to incentivize carriers to submit complete and comprehensive NQTL analyses and reduce the MIA’s oversight burden. The range of remedies that could flow from a finding of noncompliance, including the issuance of an order to cease the application of the non-compliant NQTL, would likely spur a carrier to submit the required information or eliminate the non-compliant practice. Although the MIA’s bill (HB 1085) does not include this explicit requirement, **its Interim Report identifies it as one of the two most important recommendations for the General Assembly to adopt.** While the carriers successfully opposed the persuasion standard in 2020, any on-going opposition should be rejected. The MIA clearly could not overcome the carriers’ reporting recalcitrance without this standard during the first round of reports, and it should not be required to pursue compliance in any future review under the same handicap.

This is particularly true because the proposed persuasion standard is entirely consistent with existing federal law. As noted above, federal law bars Maryland’s carriers from offering plans that do not comply with the Parity Act standards, and the compliance reporting requirement enforces that standard. Under the federal law, it is the carrier’s obligation to “*demonstrate*” that the processes, strategies, evidentiary standards and other factors used to apply the NQTL to MH and SUD benefits, as written and in operation, are comparable to and no more stringently applied than those same elements for medical/surgical benefits. 42 U.S.C. § 300gg-26(a)(8)(A)(iv). The law affords carriers regulated by federal authorities an opportunity to submit additional information based on a regulator’s finding of insufficient information, but, following a short time-period for corrective action, the federal regulator may find the plan in violation of the Parity Act if the plan has still not demonstrated compliance. § 300gg-26(a)(8)(B)(ii) and (iii). The same legal analysis applies to state regulators.

This standard is also essential in individual matters that raise parity compliance violations. While the carriers do have the burden of persuasion in grievance and appeal matters, a parity violation may be asserted in other complaints, particularly by a MH or SUD provider that has been denied admission to a carrier network or a fair reimbursement rate. Indeed, the MIA failed to issue a substantive finding in two Parity Act challenges filed by opioid treatment programs against CareFirst for alleged violations in reimbursement rate setting. MAT Clinics, MIA-2023-1-5-00143686 (CareFirst of Maryland, Inc.) and Behavioral Health Services and Northern Parkway Treatment Services, MIA-2021-6-13-00128023 (CareFirst of Maryland, Inc.). The MIA’s determination in both matters stated that it relied on CareFirst’s compliance report to address the alleged parity violation and found that CareFirst’s insufficient information “did not allow the Administration to make a determination of its compliance with MHPAEA.”

That should not have been the outcome because CareFirst is required to demonstrate compliance with the Parity Act. Placing the burden of persuasion on carriers in all matters before the MIA would resolve this problem and ultimately improve access to MH and SUD care.

IV. Ensure Consistency with Federal Comparative Review and Compliance Standards

SB 684 would ensure that Maryland’s reporting law conforms to the greatest extent possible with federal Parity Act standards by ensuring that reporting standards encompass all federal substantive non-discrimination standards and track federal reporting practices. Consistency across federal and state standards reduces the burden on Maryland’s carriers as they would be required to satisfy the same standards across all markets in which they participate (e.g. state and employer-sponsored ERISA plans). And, as noted above, consumers and providers must rely on the MIA to help enforce their federal parity rights. SB 684 would achieve consistency in three important ways.

First, it would require that the MIA collect compliance information consistent with all federal requirements, including those adopted in future regulations. The Departments of Labor, Health and Human Services (HHS), and Treasury have issued proposed regulations that would establish several new tests for parity compliance and memorialize reporting standards in regulation. *See* Requirements Related to the Mental Health Parity and Addiction Equity Act, 88 Fed. Reg. 51552 (Aug. 3, 2023). Federal regulators, like the MIA, are taking steps to fill regulatory gaps that have hampered enforcement and, consequently, access to MH and SUD care. SB 684 would account for any revisions of federal law, while the MIA’s bill (HB 1085), as drafted, would limit its compliance review to the existing comparative analysis test.

Second, SB 684 (and the MIA’s bill) would require carriers to conduct an analysis of each process, strategy, evidentiary standard and other factors regardless of whether those elements were used before enactment of the Parity Act, which carriers have previously – and erroneously - refused to submit. (MIA Recommendation 3).

Finally, SB 684 (and the MIA’s bill) would remove an outdated compliance reporting form required in 2020 (HB455/SB334), and SB 684 would require submission of information on a form developed by the MIA that conforms to federal regulations on NQTL comparative analysis reporting. Greater consistency between the federal and state standards will also make it easier for Marylanders to understand and enforce their rights to non-discriminatory MH and SUD treatment, as they could take greater advantage of the resources available at the federal level.

The General Assembly has taken important actions since the enactment of the federal Parity Act to enforce non-discriminatory MH and SUD coverage standards in state-regulated health plans. Based on the documented failure of carriers to comply with state and federal laws, compliance standards must be strengthened to ensure that the underlying purpose of the Parity Act – to improve access to MH and SUD care – can be achieved in Maryland.

Thank you for considering our views. We urge the Committee to issue a favorable report on SB 684.

Ellen M. Weber, J.D.
Sr. Vice President for Health Initiatives
Legal Action Center
eweber@lac.org

MDDCSAM SB 684 Parity compliance reporting.pdf

Uploaded by: Joseph Adams, MD

Position: FAV



MDDCSAM is the Maryland state chapter of the American Society of Addiction Medicine whose members are physicians and other health providers who treat people with substance use disorders.

SB 684 Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements

Finance Committee February 28, 2024

SUPPORT

The federal Mental Health Parity and Addiction Equity Act (MHPAEA) was passed to reverse the double-standard in which mental health and substance use disorders were not considered as real conditions worthy of the same level of treatment as diseases of the body.

In spite of the development of effective, evidence-based treatments, this yawning gap persists and causes a huge burden of suffering that should have been prevented and treated. It is unconscionable that carriers in Maryland have failed to comply with MHPAEA since its adoption in 2008, fifteen years ago.

The bill incorporates federal compliance reporting standards enacted in 2021 after Maryland’s 2020 law was enacted. These reporting standards require state-regulated insurance plans to prepare an annual comparative analysis of all NQTLs (Non-quantitative Treatment Limitations) and submit their analysis upon request to state regulators.

Since no Maryland carrier has provided interpretable information in their parity compliance reports, the MIA has been unable to enforce the law. The simple clarification that the burden of persuasion of compliance lies with the carriers will allow the MIA to enforce the parity law at long last. In other words, a finding of a substantive parity violation would be required if reports are incomplete.

Among other provisions, the bill establishes that compliance reports are submitted on a standard form developed by the commissioner that conforms to the federal regulations on NQTL reporting.

After fifteen years of non-compliance, continued years of delay in enforcement is unacceptable.

We strongly urge a favorable report.

Respectfully,
Joseph A. Adams, MD, FASAM, board-certified in internal medicine and addiction medicine.

MADC Support SB 684 Parity Sunset Repeal & Report

Uploaded by: Kim Wireman

Position: FAV



Maryland Addiction Directors Council

Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements (SB 684)

Senate Finance Committee

February 28, 2024

FAVORABLE

Thank you for the opportunity to submit testimony in favor of SB 684. This bill would amend the reporting requirements that health insurance carriers must meet to demonstrate compliance with the federal Mental Health Parity and Addiction Equity Act (Parity Act) and state parity requirements and place the burden of proving compliance with this law squarely on Maryland’s insurers. The bill would put stronger and more comprehensive reporting standards in place that relate to whether mental health and substance use disorder care are truly accessible to Marylanders. Furthermore, the legislation would ensure the Maryland Insurance Administration (MIA) can meaningfully enforce a consumer’s right to non-discriminatory coverage of and access to mental health and substance use disorder care, when carriers fail to submit sufficient information to demonstrate they are complying with the law.

Maryland Addiction Directors Council (MADC) represents SUD and Dual Recovery outpatient and residential providers in Maryland. MADC members provide over 2,000 residential beds across the State and advocate for quality SUD and Dual Recovery outpatient and residential treatment. MADC advocates for treatment quality and evidence-based practice in services to SUD clients.

MADC providers routinely face significant barriers when treating or attempting to treat Marylanders with private health insurance, which may be violations of federal and state mental health parity and addiction equity laws. Stronger parity compliance reporting requirements would put the burden on insurers to demonstrate that they are complying with the law and ensure that any violations of the law could be effectively addressed to allow us to better serve our patients. Therefore, we urge the Committee to vote favorably on SB 684.

For example, some MADC providers have struggled to negotiate fair reimbursement rates with insurers. Insurers require us to submit extensive paperwork and information to get prior authorization, or continuing authorization, for treatment, which is overly burdensome and time consuming. Prior authorizations and continuing authorizations are too frequently denied, even

(OVER)

when a patient meets the medical necessity criteria for treatment. Insurers often deny coverage of care, without providing a clear reason for why they refuse to pay for the treatment.

While some of these treatment barriers may be occurring for medical and surgical providers as well, we have no way of knowing the insurer's practices and whether they apply more restrictive standards for mental health and substance use disorder care. The insurers have access to all this information, as well as outcome data that would reflect how these barriers affect access to care. That is why it is so vital that the insurers submit complete reports to the MIA detailing the comparative analysis required in federal and state laws. As providers, we cannot meaningfully challenge insurance practices that seem out of line with medical practices – such as the inability to join networks, unfair reimbursement rates, or limitations on patient care – without this information. Full and comprehensive parity analyses will allow the MIA to require insurers to eliminate any barriers to care that are more restrictive for substance use disorder and mental health providers and patients, and Marylanders can get the care they need.

Currently, Maryland private health insurers are only required to submit two reports demonstrating their compliance with the Parity Act over a four-year period. The MIA found that, in the first set of reports, not one single insurer submitted sufficient information for the agency to determine that their plans complied with the Parity Act. The MIA imposed approximately one million dollars in fines against the largest insurers and made a number of recommendations for how to improve the insurers' compliance with these reporting requirements, consistent with this legislation. SB 684 would ensure that the MIA can do its job to audit compliance and that state regulators continue to audit compliance beyond 2026. We have faced ongoing barriers to treating Maryland patients, year after year. Thus, the annual reporting and clarified report requirements in this legislation are necessary to root out the ongoing discrimination that Marylanders face in their private insurance when they need access to substance use disorder and mental health treatment and ensure that insurers do not adopt discriminatory practices in the future.

Thank you for considering our views. We urge the Committee to issue a favorable report on SB 684.

Children's National Testimony - SB 684 - Laura Wil

Uploaded by: Laura Willing

Position: FAV



111 Michigan Ave NW
Washington, DC 20010-2916
ChildrensNational.org

Testimony of Laura Willing, MD
Co-Director, Child and Adolescent Anxiety Program
Associate Program Director, Child and Adolescent Psychiatry Fellowship
Medical Director for Mental Health Policy and Advocacy, Community Mental Health Core
Assistant Professor, Department of Psychiatry & Behavioral Sciences
Children's National Hospital
before
Senate Finance Committee
IN SUPPORT OF
SB 684: Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset
Repeal and Modification of Reporting Requirements

February 28, 2024

Chairwoman Beidle, Vice Chair Klausmeier and members of the committee, thank you for the opportunity to provide written testimony in favor of Senate Bill 684. My name is Laura Willing, MD and I am a child and adolescent psychiatrist at Children's National Hospital. Children's National has been serving the nation's children since 1870. Nearly 60% of our patients are residents of Maryland, and we maintain a network of community-based pediatric practices, surgery centers and regional outpatient centers in Maryland. We also provide a comprehensive range of behavioral health services for Maryland children and youth.

At Children's National, we treat children and youth with a variety of mental health and substance use disorders, in both the inpatient and outpatient settings. We know that many children and youth with health insurance have difficulty accessing quality mental health care in a timely matter, which may be vastly improved by strengthening network adequacy among health plans as is detailed in SB 684. We value all children and youth being able to access the mental health care they need when they need it. We have heard from providers and families

that there are many barriers to care including prior authorizations, step therapy, limited networks, and long wait times for services.

The American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, and Children's Hospital Association declared a National Emergency in Child and Adolescent Mental Health in October 2021¹. We believe that achieving true mental health parity is necessary and vital to improve the current state of youth mental health. The comparative analysis this bill requires the carriers to submit will help the State of Maryland enforce state and federal parity laws that are already in place. We suggest that, to the extent possible, the reports and data are also made available to the public so that the consumers can purchase plans that are in compliance with the parity law.

Nonquantitative treatment limitations (NQTLs) can be difficult to compare between medical/surgical care and mental health and substance use disorders. While we support this bill as is, we do have some suggestions for its implementation. We recommend the use of the substantially all/predominant test for analyzing NQTL in addition to Quantitative Treatment limitations (QTLs). We suggest that a stakeholder advisory group may be beneficial to the Insurance Commissioner when implementing this bill in Maryland. In addition, to determine network adequacy, we recommend using time, distance, and wait time data to determine if a carrier has an adequate mental health network. It is also important to note that the entire continuum of care (including but not limited to outpatient care, intensive outpatient programs, applied behavioral analysis, dialectical behavioral therapy, multisystemic therapy, partial hospitalization programs, residential facilities, and inpatient care) should be covered within network. Furthermore, when considering network adequacy, we recommend that a variety of mental health specialists be included in the network for all carriers. Further, consider that if Maryland residents are frequently needing to find care outside of their carrier's network, that likely is not an adequate network.

We also suggest gathering data on payment/reimbursement rates when comparing medical/surgical care to mental health and substance use disorders care. The Milliman Report shows higher out of network utilization for inpatient and outpatient mental health care as

1. American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, & Children's Hospital Association. (2021, October 19). *AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health* [Press release]. <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>

compared to medical/surgical care, and it also shows frequently lower reimbursement rates for mental health care as compared to medical/surgical care².

I applaud Senator Augustine for introducing this important legislation, which will help more Maryland residents use their health insurance to access mental health care in a timely manner and request a favorable report on Senate Bill 684. Thank you for the opportunity to submit testimony. I am happy to respond to any questions you may have.

2. Melek, S.P. FSA, MAAA; Perlman, D. FSA, MAAA, and Davenport, S. *Milliman Research Report Addiction and mental health vs. physical health: Analyzing disparities in network use and provider reimbursement rates*. December 2017.

SB684-CBH-FAV.pdf

Uploaded by: Lori Doyle

Position: FAV



Testimony on SB 684
Health Insurance – Mental Health and Substance Use Disorder Benefits –
Sunset Repeal and Modification of Reporting Requirements
Senate Finance Committee
February 28, 2024
POSITION: SUPPORT

The Community Behavioral Health Association of Maryland (CBH) is the leading voice for community-based organizations serving the mental health and addiction needs of vulnerable Marylanders. Our 89 members serve the majority of those accessing care through the public behavioral health system. CBH members provide outpatient and residential treatment for mental health and addiction-related disorders, day programs, case management, Assertive Community Treatment (ACT), employment supports, and crisis intervention.

Our member organizations serve the great majority of the almost 300,000 children and adults who access services through the Public Behavioral Health System. Yet, despite their behavioral health expertise and desire to serve those with commercial insurance, our members report great difficulty in getting their clinicians credentialed on carrier panels. They also cite low reimbursement – below that of Medicaid – as a barrier to serving the commercial market. While neither of these barriers taken on their face prove a parity violation, the lack of carrier compliance with parity reporting precludes the Maryland Insurance Administration from making parity violation determinations when complaints have been filed by providers.

Given the serious impact of untreated or under-treated behavioral health disorders, carriers must provide complete compliance reports on all nonquantitative treatment limitations (NQTLs). SB 684 requires carriers to conduct an analysis of all NQTLs and then allows the MIA to choose a subset for review.

Penalties for failure to comply with parity reporting must be severe enough to discourage carriers from viewing them as simply the cost of doing business. SB 684 would impose a penalty of not less than \$1,000 for each day the carrier fails to submit the required information and places the burden of persuasion on the carrier in any matter filed with the MIA that involves the Parity Act. This is an important addition since carriers have been able to fend off violation determinations simply by failing to comply with reporting requirements.

It has been over 15 years since the federal Mental Health Parity and Addiction Act passed and yet we still have no mechanism for ensuring carrier compliance with the law. Lack of access to needed behavioral health services has serious consequences, including suicide, overdose, and loss of functionality. Maryland's law must reflect the serious impact of this problem by taking strong measures to prompt carrier compliance.

For these reasons we urge a favorable report on SB 684.

For more information contact Lori Doyle, Public Policy Director, at (410) 456-1127 or lori@mdcbh.org.

SB684 Testimony .pdf

Uploaded by: Malcolm Augustine

Position: FAV

MALCOLM AUGUSTINE
Legislative District 47
Prince George's County

PRESIDENT PRO TEMPORE

Executive Nominations Committee

Education, Energy and the
Environment Committee



James Senate Office Building
11 Bladen Street, Room 214
Annapolis, Maryland 21401
410-841-3745 · 301-858-3745
800-492-7122 Ext. 3745
Fax 410-841-3387 · 301-858-3387
Malcolm.Augustine@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 28, 2024

Senate Bill 684 - Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements

Dear Colleagues,

I am pleased to present **Senate Bill 684 - Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements**, which will require Maryland health insurers to provide non-discriminatory health coverage for mental health and substance use disorder treatment – the Mental Health Parity and Addiction Equity Act. In 2020, we passed a law (SB 334/HB 455) requiring insurers to document their compliance with parity and submit two reports over four years to the Maryland Insurance Administration (MIA). Compliance reporting laws *appropriately* put the responsibility on insurers to demonstrate that they are adhering to these critical anti-discrimination protections, since they are in possession of all the information about how they operate. Consumers and providers do *not* have access to this information, and any other enforcement mechanism unjustly puts the burden on people who are already struggling to show that their rights have been violated.

However, after lengthy review, the MIA found that the insurers' first set of reports "were *uniformly and significantly inadequate*, impeding the [MIA's] ability to reach parity determinations." As a result, the MIA has urged the General Assembly to strengthen Maryland's 2020 compliance reporting law so that it can do its job – determine whether state-regulated health plans provide coverage for and access to mental health and substance use disorder benefits at the same level as other medical benefits.

SB 684 would adopt the MIA's recommendations to enhance its enforcement authority and also conform Maryland's standards to federal reporting standards, which were added in late 2020. Specifically, this bill would first require insurers to prepare and submit *annual* compliance reports on *all* non quantitative treatment limitations, including on all elements of those treatment limitations even if they were in place from before the parity law went into effect, and remove the reporting law's 2026 sunset. Second, give the MIA discretion to review a subset of those treatment limitations to reduce their burden while still ensuring that it has ready access to these analyses to be able to investigate and resolve consumer complaints as quickly as possible. Third, give the MIA greater discretion to identify outcome data that insurers must submit to evaluate how these treatment limitations are applied and how they affect access to care. Finally, strengthen the MIA's enforcement authority by putting the burden of persuasion on the insurers to demonstrate their compliance with parity, both in reports and in individual disputes, and giving the MIA additional enforcement tools to hold insurers accountable.

MALCOLM AUGUSTINE
Legislative District 47
Prince George's County

PRESIDENT PRO TEMPORE

Executive Nominations Committee

Education, Energy and the
Environment Committee



James Senate Office Building
11 Bladen Street, Room 214
Annapolis, Maryland 21401
410-841-3745 · 301-858-3745
800-492-7122 Ext. 3745
Fax 410-841-3387 · 301-858-3387
Malcolm.Augustine@senate.state.md.us

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

The changes in SB 684 are necessary to ensure that Marylanders have access to the coverage and care they need and deserve, and that they expect when they purchase health insurance. That is the crux of parity. Marylanders should not be forced to pay out-of-pocket for care or wait months for mental health and addiction treatment because their insurers apply more restrictive standards to this coverage than they do for medical conditions. Meaningful compliance with the parity law helps our constituents get the mental health and substance use disorder treatment they need and reduces the stigma around these conditions, and we owe that to our community.

These proposed changes *would not* put any additional burden on insurers because they are already required by law to be conducting and documenting these analyses annually. The federal parity law prohibits insurers from selling plans that do not have equitable coverage of mental health and addiction treatment and it enforces this requirement by requiring insurers to conduct and document these analyses on all treatment limitations. Maryland should track the federal law requirement by requiring annual documentation on all treatment limitations. If insurers are actually complying with parity, they should be able to prove it to the regulators. And if they are not, then we need to hold them accountable.

At the same time, the MIA should have latitude to review a subset of these treatment limitations, and SB 684 would allow for that with appropriate guardrails. But, the most important tool to streamline the MIA's process – and a centerpiece of SB 684 – would be to place the burden of persuasion for compliance squarely on the insurers, as in federal law.

The bill does have a fiscal note, but it does not account for the shifted burden of persuasion to the insurers. With the insurers being rightfully obligated to provide enough information to demonstrate their compliance with the law, the MIA's time and effort will be tremendously reduced from what it is now. Furthermore, after the first set of reports, the MIA issued nearly \$1 million in fines against the insurers, which would already make up for half of the fiscal note. The bottom line however, is that the carriers are required to be demonstrating compliance, and the MIA must enforce it. Otherwise, this financial burden merely gets shifted to Marylanders because their mental health and substance use disorder treatment is not meaningfully and equitably covered under their insurance.

We have been working with the MIA to address differences between SB 684 and a bill in the House (HB 1085). But the answer to the insurers' uniform noncompliance is not to reward the insurers by reducing oversight requirements. The answer is to strengthen the standards to ensure that coverage and access to mental health and substance use disorder care is equitable.

MALCOLM AUGUSTINE
Legislative District 47
Prince George's County

PRESIDENT PRO TEMPORE

Executive Nominations Committee

Education, Energy and the
Environment Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

James Senate Office Building
11 Bladen Street, Room 214
Annapolis, Maryland 21401
410-841-3745 · 301-858-3745
800-492-7122 Ext. 3745
Fax 410-841-3387 · 301-858-3387
Malcolm.Augustine@senate.state.md.us

Thank you for your attention to this critical matter. I urge the committee to give a favorable report for **Senate Bill 684 - Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements**

Sincerely,

A handwritten signature in cursive script that reads "Malcolm Augustine".

Senator Malcolm Augustine

2024 MCHS SB 684 Senate Side.pdf

Uploaded by: Michael Paddy

Position: FAV



Maryland Community Health System

Committee: Senate Finance Committee

Bill: Senate Bill 684 - Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements

Hearing Date: February 28, 2024

Position: Support

The Maryland Community Health System (MCHS) supports Senate Bill 684 - *Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements*. The bill alters reporting requirements on health insurance carriers relating to compliance with the federal Mental Health Parity and Addiction Equity Act (MHPAEA) and alters requirements for certain analyses of nonquantitative treatment limitations required of health insurance carriers. This bill also permits the Maryland Insurance Administration (MIA) to exercise discretion when reviewing subsets of nonquantitative treatment limitations under certain circumstances.

Federally qualified health centers (FQHCs) play a critical role in providing comprehensive and affordable healthcare services to underserved populations. These centers not only focus on physical health but also recognize the importance of mental health and addiction treatment. That is why FQHCs strongly support MHPAEA. FQHCs understand that mental health is an integral part of overall well-being, and they strive to provide accessible and high-quality care to individuals seeking treatment for these conditions.

Comprehensive reporting allows the MIA to effectively monitor and regulate insurance carriers, ensuring compliance with federal and state laws. Insurance carriers that are not in compliance need to be held accountable, and this bill continues to give the MIA the tools it needs to carry out the law's requirements. Based on the MIA's December report it is clear insurance carriers are not in compliance and we support incorporating the MIA's recommendations into law.

We ask for a favorable report. If we can provide any further information, please contact Michael Paddy at mpaddy@policypartners.net.

2024 MOTA SB 684 Senate Side.pdf

Uploaded by: Michael Paddy

Position: FAV



Maryland Occupational Therapy Association

PO Box 36401, Towson, Maryland 21286 ♦ www.mota-members.com

Committee:	Senate Finance Committee
Bill Number:	Senate Bill 684 - Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements
Hearing Date:	February 28, 2024
Position:	Support

The Maryland Occupational Therapy Association (MOTA) supports Senate Bill 684 - *Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements*. The bill alters reporting requirements on health insurance carriers relating to compliance with the federal Mental Health Parity and Addiction Equity Act (MHPAEA) and alters requirements for certain analyses of nonquantitative treatment limitations required of health insurance carriers. This bill also permits the Maryland Insurance Administration (MIA) to exercise discretion when reviewing subsets of nonquantitative treatment limitations under certain circumstances.

Occupational therapists are strong advocates for MHPAEA because they recognize the importance of providing equal access to mental health and addiction treatment. The MHPAEA ensures that insurance plans cannot impose greater restrictions on mental health and addiction benefits compared to other medical and surgical benefits. This means that individuals seeking occupational therapy services for mental health conditions or addiction should have the same coverage and benefits as those seeking treatment for physical health conditions.

Comprehensive reporting to the MIA is crucial. Reporting helps ensure that insurance companies are compliant with state regulations and guidelines related to mental health and addiction coverage. By accurately reporting information, the MIA can identify any discrepancies or violations in insurance plans that may be hindering individuals from accessing the necessary care they need. Accurate reporting provides valuable data that can be used to evaluate the effectiveness of current policies and make informed decisions about potential improvements or adjustments. Ultimately, comprehensive reporting to the MIA is essential for promoting transparency, accountability, and equity in healthcare coverage for all Maryland residents.

We as for a favorable report. If we can provide any additional information, please feel free to contact Michael Paddy at mpaddy@policypartners.net.

SB684 FAV.pdf

Uploaded by: Morgan Mills

Position: FAV



February 28, 2024

Chair Beidle, Vice Chair Klausmeier, and distinguished members of the Finance Committee,

NAMI Maryland and our 11 local affiliates across the state represent a network of more than 58,000 families, individuals, community-based organizations, and service providers. NAMI Maryland is a 501(c)(3) non-profit dedicated to providing education, support, and advocacy for people living with mental illnesses, their families, and the wider community.

NAMI MD believes that health insurance should provide comprehensive mental health and substance use disorder coverage without arbitrary limits on treatment. Therefore, we support policies that ensure parity between mental health and physical health services in all forms of insurance coverage.

Parity has been a priority throughout NAMI's history. Yet despite important advances, the promise of true parity has not been achieved — and far too many people with mental illness are still being denied the care that they need and deserve.

Federal and Maryland parity laws have helped to create a more level playing field to treat mental and physical health conditions alike. However, carriers are still demonstrating non-compliance with parity laws. We believe that the Maryland Insurance Administration's 2023 recommendations are strong to hold health insurance carriers accountable to comply with existing parity laws.

SB684 would ensure that there is appropriate enforcement of parity laws. By strengthening compliance reporting requirements, as SB684 aims to do, we will force insurance carriers to do better. Marylanders deserve better-- they deserve parity compliance.

For these reasons, we urge a favorable report.

Kathryn S. Farinholt
Executive Director
National Alliance on Mental Illness, Maryland

Contact: Morgan Mills
Compass Government Relations
Mmills@compassadvocacy.com

2024 LCPCM SB 684 Senate Side.pdf

Uploaded by: Robyn Elliott

Position: FAV



Committee: Senate Finance Committee

Bill Number: Senate Bill 684 – Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements

Hearing Date: February 28, 2024

Position: Support

The Licensed Clinical Professional Counselors of Maryland (LCPCM) supports *Senate Bill 684 – Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements*. The bill repeals the sunset date for reporting requirements that assist the Maryland Insurance Commission in enforcing parity requirements.

LCPCM strongly supports ensuring that Marylanders have access to behavioral health services, particularly as both the suicide rate and overdose deaths among Marylanders remain high and substance use disorder continues to increase. Under the federal Mental Health Parity and Addiction Equity Act, a plan or issuer may not impose a non-quantitative treatment limitation (NQTL) on mental health and substance use disorder benefits unless, under the terms of the plan or coverage, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL are comparable to those used in applying the limitation to other benefits in the same classification. The information requested in this bill will better aid the Maryland Insurance Administration in confirming the law is being appropriately followed.

We ask for a favorable report. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net.

SB 684_MH parity 2_SWA final.pdf

Uploaded by: Allison Taylor

Position: FWA



Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc
2101 East Jefferson Street
Rockville, Maryland 20852

February 28, 2024

The Honorable Pamela Beidle
Senate Finance Committee
3 East, Miller Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401

RE: SB 684 – Support with Amendments

Dear Chair Beidle and Members of the Committee:

Kaiser Permanente respectfully supports SB 684, “Health Insurance - Mental Health and Substance Use Disorder Benefits - Sunset Repeal and Modification of Reporting Requirements,” if amended. KP prefers the approach to Parity Act reporting outlined in HB 1085 and recommends some additional amendments described below.

Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering health care to over 12 million members in eight states and the District of Columbia.¹ Kaiser Permanente of the Mid-Atlantic States, which operates in Maryland, provides and coordinates complete health care services for over 825,000 members. In Maryland, we deliver care to approximately 475,000 members.

Kaiser Permanente supports the Mental Health Parity and Addiction Equity Act and has worked diligently to implement parity since the law’s inception for group plans in 2008 and expansion into the individual market under the Affordable Care Act in 2010. We agree that everyone deserves access to mental health care. Access to this care continues to be challenging, primarily because of a shortage and maldistribution of mental health providers, which is why Kaiser Permanente has implemented programs and strategies to expand networks and increase access. Those approaches include investing in our networks, creating new coverage pathways with expanded access through telehealth and new technologies, and integrating mental and physical health care. It also involves working with primary care doctors on identifying mental health needs, supporting a collaborative care model, providing pathways to care, and incorporating quality and value.

MH/SUD parity regulations are complicated, especially related to non-quantitative treatment limits (NQTLs). Laws that mandate complex, granular analysis and reporting of NQTLs (especially comprehensive, pre-emptive analysis) will do little or nothing to address the primary issues that affect access to care and are likely to increase costs. Furthermore, there is no current consensus

¹ Kaiser Permanente comprises Kaiser Foundation Health Plan, Inc., the nation’s largest not-for-profit health plan, and its health plan subsidiaries outside California and Hawaii; the not-for-profit Kaiser Foundation Hospitals, which operates 39 hospitals and over 650 other clinical facilities; and the Permanente Medical Groups, self-governed physician group practices that exclusively contract with Kaiser Foundation Health Plan and its health plan subsidiaries to meet the health needs of Kaiser Permanente’s members.

among states about the use of tools or attestation in meeting regulatory requirements (and best practices/standards are evolving).

The focus of regulators should instead be on helping plans to understand how to interpret and apply parity requirements, especially when there is evidence of good faith efforts to comply. Continued guidance is essential in helping plans understand how to avoid applying processes and strategies in an arbitrary or discriminatory manner. We support the development of additional guidance, tools, and templates to inform parity implementation.

Understanding that the State would like to continue with these reports, we provide the following feedback on SB 684:

- **Timing of Reports:** We would prefer that this legislation require the reports to be furnished every third year – rather than every other year. Kaiser Permanente did not receive any feedback on its 2022 reports until the end of January 2023, almost 11 months after they were submitted. Kaiser Permanente’s efforts to review and revise the 2022 reports to address the MIA’s extensive comments soon impeded our effort to prepare the 2024 reports. The biennial reporting cadence provides carriers little opportunity to make meaningful changes to address compliance issues, if any, before the next report is due.

The MIA’s December 2023 report recommended “Until such time that widespread substantive parity determinations have been made by the MIA, compliance and data reporting should continue to be required.” Rather than continuing the reports in perpetuity, we recommend extending the reports through 2030, with further legislative action at that time to extend the reporting requirement if needed.

- **NQTLs:** We appreciate that the bill gives the Commissioner discretion to review a subset of NQTLs; however, as a matter of practicality the MIA should be allowed to inform carriers of their intent before reports are due, and carriers should be permitted to respond only those that will be reviewed. HB 1085 includes this approach.
- **Substantive Parity Violation:** The bill also specifies that a failure of a carrier to submit complete Parity Act compliance information constitutes noncompliance with the Parity Act. If the Committee intends to move forward with this language, we request the amendments conceptually described below:
 - A carrier should not be found in substantive violation if the reviewer lacks the expertise to fairly analyze the report’s content. To that end we propose that a reviewer have 1) substantive experience reviewing reports submitted by health benefit plans to demonstrate compliance with the Parity Act; 2) expertise in Maryland law; and 3) familiarity with health plan operations.
 - Before the MIA determines that a carrier is not in compliance with the Parity Act due to a failure to submit complete information, the MIA must have previously provided the carrier with feedback demonstrating which parts of past filings are sufficient to demonstrate compliance.

Kaiser Permanente
Comments on SB 684
February 28, 2024

Kaiser Permanente understands that access to MH/SUD treatment remains a critical issue. Rather than creating burdensome regulations that do not solve this issue, the State should instead focus efforts on promoting policies that support increasing MH/SUD workforce and innovative models of care, as well as prevention and early intervention in communities.

Thank you for the opportunity to comment. Please feel free to contact me at Allison.W.Taylor@kp.org or (202) 924-7496 with questions.

Sincerely,

A handwritten signature in cursive script that reads "Allison Taylor".

Allison Taylor
Director of Government Relations
Kaiser Permanente

Final SB 684 - MIA - LOI.pdf

Uploaded by: David Cooney

Position: INFO

WES MOORE
Governor

ARUNA MILLER
Lt. Governor



KATHLEEN A. BIRrane
Commissioner

TAMMY R. J. LONGAN
Acting Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2471 Fax: 410-468-2020
1-800-492-6116 TTY: 1-800-735-2258
www.insurance.maryland.gov

Date: February 28, 2024

Bill # / Title: Senate Bill 684 – Health Insurance – Mental Health and Substance Use Disorder Benefits – Sunset Repeal and Modification of Reporting Requirements

Committee: Senate Finance Committee

Position: Letter of Information (LOI)

The Maryland Insurance Administration (MIA) appreciates the opportunity to provide the Committee with information regarding Senate Bill 684.

House Bill 455, Chapter 211/Senate Bill 334, Chapter 212 of the Acts of 2020 created a new reporting requirement related to the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (“Parity Act”). Specifically, § 15-144 of the Insurance Article was enacted to require health insurance carriers to demonstrate compliance with the Parity Act by providing information to the MIA on Nonquantitative Treatment Limitations (“NQTLs”) and data related to health benefit plans offered in certain markets in the State. These landmark 2020 bills established Maryland as a national leader in Parity Act enforcement. Chapters 211 and 212 also required the MIA to submit an Interim Report to the General Assembly by December 1, 2023, summarizing the MIA’s findings after reviewing the required NQTL reports, and making recommendations related to necessary changes to the reporting and data requirements. The MIA’s Interim Report outlined various problems and challenges with the existing reporting process, and included eight specific recommendations for how to improve the efficiency and effectiveness of the process, in order to enable the MIA to reach substantive parity determinations more quickly.

The MIA appreciates that the intent of Senate Bill 684 is to implement the MIA’s recommendations from the Interim Report, and appreciates the efforts of the sponsor to improve access to mental health care for Maryland residents. However, the MIA would like to make the Committee aware that some of the language of the bill as introduced may not accomplish the desired goal of improving the effectiveness of the existing reporting requirements and ultimately increasing consumer access to mental health and substance use disorder treatment.

Over the past two years, the MIA engaged in a deliberative and painstaking process to review and analyze the 213 NQTL reports that were received from carriers in 2022, with each report covering 14 different

categories of NQTLs. Unfortunately, the reviews of these reports are ongoing and the MIA has not yet been able to reach substantive parity determinations due to repeated deficient submissions from carriers. The MIA has imposed significant fines on carriers, and provided detailed guidance on correcting the deficiencies. Despite this, carriers have been unable to provide complete documentation of the required analyses. The lessons learned from this experience informed the MIA's recommendations from the Interim Report, and it is important to consider the complexity of various issues related to the NQTL reports as the Committee determines the most appropriate statutory changes to make to the existing reporting requirements.

In addition to Senate Bill 684's cross file (HB 1074), a second bill seeking to implement the recommendations from the MIA's Interim Report (House Bill 1085) was also introduced in the House. The MIA was able to provide feedback on an early draft of House Bill 1085 before it was introduced to ensure the bill language accurately captured the intent of the MIA's recommendations. Unfortunately, the MIA was not able to provide similar feedback on Senate Bill 684 prior to the bill's introduction. We are, however, currently working with the sponsor to attempt to address several technical and substantive issues the MIA has identified with the current bill language and look forward to reconciling the conflicting provisions between the bills.

In order for the MIA's review of the NQTL reports to be thorough and effective, it is critical to reduce the volume of reports filed by carriers each year, and to grant the MIA additional enforcement tools in the event a carrier submits a deficient report. Additionally, we have provided the sponsor with suggestions to amend the bill to accomplish these goals, but we are not describing all of these issues in our written testimony for the sake of brevity.

Based on the MIA's own experience, and based on best practices from other federal and state regulators, it is clear that the regulatory reviews of the NQTL reports can be more effective and efficient if only a subset of NQTLs are reviewed each reporting period. This allows the regulator to perform an in-depth review of all the carrier's processes and data associated with a particular NQTL, rather than a performing cursory review of all of a carrier's NQTLs, which is unlikely to uncover violations. The MIA also identified that requiring carriers to report NQTLs at the product level, rather than the more granular plan level, will allow the MIA to collect more robust data samples and increase the efficiency of reviews, without sacrificing the integrity of the process, provided certain guardrails are included. Generally, regulators at the state and federal level have a choice between in-depth analysis with a goal of ensuring that carriers are complying with the most important aspects of the Parity Act, or a broad, cursory analysis that may permit a carrier to complete a reporting template without actually documenting compliance.

Unfortunately, Senate Bill 684 does not effectively improve the efficiency of reviewing the NQTL reports, because the recommendations from the MIA's Interim Report were not fully adopted in the bill. While Senate Bill 684 does reduce the number of NQTLs that the MIA must review each reporting period from 14 to 10, the bill *increases* the frequency of reporting from every other year to every year, and the bill still requires reporting at the plan level, instead of at the product level¹. On balance, therefore, Senate Bill 684

¹ An example of a product is an HMO that requires a referral to see a specialist, and does not cover routine out-of-network services. An example of a plan is that type of product with a \$1,000 deductible and \$30 copayments. The same type of product with a \$5,000 deductible and \$25 copayments would be a separate plan.

will actually significantly increase the time and personnel to continue to review these reports in depth, or create considerable strain on agency resources. In the MIA's experience, reviewing between 4 and 5 NQTLs biennially, focusing on the NQTLs with the greatest impact on consumer access to care, is a more effective approach to ensuring compliance. Although federal law requires carriers to perform analyses of all NQTLs, the federal Department of Labor asked for reports of only four NQTLs in its first two years, and will ask for six this year. Additionally, the NQTL reports should be submitted at the product level, as long as all plans within the product use the exact same processes when imposing NQTLs, such as using the same provider network. This will enable the MIA to accomplish more in a shorter time period, with fewer resources, while protecting consumers.

With respect to granting the MIA additional enforcement tools, the MIA is very pleased to see that Senate Bill 684 places the burden of persuasion on the carrier for any determinations related to compliance with the Parity Act. The bill also includes a provision expressly authorizing the MIA to impose a daily penalty for each day a carrier fails to submit information requested by the MIA to determine compliance with the Parity Act, and authorizes the MIA to require a carrier to cease the implementation of an NQTL if the MIA is unable to make a determination of compliance. While these enforcement tools would be helpful in certain situations, they would not be appropriate for all NQTLs, and House Bill 1085 includes additional enforcement tools that would assist the MIA in ensuring compliance. Specifically, when the MIA is unable to reach a parity determination due to a deficient filing from the carrier, House Bill 1085 authorizes the MIA to: charge the carrier for the cost of reviewing re-filed NQTL reports if the initial submission is deficient; cease *or modify* the conduct or practice; submit periodic data related to the conduct or practice; or establish specific quantitative thresholds for evidentiary standards and conduct a new comparative analysis. These additional remedies and enforcement tools are critical to effectively enforce the Parity Act without disrupting the market in a way that could ultimately harm consumers.

Thank you for the opportunity to provide this letter of information. The MIA is available to provide additional information and assistance to the Committee to ensure that Maryland remains a national leader in Parity Act enforcement.