**BRIAN E. FROSH**
*Attorney General*

**ELIZABETH F. HARRIS**
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**
*Deputy Attorney General*

Writer's Direct Fax No.
(410) 576-6571

Writer's Direct Email:
poconnor@oag.state.md.us

**STATE OF MARYLAND**
**OFFICE OF THE ATTORNEY GENERAL**
**CONSUMER PROTECTION DIVISION**

**WILLIAM D. GRUHN**
*Chief*
Consumer Protection Division

Writer's Direct Dial No.
(410) 576-6515

February 20, 2020

To: The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit

Re: House Bill 455 (Health Insurance - Coverage for Mental Health Benefits and Substance Use Disorder Benefits - Treatment Criteria): Support

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports House Bill 455 because the bill could improve the delivery of mental health and substance use disorder treatments in Maryland. Currently carriers are not adequately reporting to the Maryland Insurance Administration (MIA) about whether or not their plans, as written and in operation, have parity between mental health and substance use disorder (MH/SUD) benefits and medical/surgical benefits, as required by the Mental Health Parity and Addiction Equity Act of 2008 (the Parity Act). Without operational information, the MIA cannot meaningfully assess or enforce carriers' compliance with the Parity Act. This bill would impose detailed reporting requirements of operational parity information, among other information, on carriers in Maryland.

By focusing on parity in the operation of health plans, we may achieve progress in addressing the persistent problems facing insureds who require MH/SUD treatments: inadequate networks, unaffordable prescription drugs, and criteria that limit the scope or duration of benefits for services provided under a plan. These nonquantitative treatment limitations (NQTLs) may not be more stringent for MH/SUD benefits than for medical/surgical benefits, and there must be parity in operation as well as on paper. Examples of NQTLs include:

• Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative (including standards for concurrent review);

• Formulary design for prescription drugs;



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• Network tier design;

• Standards for provider admission to participate in a network, including reimbursement rates;

• Plan methods for determining usual, customary, and reasonable charges;

• Fail-first policies or step therapy protocols;

• Exclusions based on failure to complete a course of treatment; and

• Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage. https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtls-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf

Only comparisons of decision-making processes and outcomes within each category can establish whether carriers are more stringent regarding MH/SUD benefits than medical/surgical benefits. For example: Are reimbursement rates for providers of the two classes of benefits in parity or not? Are standards for provider admission to the plan's network in parity or not? Is there parity between the facilities required for SUD treatment (e.g., methadone clinics) and medical treatment (e.g., dialysis clinics)?

The Parity Act requires carriers to assess and document plan parity as written and in operation, but not a single carrier could produce documentation of an operational plan review as required by the Act when the MIA conducted its 3rd market survey. The bill's enhanced reporting requirements are necessary so that consumers may have verification that Maryland carriers are complying with the Parity Act.

Seven states have adopted comparable carrier compliance reporting requirements to enforce mental health parity (California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, and New Jersey). In addition, Massachusetts, Connecticut and Vermont gather carrier data annually to identify disparities in mental health coverage, and New York implemented biennial data reporting standards in 2019. We believe improved parity is necessary for consumers of MH/SUD treatments, and that this bill would improve parity.

For these reasons, we ask for a favorable report by the Committee.

cc: Members of the Health and Government Operations Committee