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02/21/2022

### Written Testimony in Favor of SB460 with Amendments

Good Afternoon,

My name is Prerna Polepally and I am an intern with Senator Katie Fry Hester. Our office has worked on a project regarding Mental & Behavioral Health Insurance Parity since the end of the 2021 Legislative Session. Based on my significant research, I am testifying in strong support of SB 460 – Consumer Health Access Program for Mental Health and Addiction Care - Establishment – proposed by Senator Augustine and Cosponsored by Senator Hester.

I was honored to speak with Senator Augustine & Vice Chair Feldman in September regarding the insurance parity issue, and how it has advanced with their advocacy over the past few years. Throughout my research (*attached below as Appendix A*), I spoke with various stakeholders – providers, consumers, and representatives from the MIA and HEAU. Though each group has varying concerns and perspectives, they agree that Maryland has a major problem with MBH & Substance Abuse Insurance Parity. The primary issues that I found can be broken down into three components: 1.) asymmetric information, 2.) a lack of incentives for Maryland providers to take insurance, and 3.) difficulty coordinating and enforcing existing rules. Many insurance companies have displayed a subtle yet blatant disregard for the Federal MHPAEA and it is finally time that Maryland takes stronger steps to bridge the gaps between existing laws, various departments, and the consumers.

This bill takes a huge step towards that. By creating an outreach program to consumers, we can make this information more accessible. Especially during the pandemic, chasing insurance companies for correct information regarding appeals is a tedious and complicated task. By assisting and representing customers with appeals and other insurance concerns, this program will ensure that everyone gets the help that they need without sacrificing their time and mental health. Many consumers who face these issues give up (during either the appeal or seeking help itself if prices are too steep) and by creating a guide for that process, the Consumer Health Access Program will prevent this from happening at the scale it does today. The work done with data collection - especially in conjunction with the wonderful work done by the MIA and MHBE - will provide the Legislature with a comprehensive view of the problems that Maryland faces,

especially with discrimination within MBH care, and enable more targeted legislation for enforcement in the future.

The work that this program can do will be life changing for many people; however, there is still more that can be done. One thing not addressed in this bill is provider incentives. Due to a lack of cooperation and other issues, many health care providers choose not to take insurance, especially if their clientele are able to pay out-of-pocket. This creates a significant issue for low-income people or people who lack that degree of disposable income. **If this bill were amended to include incentives for providers or at least address issues of reimbursement within each provider, we can further reduce the disparities this program hopes to address.** This could include anything from specific parts of the proposed hotline to address reimbursement, a guide for consumers on how to pursue reimbursement, or even training for staff at various providers' offices that address how to deal with parity issues. This program has the potential to change the way that insurance manages mental & behavioral health. But the first step to that is passing this pivotal bill.

With a decline in our overall mental health due to the COVID-19 pandemic, it is important now more than ever that this bill be passed. It opens doors for everyone to access the help that they need. As I have said in my meeting with Senator Augustine and others: the last thing people with mental, behavioral, or substance abuse issues need is to face additional barriers with insurance. Taking the step to get help is a massive one and there should not be any boundaries to prevent people from receiving the help that they need.

Thank you so much for your time. Please feel free to contact me at my email ([prerna.polepally@gmail.com](mailto:prerna.polepally@gmail.com)) for any clarification or further information.

Thank You,

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## **Behavioral and Mental Health and Substance Abuse Parity Policy Memo**

### **I. Background**

#### **A. Existing Laws Dealing With Parity:**

1. 2008 (Federal) MHPAEA
  - a) Federal Regulations for State's Network Adequacy Standards - [42 CFR § 438.68](#) *this is for Medicaid*
2. 2019 (MD) Coverage Requirements and Reports - SB 631
3. 2019 (MD) Defined Parity - SB 28
4. 2020 (MD) Bi-annual Reporting Requirements (Sunset 2026) - SB 334
5. 2021 (MD) Telehealth Bill - SB 3
6. <https://www.paritytrack.org/reports/maryland/statutes/>

### **II. Issues**

#### **A. Main Issue: Health insurance companies do not provide fair and equitable coverage for behavioral and mental health disorder or substance abuse compared to surgical or physical health.**

##### **1. Further Issues:**

- a) There are existing laws but no guidelines set in place that allow for enforcement of parity.
- b) There is a lack of accurate information regarding health care providers on insurance panels.
  - (1) Providers can have difficulty acquiring patients due to misinformation.
  - (2) Patients in need of specialized care will be unable to find the right provider.
- c) Many providers are no longer taking insurance.
- d) There is difficulty in coordinating with insurance companies, providers, and the MIA to fix an issue

### **III. Possible Solutions**

#### **A. Perhaps establishing a division in the Attorney General's Office who can prosecute these instances**

1. Key Parts of the Federal MHPAEA that may be "easier" to prosecute
  - a) Fail First Requirement: insurers can not require that a certain cheaper treatment fails before a patient moves to a more expensive one UNLESS that statute applies to physical & surgical health
  - b) Network Access: patients must have access to an 1) in-network provider who is 2) qualified to treat their condition and 3) can see them in a reasonable amount of time from an accessible location

*(1) Highlighting this will (hopefully) result in better data collection on insurance panels - Issue b*

- c) Pre-Authorization: networks can not require pre-authorization UNLESS that statute applies to physical & surgical health
- d) Written Explanation: a health plan should provide patients with a reason as to how the claim was evaluated, why it was denied, and the legal basis

*(1) This point is further addressed below*

- 2. Key Parts of the Federally Set Network Adequacy Guidelines (42 CFR § 438.68) for Medicaid that may be “easier” to prosecute

- a) (c)(1) of Statute provides guidelines for minimum elements of network adequacy standards

(1) There is a clause on “(vii) The ability of network providers to communicate with limited English proficient enrollees in their preferred language” which may be something to note in the future

- b) *Perhaps adapt some of these guidelines to non-Medicaid services*

B. Pass statute fine-tuning the MHPAEA’s reporting requirements TO the patient

- 1. Requires that the health plan provides patients with a written explanation of:
  - a) how it evaluated the need for treatment
  - b) why it denied the claim
  - c) the basis for its conclusion that the plan complies with federal law
- 2. Perhaps set a time limit and/or add more requirements; if ignored, patient should be able file a case with either MIA (in a more formal and enforceable way than it exists currently) or even further with the AG’s office

C. Outreach:

- 1. Awareness about checking how much our constituent’s out-of-network doctors get paid to get reimbursed. (You can see what doctors are paid by checking the explanation of benefits you receive from your plan)
- 2. Awareness on the links to go to in order to file an appeal to a 3rd party
  - a) How to file a complaint is dependant on your plan type and can go to State insurance commissioner/USD or Labor/ USD of Health & Human Services ([www.naic.org/documents/members\\_membershipist.pdf](http://www.naic.org/documents/members_membershipist.pdf) and <https://www.psychiatry.org/psychiatrists/practice/parity> are helpful resources)
  - b) [info@mentalhealthparitywatch.org](mailto:info@mentalhealthparitywatch.org)

#### IV. Overall Takeaways

- A. There seems to be a lot in the works as far as legal guidelines go. The foundational laws are present as are the reporting requirements (though those may need updating after we actually receive the information). The underlying issue is the lack of enforcement. Taking inspiration from *Wit v. UBH* (the Northern California court case against United Health), prosecuting would not be a bad idea as long as it is comprehensive and sets a guideline that makes it clear that MD will be taking action. Probably, until we get to that point, we would have to set up the commission in the AG's office and wait for the results from the reports in 2022 and 2024, then take action. Until then, we may not be able to hit a critical point of issue. It seems like everyone agrees on the idea that enforcement is the primary issue (though our laws do need to be better). We just have to find a way to do that.

#### V. Additional Resources That May Be Of Note

- A. Indepth Lengthy Notes: [BX Project - Insurance Parity Notes](#)
- B. [50 state report from NCSL](#)
  1. Summary and Notes - [NCSL Analysis Notes](#)
- C. [MARYLAND PARITY PROJECT](#)
- D. [MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT RESOURCE GUIDE](#)
- E. [Maryland Medicaid Parity \(MHPAEA\)](#)
- F. MD Psychiatry Society (Letters about parity)
  1. [September 18, 2015 The Honorable Al Redmer Commissioner Maryland Insurance Administration 200 St. Paul Place Suite 2700 Baltimore](#)
  2. [April 23, 2019 Robert R. Neall Secretary Maryland Department of Health 201 W. Preston Street Baltimore, Maryland 21201 Dear Sec](#)
  3. [Action Steps](#)
- G. [Parity Law Poster](#)
- H. [Wit v. UBH](#)
- I. [MHAMD PDFs](#)
- J. New York Laws:
  1. <https://omh.ny.gov/omhweb/bho/parity.html>
    - a) Federal: Patient Protection and Affordable Care Act of 2010
  2. [https://ag.ny.gov/sites/default/files/mental\\_health\\_parity\\_brochure.pdf](https://ag.ny.gov/sites/default/files/mental_health_parity_brochure.pdf)
  3. [https://ag.ny.gov/sites/default/files/hcb\\_mental\\_health\\_parity\\_report.pdf](https://ag.ny.gov/sites/default/files/hcb_mental_health_parity_report.pdf)
- K. Massachusetts Laws:
  1. <https://www.masslegalhelp.org/mental-health/mental-health-parity>