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Legislative District 47
Prince George's County

PRESIDENT PRO TEMPORE

Executive Nominations Committee

Education, Energy and the
Environment Committee



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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.

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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.

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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