LEGAL ACTION CENTER
Breaking Barriers. Defending Dignity.

Maryland Insurance Administration – Mental Health Parity and Addiction Equity Act Reporting Requirements – Revisions and Sunset Repeal (HB 1085)
Health and Government Operations Committee
February 22, 2024
FAVORABLE WITH AMENDMENTS

Thank you for the opportunity to submit testimony in support of HB 1085 with amendments, which would amend Maryland's Parity Act compliance reporting standards to streamline the Maryland Insurance Administration's (MIA) oversight process and repeal a sunset of the current biennial reporting requirement. 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 enactment of the 2020 parity compliance and data reporting standards and worked to establish strong regulatory standards to implement the law. We support efforts to address **"uniform and significant" noncompliance by all carriers**, as described in the MIA's Interim Report to the General Assembly.

HB 1085 would adopt several important measures to strengthen Maryland's compliance requirements to better enforce the Parity Act, including: (1) lifting the 2026 sunset on reporting requirements; (2) eliminating the use of an outdated compliance reporting form; (3) requiring plans to conduct compliance analyses of "legacy" standards used to design and apply their nonquantitative treatment limitations (NQTLs); and (4) expanding the MIA's remedial authority to, among other things, bar a carrier from implementing NQTLs for which it has not submitted sufficient information to demonstrate parity compliance. We fully support these provisions and commend the MIA's efforts to enforce state and federal law.

Yet, in an effort to streamline the MIA's review process – made more onerous by the carriers' widespread and repeated failure to submit required information – HB 1085 would significantly reduce the breadth of the MIA's oversight, authorize analytical standards without sufficient guardrails, and fail to place the burden of persuasion squarely on carriers to demonstrate parity compliance. **HB 1085 would effectively reward carriers for not demonstrating compliance with federal and state laws.**

Limiting the MIA's oversight would have significant consequences for Marylanders who are entitled to access equitable MH and SUD care through their insurance. They and their providers rely on strong oversight by the MIA to enforce nondiscriminatory coverage because they have neither the information nor the power necessary to enforce their parity rights. The purpose of the Parity Act is to improve access to MH and SUD care, and effective compliance oversight is widely recognized as an essential tool, and, thus, required by federal law. Federal regulators have also proposed new standards to address widespread noncompliance by health plans, and we urge the General Assembly to strengthen, not weaken, Maryland's oversight.

810 First St, NE, Suite 200, Washington, DC 20002 T 202.544.5478 F 202.544.57 www.lac.org

Based on our detailed testimony in HB 1074, we briefly highlight our key concerns and recommended revisions.

- **Frequency of Compliance Reporting**

HB 1085 would retain biennial submission and review of carrier NQTL reports, even though carriers should be **conducting annual analyses** of NQTLs, as written and in operation, to comply with federal law. The majority of states that have enacted compliance reporting statutes – 16 of 25 states – require annual report submission. An annual compliance report is also essential to ensure that consumers or providers that challenge a carrier's decision as violative of the Parity Act have ready access to their carrier's compliance report, as required under federal law. We urge the adoption of annual compliance reporting, as proposed in HB 1074.

- **Analysis and Submission of All NQTLs Rather Than a Designated Set of Four**

HB 1085 would reduce the number of NQTLs that carriers must submit for review (on a biennial basis) to no less than 4 NQTLs and would also give advance notice to carriers of the NQTLs that must be submitted. While we agree that the MIA should have authority to review a representative subset of NQTLs, with appropriate guardrails and transparency, federal law clearly requires Maryland's carriers 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.

HB 1085's framework would substantially weaken enforcement and harm consumers who may need to challenge a denial that is based on an NQTL that has not be selected for reporting and review. 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. We, therefore, urge the adoption of the HB 1074 requirement that would require carriers to submit their analysis of all NQTLs and allow the MIA to identify, post submission of carrier reports, a subset of NQTLs for review.

- **Compliance Submission and Review at the Product Rather Than Plan Level**

While federal law requires Maryland's carriers to demonstrate compliance on the "plan" level, the MIA has proposed that compliance analyses be conducted and reviewed at a "product" level. We have seen no guidance from federal regulators on this analytical approach, and only one state (Texas) authorizes reporting on the product level. We agree that the MIA should have authority to streamline its ***review*** of plans by collecting compliance information and outcomes data at the plan level and then conducting a compliance review at the product level provided appropriate guardrails. For example, the carrier must verify that it has designed and implements the relevant NQTL for each plan within a product in the exact same way, and the MIA must apply any finding of insufficient reporting or noncompliance to all plans within the product.

810 First St, NE, Suite 200, Washington, DC 20002 T 202.544.5478 F 202.544.57 www.lac.org

This approach should retain a requirement that the carrier must continue to conduct its NQTL comparative analysis on the plan level, in keeping with federal law. Retaining this standard would also ensure that carriers conform to any new testing standards proposed by federal regulators that rely on plan level data.

- **Carrier Burden of Persuasion**

We support the additional remedial measures proposed in HB 1085, including the assessment of fees on carriers for the MIA's expenses incurred after an initial determination of an incomplete report and authority to require specific actions if the Commissioner cannot make a substantive determination based on an insufficient comparative analysis. We are concerned, however, that HB 1085 does not explicitly impose the burden of persuasion on the carrier for both its compliance reports and in all matters that raise Parity Act violations. The MIA recommended this persuasion standard in 2020 and identified it as one of the two most important recommendations in its Interim Report. **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.** We urge adoption of this standard (included in HB 1074) to ensure that the MIA can carry out its legal obligation to determine parity compliance and issue definitive substantive orders in individual matters that raise Parity Act violations.

- **Consistency with Federal Comparative Review and Compliance Standards**

Although the MIA has incorporated federal regulatory guidance in developing its parity reporting regulations, HB 1085 does not account for any updated compliance standards that may be adopted in federal regulations. The Departments of Labor, Health and Human Services and Treasury have issued proposed regulations that would establish two new standards for assessing discrimination and substantially expand outcomes data measures, particularly related to network composition. We urge adoption of a provision that would require the Commissioner to conform Maryland's standards for compliance reporting, outcomes data measures and report forms to federal standards. While the MIA should certainly go beyond federal standards, as appropriate, it must encompass all federal standards. 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).

Thank you for considering our views. We urge the Committee to issue a favorable report with amendments on HB 1085.

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