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Washington, D.C. 20004  
February 22, 2024

Health and Government Operations Committee  
Maryland General Assembly  
House Office Building  
Annapolis, MD 21401

Via electronic submission

**RE: SUPPORT WITH AMENDMENTS FOR HB 1085**

Dear Chair Pena-Melnyk, Vice-Chair Cullison, and Members of the Committee:

On behalf of Inseparable, I am testifying in favor of HB 1085 with amendments. 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 Vice-Chair Cullison for her commitment to ensuring parity and for being the prime sponsor of HB 1085. 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.<sup>1</sup> 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.

To ensure the intent of parity is realized, it is critical that Maryland adopt policies that will hold insurers and plans accountable. Therefore, we urge amendments to HB 1085, including provisions contained in HB 1074, that will improve the ability of Maryland residents to access needed MH/SUD care:

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<sup>1</sup> See [2022](#) and [2023](#) MHPAEA Reports to Congress.

- Ensure 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. We believe that Maryland should align with both federal law and, wherever possible, with other states. 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. Therefore, after submission of all NQTL compliance analyses, MIA should be permitted to review a representative subset of different NQTLs at the product level, to the extent that the insurers attest that there are no differences in the design or implementation between plans within a given product. To encourage more robust compliance analyses across NQTLs, we do not believe that MIA should 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. It is important that Maryland ensure alignment with changes to Federal Parity Act rules over time and gather this vital information 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 HB 1085’s provision to require insurers to pay for any reviews beyond their initial submission, as this would incentivize carriers to submit complete reports at the outset. However, we urge stronger enforcement provisions in HB 1085, 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 Vice-Chair Cullison for prioritizing mental health parity. With amendments to strengthen the bill, we believe HB 1085 can represent a major step towards

finally holding insurers accountable and realizing 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