Legislative Analyst's Office

Presented to: California State Senate Select Committee on Mental Health

Honorable Jim Beall, Chair

June 27, 2013, Hearing: *"Measuring Parity Compliance in California"*

Introductory Remarks

My name is Shawn Martin and I am the Managing Principal Analyst for the Health and Human Services section at the Legislative Analyst's Office. I would like to thank the Committee Chair and members for inviting me here to testify today. My testimony will focus on enforcement of the federal Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008. Specifically, I will talk about how clarification of federal regulations could facilitate better enforcement.

Overview of the Federal MHPAEA of 2008

Under MHPAEA, group health plans and health insurance issuers are required to ensure that financial requirements and treatment limitations applicable to mental health and substance use disorder (MH/SUD) benefits are no more restrictive than the predominant requirements or limitations applied to substantially all medical/surgical benefits. (The MHPAEA does not mandate that a plan provide MH/SUD benefits.)

Federal Interim Final Rule (IFR) Issued to Provide MHPAEA Implementation Guidance. On February 2, 2010, the federal Departments of Health and Human Services, Labor, and the Treasury published an IFR to clarify implementation of MHPAEA. Under MHPAEA, if a plan or issuer that offers medical/surgical and MH/SUD benefits imposes "financial requirements" (such as deductibles, copayments, coinsurance and out-of-pocket limitations), the financial requirements applicable to MH/SUD benefits can be no more restrictive than the "predominant" financial requirements applied to "substantially all" medical/surgical benefits. The regulations provide that the "predominantly/substantially all" test applies to six classifications of benefits on a classification-by-classification basis. The six classifications are as follows:

- ***Inpatient, In-Network.*** Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.
- ***Inpatient, Out-of-Network.*** Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network providers.
- ***Outpatient, In-Network.*** Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.
- ***Outpatient, Out-of-Network.*** Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers.
- ***Emergency Care.*** Benefits for emergency care.

- ***Prescription Drugs.*** Benefits for prescription drugs. (Special rules apply for multi-tiered prescription drug benefits.)

Clarification of Federal Regulations Would Facilitate Enforcement of MHPAEA

Federal officials have indicated that final regulations for the implementation of MHPAEA will be promulgated by the end of the 2013 calendar year. There are a number of issues that the final regulations could clarify that would facilitate enforcement of MHPAEA. We describe some of them here.

Classification of Benefits. The IFR requires parity to be determined on a classification-by-classification basis under the six classifications described in the IFR. For example, parity for inpatient/in-network behavioral health benefits is determined by comparing the benefits to inpatient/in-network medical/surgical benefits. However, certain health care services are not clearly classified as inpatient or outpatient because they provide an intermediate level of care. For example, health plans may provide residential treatment to enrollees who require continued treatment for certain MH conditions but who do not require psychiatric inpatient hospitalization. These residential treatment facilities may not be licensed as hospitals, but may provide services that exceed the scope of typical outpatient care. Furthermore, health plans can provide benefits for behavioral health services that have no analogous services on the medical/surgical side, thereby making parity difficult to enforce.

Non-Quantitative Treatment Limitations. Additional examples to illustrate the application of non-quantitative treatment limitation rules would be helpful to illustrate the application of the rules. For example, plans often impose non-quantitative treatment limitations such as prior authorization being required before an enrollee can see a specialist, but no prior authorization to see a primary care physician. Similarly, plans may require physicians to seek prior authorization before they can perform a specific test or procedure.

Effect of ACA. The IFR was published prior to passage of the ACA. The ACA includes provisions that amend certain provisions of MHPAEA, expanding the applicability of the parity requirements to health insurance issuers offering group or individual health insurance coverage. As noted above, MHPAEA initially only applied to plans sponsored by private and public sector employers with more than 50 employees. It would be helpful if the final regulations clarified the implementation of MHPAEA in the context of ACA.

Federal Government Should Provide Clarification. In summary, enforcement of MHPAEA would be facilitated by the federal government promulgating final regulations that provide clarity regarding:

- The classification of certain benefits as inpatient and outpatient services, providing examples of how to apply MHPAEA in such cases;
- Non-quantitative treatment limitations and qualitative treatment differences and how to apply MHPAEA in such cases;
- The broader reach of MHPAEA under ACA.

Conclusion

This concludes my testimony on how enforcement of MHPAEA would be facilitated by clarification of federal regulations. I would be happy to answer any questions.