

Introduced by Senator Wiener

(Principal coauthor: Senator Beall)

(Principal coauthors: Assembly Members Aguiar-Curry and Chiu)

(Coauthors: Senators Glazer and Hill)

(Coauthors: Assembly Members Maienschein and Wicks)

January 14, 2020

An act to add Section 1367.045 to, and to repeal and add Section 1374.72 of, the Health and Safety Code, and to repeal and add Section 10144.5 of the Insurance Code, relating to health coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 855, as introduced, Wiener. Health coverage: mental health or substance abuse disorders.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

Existing law, known as the California Mental Health Parity Act, requires every health care service plan contract or health insurance policy issued, amended, or renewed on or after July 1, 2000, that provides hospital, medical, or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age, and of serious emotional disturbances of a child under the same terms and conditions applied to other medical conditions, as specified. Existing law requires those benefits to include, among other things, outpatient services, inpatient hospital services, partial hospital services, and prescription drugs, if the plan contract or policy includes coverage for prescription drugs.

This bill would revise and recast those provisions, and would instead require a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage to provide coverage for the diagnosis and medically necessary treatment of mental health and substance use disorders, as defined, under the same terms and conditions applied to other medical conditions. The bill would prohibit a health care service plan or health insurer from limiting benefits or coverage for chronic or pervasive mental health and substance use disorders to short-term or acute treatment.

This bill would authorize certain individuals or entities to pursue a civil action against a health care service plan or health insurer for a violation of the above-described provisions either independently or through a class action lawsuit, and would authorize the imposition of penalties in a civil action under these provisions, including attorney's fees. The bill would declare that its provisions are severable.

Because a willful violation of these requirements with respect to health care service plans would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The California Mental Health Parity Act (Section 1374.72
4 of the Health and Safety Code and Section 10144.5 of the Insurance
5 Code) was enacted in 1999 to require coverage of all diagnosis
6 and medically necessary treatment of nine listed severe mental
7 illnesses, as well as serious emotional disturbances of a child.
8 However, this list of nine severe mental illnesses is not only
9 incomplete and out-of-date, but also fails to encompass the range
10 of mental health and substance use disorders whose complex
11 interactions are contributing to overdose deaths from opioids and

1 methamphetamines, the increase in suicides, and other so-called
2 deaths of despair.

3 (b) Following the California Mental Health Parity Act, the
4 federal Paul Wellstone and Pete Domenici Mental Health Parity
5 and Addiction Equity Act of 2008 put in place even more robust
6 mental health parity protections, which also applied to substance
7 use disorders, making the most important provision of the
8 California Mental Health Parity Act its coverage requirement for
9 medically necessary treatment for severe mental illnesses and
10 serious emotional disturbances of a child.

11 (c) The federal Affordable Care Act (ACA) includes mental
12 health and addiction coverage as one of its 10 essential health
13 benefits, but it does not contain a definition for medical necessity,
14 and despite the ACA, needed mental health and addiction coverage
15 can be denied through overly restrictive medical necessity
16 determinations.

17 (d) With one in five adults in the United States experiencing a
18 mental health disorder and 1 in 13 individuals 12 years of age or
19 older experiencing a substance use disorder, it is critical for the
20 California Mental Health Parity Act to be expanded to apply to all
21 mental health and substance use disorders, as defined by the
22 preeminent national and international bodies.

23 (e) The conditions currently listed in the California Mental
24 Health Parity Act, including autism, are all included in the broader
25 definition of mental health and substance use disorders.

26 (f) If the California Mental Health Parity Act is so expanded,
27 coverage of medically necessary treatment would increase for the
28 fewer than one-half of adults with a mental health disorder who
29 now receive treatment and the fewer than 1 in 10 individuals 12
30 years of age or older with a substance use disorder who now receive
31 treatment.

32 (g) When medically necessary mental health and substance use
33 disorder care is not covered, individuals with mental health and
34 substance use disorders often have their conditions worsen, ending
35 up on Medicaid, in the criminal justice system, or on the streets,
36 resulting in harm to individuals and communities, and higher costs
37 to taxpayers.

38 (h) In 2016, approximately 6,000,000 veterans in the United
39 States had private health care coverage, making it critical to ensure

1 that the veterans' private health plans cover all medically necessary
2 treatment for the invisible wounds of war.

3 (i) Expansion of the California Mental Health Parity Act will
4 help address the following manifestations of the ongoing mental
5 health and addiction crises in California:

6 (1) Between 2012 and 2017, California's rate of fatal overdoses
7 for all opioids increased 22 percent, while fatal overdose rates
8 increased 85 percent for heroin and 425 percent for fentanyl.

9 (2) Suicide rates in California increased by 14.8 percent between
10 1999 and 2016, with the suicide rate from 1991 to 2017, inclusive,
11 for children 10 to 14 years of age, inclusive, increasing by 225
12 percent.

13 (3) Thirty-seven percent of students with a mental health
14 condition 14 years of age and older drop out of school, and mental
15 illness has the highest dropout rate of any disability group.

16 (4) The correlation between untreated mental illness, substance
17 use disorders, and incarceration is substantial, as three in four
18 individuals in jail have been diagnosed with both a mental illness
19 and a substance use disorder.

20 (5) Untreated mental health and substance use disorders are an
21 enormous problem with incarcerated youth, with 70 percent of
22 youth arrested each year having a mental health disorder.

23 (6) As many as one-third of the 130,000 individuals who are
24 homeless living on the streets in California have a mental health
25 condition.

26 (j) In two court decisions, *Harlick v. Blue Shield of California*,
27 686 F.3d 699 (9th Cir. 2011), cert. denied, 133 S.Ct. 1492 (2013),
28 and *Rea v. Blue Shield of California*, 226 Cal.App.4th 1209, 1227
29 (2014), the California Mental Health Parity Act was interpreted
30 to require coverage of medically necessary residential treatment.

31 (k) Coverage of intermediate levels of care such as residential
32 treatment, which are essential components of the level of care
33 continuum called for by nonprofit, and clinical specialty
34 associations such as the American Society of Addiction Medicine
35 (ASAM), are often denied through overly restrictive medical
36 necessity determinations.

37 (l) In March 2019, the United States District Court of the
38 Northern District of California ruled in *Wit v. United Behavioral*
39 *Health*, 2019 WL 1033730 (Wit; N.D.CA Mar. 5, 2019), that
40 United Behavioral Health created flawed level of care placement

1 criteria that were inconsistent with generally accepted standards
2 of mental health and substance use disorder care in order to
3 “mitigate” the requirements of the federal Mental Health Parity
4 and Addiction Equity Act of 2008.

5 (m) As described by the federal court in Wit, the eight generally
6 accepted standards of mental health and substance use disorder
7 care require all of the following:

8 (1) Effective treatment of underlying conditions, rather than
9 mere amelioration of current symptoms, such as suicidality or
10 psychosis.

11 (2) Treatment of cooccurring behavioral health disorders or
12 medical conditions in a coordinated manner.

13 (3) Treatment at the least intensive and restrictive level of care
14 that is safe and effective; a lower level or less intensive care is
15 appropriate only if it safe and just as effective as treatment at a
16 higher level or service intensity.

17 (4) Erring on the side of caution, by placing patients in higher
18 levels of care when there is ambiguity as to the appropriate level
19 of care, or when the recommended level of care is not available.

20 (5) Treatment to maintain functioning or prevent deterioration.

21 (6) Treatment of mental health and substance use disorders for
22 an appropriate duration based on individual patient needs rather
23 than on specific time limits.

24 (7) Accounting for the unique needs of children and adolescents
25 when making level of care decisions.

26 (8) Applying multidimensional assessments of patient needs
27 when making determinations regarding the appropriate level of
28 care.

29 (n) The court in Wit found that all parties’ expert witnesses
30 regarded the ASAM criteria for substance use disorders and Level
31 of Care Utilization System, Child and Adolescent Level of Care
32 Utilization System, Child and Adolescent Service Intensity
33 Instrument, and Early Childhood Service Intensity Instrument
34 (LOCUS/CALOCUS and CASII/ECSII) criteria for mental health
35 disorders as prime examples of level of care criteria that are fully
36 consistent with generally accepted standards of mental health and
37 substance use care.

38 SEC. 2. Section 1367.045 is added to the Health and Safety
39 Code, to read:

1 1367.045. (a) If a health care service plan contract offered,
2 issued, delivered, or renewed on or after January 1, 2021, whether
3 or not in California, that provides health care coverage for a
4 California resident contains a provision that reserves discretionary
5 authority to the plan, or an agent of the plan, to determine eligibility
6 for benefits or coverage, to interpret the terms of the contract, or
7 to provide standards of interpretation or review that are inconsistent
8 with the laws of this state, that provision is void and unenforceable.

9 (b) For purposes of this section, “renewed” means continued in
10 force on or after the contract’s anniversary date.

11 (c) For purposes of this section, the term “discretionary
12 authority” means a contract provision that has the effect of
13 conferring discretion on a health care service plan or other claims
14 administrator to determine entitlement to benefits or interpret
15 contract language that, in turn, could lead to a deferential standard
16 of review by a reviewing court.

17 (d) This section does not prohibit a health care service plan from
18 including a provision in a contract that informs an enrollee that,
19 as part of its routine operations, the plan applies the terms of its
20 contracts for making decisions, including making determinations
21 regarding eligibility, receipt of benefits and claims, or explaining
22 policies, procedures, and processes, so long as the provision could
23 not give rise to a deferential standard of review by a reviewing
24 court.

25 (e) This section applies to both group and individual health care
26 service plan contracts.

27 (f) The director may adopt regulations reasonably necessary to
28 implement this section.

29 (g) This section is self-executing. If a health care service plan
30 contract contains a provision rendered void and unenforceable by
31 this section, the parties to the contract and the courts shall treat
32 that provision as void and unenforceable.

33 SEC. 3. Section 1374.72 of the Health and Safety Code is
34 repealed.

35 ~~1374.72. (a) Every health care service plan contract issued,~~
36 ~~amended, or renewed on or after July 1, 2000, that provides~~
37 ~~hospital, medical, or surgical coverage shall provide coverage for~~
38 ~~the diagnosis and medically necessary treatment of severe mental~~
39 ~~illnesses of a person of any age, and of serious emotional~~
40 ~~disturbances of a child, as specified in subdivisions (d) and (e);~~

1 under the same terms and conditions applied to other medical
2 conditions as specified in subdivision (c):
3 (b) These benefits shall include the following:
4 (1) Outpatient services.
5 (2) Inpatient hospital services.
6 (3) Partial hospital services.
7 (4) Prescription drugs, if the plan contract includes coverage
8 for prescription drugs.
9 (c) The terms and conditions applied to the benefits required
10 by this section, that shall be applied equally to all benefits under
11 the plan contract, shall include, but not be limited to, the following:
12 (1) Maximum lifetime benefits.
13 (2) Copayments.
14 (3) Individual and family deductibles.
15 (d) For the purposes of this section, “severe mental illnesses”
16 shall include:
17 (1) Schizophrenia.
18 (2) Schizoaffective disorder.
19 (3) Bipolar disorder (manic-depressive illness).
20 (4) Major depressive disorders.
21 (5) Panic disorder.
22 (6) Obsessive-compulsive disorder.
23 (7) Pervasive developmental disorder or autism.
24 (8) Anorexia nervosa.
25 (9) Bulimia nervosa.
26 (e) For the purposes of this section, a child suffering from,
27 “serious emotional disturbances of a child” shall be defined as a
28 child who (1) has one or more mental disorders as identified in the
29 most recent edition of the Diagnostic and Statistical Manual of
30 Mental Disorders, other than a primary substance use disorder or
31 developmental disorder, that result in behavior inappropriate to
32 the child’s age according to expected developmental norms, and
33 (2) who meets the criteria in paragraph (2) of subdivision (a) of
34 Section 5600.3 of the Welfare and Institutions Code.
35 (f) This section shall not apply to contracts entered into pursuant
36 to Chapter 7 (commencing with Section 14000) or Chapter 8
37 (commencing with Section 14200) of Division 9 of Part 3 of the
38 Welfare and Institutions Code, between the State Department of
39 Health Services and a health care service plan for enrolled
40 Medi-Cal beneficiaries.

1 ~~(g) (1) For the purpose of compliance with this section, a plan~~
2 ~~may provide coverage for all or part of the mental health services~~
3 ~~required by this section through a separate specialized health care~~
4 ~~service plan or mental health plan, and shall not be required to~~
5 ~~obtain an additional or specialized license for this purpose.~~

6 ~~(2) A plan shall provide the mental health coverage required~~
7 ~~by this section in its entire service area and in emergency situations~~
8 ~~as may be required by applicable laws and regulations. For~~
9 ~~purposes of this section, health care service plan contracts that~~
10 ~~provide benefits to enrollees through preferred provider contracting~~
11 ~~arrangements are not precluded from requiring enrollees who reside~~
12 ~~or work in geographic areas served by specialized health care~~
13 ~~service plans or mental health plans to secure all or part of their~~
14 ~~mental health services within those geographic areas served by~~
15 ~~specialized health care service plans or mental health plans.~~

16 ~~(3) Notwithstanding any other provision of law, in the provision~~
17 ~~of benefits required by this section, a health care service plan may~~
18 ~~utilize case management, network providers, utilization review~~
19 ~~techniques, prior authorization, copayments, or other cost sharing.~~

20 ~~(h) Nothing in this section shall be construed to deny or restrict~~
21 ~~in any way the department's authority to ensure plan compliance~~
22 ~~with this chapter when a plan provides coverage for prescription~~
23 ~~drugs.~~

24 SEC. 4. Section 1374.72 is added to the Health and Safety
25 Code, to read:

26 1374.72. (a) (1) Every health care service plan contract issued,
27 amended, or renewed on or after January 1, 2021, that provides
28 hospital, medical, or surgical coverage shall provide coverage for
29 the diagnosis and medically necessary treatment of mental health
30 and substance use disorders, including, but not limited to, severe
31 mental illnesses of a person of any age, and serious emotional
32 disturbances of a child, under the same terms and conditions
33 applied to other medical conditions as specified in subdivision (c).

34 (2) Mental health and substance use disorders shall mean a
35 mental health condition or substance use disorder that falls under
36 any of the diagnostic categories listed in the mental and behavioral
37 disorders chapter of the most recent edition of the International
38 Classification of Diseases or that is listed in the most recent version
39 of the Diagnostic and Statistical Manual of Mental Disorders.

1 (3) Medically necessary treatment of a mental health or
2 substance use disorder shall be a covered service that is all of the
3 following:

- 4 (A) Recommended by the patient’s treatment provider.
- 5 (B) Furnished in the manner and setting that can most effectively
6 and comprehensively address the patient’s conditions, including,
7 but not limited to, functional impairments, lack of coping skills,
8 symptoms, and the underlying biopsychosocial determinants of
9 mental health, substance use, and medical disorders, and any
10 combination thereof.
- 11 (C) Provided in sufficient amount, duration, and scope to do
12 any of the following:
 - 13 (i) Prevent, diagnose, or treat a disorder.
 - 14 (ii) Minimize the progression of a disorder or its symptoms.
 - 15 (iii) Achieve age-appropriate growth and development.
 - 16 (iv) Minimize the progression of disability.
 - 17 (v) Attain, maintain, regain, or maximize full functional
18 capacity.
- 19 (D) Consistent with generally accepted standards of practice,
20 which shall be based on either of the following:
 - 21 (i) Scientific evidence published in peer-reviewed medical
22 literature generally recognized by the relevant clinical community.
 - 23 (ii) Clinical specialty society recommendations, professional
24 standards, and consensus statements.
- 25 (4) A health care service plan shall not limit benefits or coverage
26 for chronic or pervasive mental health and substance use disorders
27 to short-term or acute treatment.
- 28 (5) (A) Consistent with paragraph (3), for all medical necessity
29 determinations concerning level of care placement, continued stay,
30 and transfer or discharge, a health care service plan shall
31 exclusively rely on the most recent editions of the following:
 - 32 (i) The American Society of Addiction Medicine (ASAM)
33 criteria developed by the American Society of Addiction Medicine
34 for substance use disorders for patients of any age.
 - 35 (ii) The Level of Care Utilization System (LOCUS) criteria
36 developed by the American Association of Community
37 Psychiatrists for mental health disorders for patients 18 years of
38 age and over.
 - 39 (iii) The Child and Adolescent Level of Care Utilization System
40 (CALOCUS) developed by the American Association of

1 Community Psychiatrists or the Child and Adolescent Service
2 Intensity Instrument (CASII) developed by the American Academy
3 of Child and Adolescent Psychiatry for mental health disorders
4 for patients 6 to 17 years of age, inclusive.

5 (iv) The Early Childhood Service Intensity Instrument (ECSII)
6 developed by the American Academy of Child and Adolescent
7 Psychiatry for mental health disorders for patients zero to five
8 years of age, inclusive.

9 (v) The American Psychiatric Association criteria for eating
10 disorders for a primary diagnosis of an eating disorder for patients
11 any of age.

12 (vi) “Clarifications Regarding Applied Behavior Analysis
13 Treatment of Autism Spectrum Disorder: Practice Guidelines for
14 Healthcare Funders and Managers” or subsequent guidelines
15 developed by the Behavior Analyst Certification Board or the
16 Association of Professional Behavior Analysts for individuals with
17 autistic spectrum disorders undergoing behavior therapy.

18 (B) As specified in clauses (i) to (vi), inclusive, of subparagraph
19 (A), reviewers shall err on the side of caution and safety in making
20 medical necessity determinations by placing patients in higher
21 levels of care when there is ambiguity as to the appropriate level
22 of care.

23 (6) To ensure the proper use of the criteria described in
24 paragraph (5), every health care service plan shall do all of the
25 following:

26 (A) Sponsor a formal education program by nonprofit clinical
27 specialty associations to educate plan staff, including any third
28 parties contracted with the health plan to review claims, conduct
29 utilization reviews, or make medical necessity determinations, and
30 other stakeholders, including the plan’s participating providers
31 and covered lives, about the guidelines, and provide the guidelines
32 and any training material or resources to providers and insured
33 patients.

34 (B) Track, identify, and analyze how the clinical guidelines are
35 used to certify care, deny care, and support the appeals process.

36 (C) Run inter-rater reliability reports about how the clinical
37 guidelines are used in conjunction with the utilization management
38 process and parity compliance activities.

39 (D) Achieve inter-rater reliability pass rates of at least 90 percent
40 and, if this threshold is not met, immediately provide for the

1 remediation of poor inter-rater reliability and inter-rater reliability
2 testing for all new staff before they can conduct utilization review
3 without supervision.

4 (E) Report the activities in this paragraph to the plan's quality
5 assurance committee.

6 (b) These benefits shall include, but not be limited to, the
7 following:

8 (1) Outpatient services.

9 (2) Inpatient services.

10 (3) Intermediate services, including the full range of levels of
11 care in the most recent edition of the ASAM criteria, LOCUS,
12 CALOCUS, ECSII, and CASII, including, but not limited to,
13 residential treatment, partial hospitalization, and intensive
14 outpatient treatment.

15 (4) Prescription drugs, if the plan contract includes coverage
16 for prescription drugs.

17 (c) The terms and conditions applied to the benefits required
18 by this section, that shall be applied equally to all benefits under
19 the plan contract, shall include, but not be limited to, all of the
20 following patient financial responsibilities:

21 (1) Maximum lifetime benefits.

22 (2) Copayments.

23 (3) Individual and family deductibles.

24 (d) If any of the medically necessary mental health services
25 enumerated in subdivision (b) are not available in network within
26 the geographic and timeliness standards set by law or regulation,
27 the health care service plan shall immediately cover out-of-network
28 services, whether secured by the patient or the health care service
29 plan, at an in-network benefit level and reimburse out-of-network
30 providers for those services at full billed charges. A health care
31 service plan may not interrupt a course of treatment initiated out
32 of network due to network inadequacy if in-network services
33 subsequently become available.

34 (e) This section shall not apply to contracts entered into pursuant
35 to Chapter 7 (commencing with Section 14000) or Chapter 8
36 (commencing with Section 14200) of Part 3 of Division 9 of the
37 Welfare and Institutions Code, between the State Department of
38 Health Care Services and a health care service plan for enrolled
39 Medi-Cal beneficiaries.

1 (f) (1) For the purpose of compliance with this section, a health
2 care service plan may provide coverage for all or part of the mental
3 health and substance use disorder services required by this section
4 through a separate specialized health care service plan or mental
5 health plan, and shall not be required to obtain an additional or
6 specialized license for this purpose.

7 (2) A health care service plan shall provide the mental health
8 and substance use disorder coverage required by this section in its
9 entire service area and in emergency situations as may be required
10 by applicable laws and regulations. For purposes of this section,
11 health care service plan contracts that provide benefits to enrollees
12 through preferred provider contracting arrangements are not
13 precluded from requiring enrollees who reside or work in
14 geographic areas served by specialized health care service plans
15 or mental health plans to secure all or part of their mental health
16 services within those geographic areas served by specialized health
17 care service plans or mental health plans, provided that all
18 appropriate mental health or substance use disorder services are
19 actually available within those geographic service areas within
20 timeliness standards.

21 (3) Notwithstanding any other law, in the provision of benefits
22 required by this section, a health care service plan may utilize case
23 management, network providers, utilization review techniques,
24 prior authorization, copayments, or other cost sharing, provided
25 that these practices are consistent with Section 2052 of the Business
26 and Professions Code.

27 (g) This section shall not be construed to deny or restrict in any
28 way the department's authority to ensure plan compliance with
29 this chapter when a health care service plan provides coverage for
30 prescription drugs.

31 (h) A health care service plan shall not limit benefits or coverage
32 for medically necessary services on the basis that those services
33 should be or could be covered by a public entitlement program,
34 including, but not limited to, special education or an individualized
35 education program, Medicaid, Medicare, Supplemental Security
36 Income, or Social Security Disability Insurance, and shall not
37 include or enforce a contract term that excludes otherwise covered
38 benefits on the basis that those services should be or could be
39 covered by a public entitlement program.

1 (i) A health care service plan shall not adopt, impose, or enforce
2 additional terms in its policies or provider agreements, in writing
3 or in operation, that undermine or alter the requirements of this
4 section.

5 (j) (1) An enrollee, subscriber, or in-network or out-of-network
6 provider on behalf of an enrollee or subscriber may bring a civil
7 action in a court of competent jurisdiction individually or on behalf
8 of a class against a health care service plan for a violation of this
9 section or Section 1374.73 or 1374.76.

10 (2) The remedies in a civil action brought pursuant to this section
11 include, independent of causation or damages, a
12 five-thousand-dollar (\$5,000) statutory penalty per act or offense,
13 general and special damages, which may be trebled for knowing
14 conduct, injunctive relief, restitution of premium, and attorney's
15 fees and costs, including expert expenses.

16 (3) If a claim is litigated on a class basis, the same act or offense
17 shall be counted with respect to each class member.

18 (4) An administrative action taken or not taken by the
19 department with regard to the health care service plan's conduct
20 shall not provide an affirmative defense in the court's consideration
21 of the claim. A claimant shall be promptly notified in writing by
22 the health care service plan and by the department of any
23 administrative action, including the final outcome, against a health
24 care service plan as a result of the claimant's complaint.

25 SEC. 5. Section 10144.5 of the Insurance Code is repealed.

26 ~~10144.5. (a) Every policy of disability insurance that covers~~
27 ~~hospital, medical, or surgical expenses in this state that is issued,~~
28 ~~amended, or renewed on or after July 1, 2000, shall provide~~
29 ~~coverage for the diagnosis and medically necessary treatment of~~
30 ~~severe mental illnesses of a person of any age, and of serious~~
31 ~~emotional disturbances of a child, as specified in subdivisions (d)~~
32 ~~and (e), under the same terms and conditions applied to other~~
33 ~~medical conditions, as specified in subdivision (e).~~

34 ~~(b) These benefits shall include the following:~~

35 ~~(1) Outpatient services.~~

36 ~~(2) Inpatient hospital services.~~

37 ~~(3) Partial hospital services.~~

38 ~~(4) Prescription drugs, if the policy or contract includes coverage~~
39 ~~for prescription drugs.~~

1 ~~(e) The terms and conditions applied to the benefits required~~
2 ~~by this section that shall be applied equally to all benefits under~~
3 ~~the disability insurance policy shall include, but not be limited to,~~
4 ~~the following:~~

- 5 ~~(1) Maximum lifetime benefits.~~
- 6 ~~(2) Copayments and coinsurance.~~
- 7 ~~(3) Individual and family deductibles.~~

8 ~~(d) For the purposes of this section, “severe mental illnesses”~~
9 ~~shall include:~~

- 10 ~~(1) Schizophrenia.~~
- 11 ~~(2) Schizoaffective disorder.~~
- 12 ~~(3) Bipolar disorder (manic-depressive illness).~~
- 13 ~~(4) Major depressive disorders.~~
- 14 ~~(5) Panic disorder.~~
- 15 ~~(6) Obsessive-compulsive disorder.~~
- 16 ~~(7) Pervasive developmental disorder or autism.~~
- 17 ~~(8) Anorexia nervosa.~~
- 18 ~~(9) Bulimia nervosa.~~

19 ~~(e) For the purposes of this section, a child suffering from,~~
20 ~~“serious emotional disturbances of a child” shall be defined as a~~
21 ~~child who (1) has one or more mental disorders as identified in the~~
22 ~~most recent edition of the Diagnostic and Statistical Manual of~~
23 ~~Mental Disorders, other than a primary substance use disorder or~~
24 ~~developmental disorder, that result in behavior inappropriate to~~
25 ~~the child’s age according to expected developmental norms, and~~
26 ~~(2) who meets the criteria in paragraph (2) of subdivision (a) of~~
27 ~~Section 5600.3 of the Welfare and Institutions Code.~~

28 ~~(f) (1) For the purpose of compliance with this section, a~~
29 ~~disability insurer may provide coverage for all or part of the mental~~
30 ~~health services required by this section through a separate~~
31 ~~specialized health care service plan or mental health plan, and shall~~
32 ~~not be required to obtain an additional or specialized license for~~
33 ~~this purpose.~~

34 ~~(2) A disability insurer shall provide the mental health coverage~~
35 ~~required by this section in its entire in-state service area and in~~
36 ~~emergency situations as may be required by applicable laws and~~
37 ~~regulations. For purposes of this section, disability insurers are not~~
38 ~~precluded from requiring insureds who reside or work in~~
39 ~~geographic areas served by specialized health care service plans~~
40 ~~or mental health plans to secure all or part of their mental health~~

1 services within those geographic areas served by specialized health
2 care service plans or mental health plans.

3 ~~(3) Notwithstanding any other provision of law, in the provision
4 of benefits required by this section, a disability insurer may utilize
5 case management, managed care, or utilization review.~~

6 ~~(4) Any action that a disability insurer takes to implement this
7 section, including, but not limited to, contracting with preferred
8 provider organizations, shall not be deemed to be an action that
9 would otherwise require licensure as a health care service plan
10 under the Knox-Keene Health Care Service Plan Act of 1975
11 (Chapter 2.2 (commencing with Section 1340) of Division 2 of
12 the Health and Safety Code.~~

13 ~~(g) This section shall not apply to accident-only, specified
14 disease, hospital indemnity, Medicare supplement, dental-only, or
15 vision-only insurance policies.~~

16 SEC. 6. Section 10144.5 is added to the Insurance Code, to
17 read:

18 10144.5. (a) (1) Every health insurance policy issued,
19 amended, or renewed on or after January 1, 2021, that provides
20 hospital, medical, or surgical coverage shall provide coverage for
21 the diagnosis and medically necessary treatment of mental health
22 and substance use disorders, including, but not limited to, severe
23 mental illnesses of a person of any age, and serious emotional
24 disturbances of a child, under the same terms and conditions
25 applied to other medical conditions as specified in subdivision (c).

26 (2) Mental health and substance use disorders shall mean a
27 mental health condition or substance use disorder that falls under
28 any of the diagnostic categories listed in the mental and behavioral
29 disorders chapter of the most recent edition of the International
30 Classification of Diseases or that is listed in the most recent version
31 of the Diagnostic and Statistical Manual of Mental Disorders.

32 (3) Medically necessary treatment of a mental health or
33 substance use disorder shall be a covered service that is all of the
34 following:

35 (A) Recommended by the patient's treatment provider.

36 (B) Furnished in the manner and setting that can most effectively
37 and comprehensively address the patient's conditions, including,
38 but not limited to, functional impairments, lack of coping skills,
39 symptoms, and the underlying biopsychosocial determinants of

1 mental health, substance use, and medical disorders, and any
2 combination thereof.

3 (C) Provided in sufficient amount, duration, and scope to do
4 any of the following:

- 5 (i) Prevent, diagnose, or treat a disorder.
- 6 (ii) Minimize the progression of a disorder or its symptoms.
- 7 (iii) Achieve age-appropriate growth and development.
- 8 (iv) Minimize the progression of disability.
- 9 (v) Attain, maintain, regain, or maximize full functional
10 capacity.

11 (D) Consistent with generally accepted standards of practice,
12 which shall be based on either of the following:

- 13 (i) Scientific evidence published in peer-reviewed medical
14 literature generally recognized by the relevant clinical community.
- 15 (ii) Clinical specialty society recommendations, professional
16 standards, and consensus statements.

17 (4) A health insurer shall not limit benefits or coverage for
18 chronic or pervasive mental health and substance use disorders to
19 short-term or acute treatment.

20 (5) (A) Consistent with paragraph (3), for all medical necessity
21 determinations concerning level of care placement, continued stay,
22 and transfer or discharge, a health insurer shall exclusively rely
23 on the most recent editions of the following:

24 (i) The American Society of Addiction Medicine (ASAM)
25 criteria developed by the American Society of Addiction Medicine
26 for substance use disorders for patients of any age.

27 (ii) The Level of Care Utilization System (LOCUS) criteria
28 developed by the American Association of Community
29 Psychiatrists for mental health disorders for patients 18 years of
30 age and over.

31 (iii) The Child and Adolescent Level of Care Utilization System
32 (CALOCUS) developed by the American Association of
33 Community Psychiatrists or the Child and Adolescent Service
34 Intensity Instrument (CASII) developed by the American Academy
35 of Child and Adolescent Psychiatry for mental health disorders
36 for patients 6 to 17 years of age, inclusive.

37 (iv) The Early Childhood Service Intensity Instrument (ECSII)
38 developed by the American Academy of Child and Adolescent
39 Psychiatry for mental health disorders for patients zero to five
40 years of age, inclusive.

1 (v) The American Psychiatric Association criteria for eating
2 disorders for a primary diagnosis of an eating disorder for patients
3 any of age.

4 (vi) “Clarifications Regarding Applied Behavior Analysis
5 Treatment of Autism Spectrum Disorder: Practice Guidelines for
6 Healthcare Funders and Managers” or subsequent guidelines
7 developed by the Behavior Analyst Certification Board or the
8 Association of Professional Behavior Analysts for individuals with
9 autistic spectrum disorders undergoing behavior therapy.

10 (B) As specified in clauses (i) to (vi), inclusive, of subparagraph
11 (A), reviewers shall err on the side of caution and safety in making
12 medical necessity determinations by placing patients in higher
13 levels of care when there is ambiguity as to the appropriate level
14 of care.

15 (6) To ensure the proper use of the criteria described in
16 paragraph (5), every health insurer shall do all of the following:

17 (A) Sponsor a formal education program by nonprofit clinical
18 specialty associations to educate the health insurer’s staff, including
19 any third parties contracted with the health insurer to review claims,
20 conduct utilization reviews, or make medical necessity
21 determinations, and other stakeholders, including the insurer’s
22 participating providers and covered lives, about the guidelines,
23 and provide the guidelines and any training material or resources
24 to providers and insured patients.

25 (B) Track, identify, and analyze how the clinical guidelines are
26 used to certify care, deny care, and support the appeals process.

27 (C) Run inter-rater reliability reports about how the clinical
28 guidelines are used in conjunction with the utilization management
29 process and parity compliance activities.

30 (D) Achieve inter-rater reliability pass rates of at least 90 percent
31 and, if this threshold is not met, immediately provide for the
32 remediation of poor inter-rater reliability and inter-rater reliability
33 testing for all new staff before they can conduct utilization review
34 without supervision.

35 (E) Report the activities in this paragraph to the plan’s quality
36 assurance committee.

37 (b) These benefits shall include, but not be limited to, the
38 following:

39 (1) Outpatient services.

40 (2) Inpatient services.

1 (3) Intermediate services, including the full range of levels of
2 care in the most recent edition of the ASAM criteria, LOCUS,
3 CALOCUS, ECSII, and CASII, including, but not limited to,
4 residential treatment, partial hospitalization, and intensive
5 outpatient treatment.

6 (4) Prescription drugs, if the plan contract includes coverage
7 for prescription drugs.

8 (c) The terms and conditions applied to the benefits required
9 by this section, that shall be applied equally to all benefits under
10 the plan contract, shall include, but not be limited to, all of the
11 following patient financial responsibilities:

12 (1) Maximum lifetime benefits.

13 (2) Copayments.

14 (3) Individual and family deductibles.

15 (d) If any of the medically necessary mental health services
16 enumerated in subdivision (b) are not available in network within
17 the geographic and timeliness standards set by law or regulation,
18 the health insurer shall immediately cover out-of-network services,
19 whether secured by the patient or the health insurer, at an
20 in-network benefit level and reimburse out-of-network providers
21 for those services at full billed charges. A health insurer may not
22 interrupt a course of treatment initiated out of network due to
23 network inadequacy if in-network services subsequently become
24 available.

25 (e) This section shall not apply to accident-only, specified
26 disease, hospital indemnity, Medicare supplement, dental-only, or
27 vision-only insurance policies.

28 (f) (1) For the purpose of compliance with this section, a health
29 insurer may provide coverage for all or part of the mental health
30 and substance use disorder services required by this section through
31 a separate specialized health insurance policy or mental health
32 insurance policy, and shall not be required to obtain an additional
33 or specialized license for this purpose.

34 (2) A health insurer shall provide the mental health and
35 substance use disorder coverage required by this section in its
36 entire service area and in emergency situations as may be required
37 by applicable laws and regulations. For purposes of this section,
38 health insurance policies that provide benefits to insureds through
39 preferred provider contracting arrangements are not precluded
40 from requiring enrollees who reside or work in geographic areas

1 served by specialized health insurance policies or mental health
2 insurance policies to secure all or part of their mental health
3 services within those geographic areas served by specialized health
4 insurance policies or mental health insurance policies, provided
5 that all appropriate mental health or substance use disorder services
6 are actually available within those geographic service areas within
7 timeliness standards.

8 (3) Notwithstanding any other law, in the provision of benefits
9 required by this section, a health insurer may utilize case
10 management, network providers, utilization review techniques,
11 prior authorization, copayments, or other cost sharing, provided
12 that these practices are consistent with Section 2052 of the Business
13 and Professions Code.

14 (g) This section shall not be construed to deny or restrict in any
15 way the department's authority to ensure a health insurer's
16 compliance with this chapter when a health insurer provides
17 coverage for prescription drugs.

18 (h) A health insurer shall not limit benefits or coverage for
19 medically necessary services on the basis that those services should
20 be or could be covered by a public entitlement program, including,
21 but not limited to, special education or an individualized education
22 program, Medicaid, Medicare, Supplemental Security Income, or
23 Social Security Disability Insurance, and shall not include or
24 enforce a contract term that excludes otherwise covered benefits
25 on the basis that those services should be or could be covered by
26 a public entitlement program.

27 (i) A health insurer shall not adopt, impose, or enforce additional
28 terms in its policies or provider agreements, in writing or in
29 operation, that undermine or alter the requirements of this section.

30 (j) (1) An insured, policyholder, or in-network or
31 out-of-network provider on behalf of an insured or policyholder
32 may bring a civil action in a court of competent jurisdiction
33 individually or on behalf of a class against a health insurer for a
34 violation of this section.

35 (2) The remedies in a civil action brought pursuant to this section
36 include, independent of causation or damages, a
37 five-thousand-dollar (\$5,000) statutory penalty per act or offense,
38 general and special damages, which may be trebled for knowing
39 conduct, injunctive relief, restitution of premium, and attorney's
40 fees and costs, including expert expenses.

1 (3) If a claim is litigated on a class basis, the same act or offense
2 shall be counted with respect to each class member.

3 (4) An administrative action taken or not taken by the
4 department with regard to the health insurer’s conduct shall not
5 provide an affirmative defense in the court’s consideration of the
6 claim. A claimant shall be promptly notified in writing by the
7 health insurer and by the department of any administrative action,
8 including the final outcome, against a health insurer as a result of
9 the claimant’s complaint.

10 SEC. 7. The provisions of this act are severable. If any
11 provision of this act or its application is held invalid, that invalidity
12 shall not affect other provisions or applications that can be given
13 effect without the invalid provision or application.

14 SEC. 8. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.