



OREGON PSYCHIATRIC PHYSICIANS ASSOCIATION

Date: February 17, 2021

To: Chair Sanchez and members of the House Behavioral Health Committee,

From: American Psychiatric Association and Oregon Psychiatric Physicians Association

RE: Position statement on HB 3046, mental health insurance coverage

The American Psychiatric Association (APA) is the medical specialty society representing over 38,800 physicians who specialize in the treatment of mental illnesses, including substance use disorders. The Oregon Psychiatric Physicians Association (OPPA), a district branch of the American Psychiatric Association, was established in 1966. OPPA serves as the organization for medical doctors (psychiatrists) in Oregon working together to ensure humane care and effective treatment for persons with mental illness, including substance use disorders, and promote compassion for their families. Together, APA and OPPA support HB 3046, which addresses mental health parity implementation and other important provisions related to mental health and substance use disorder insurance coverage.

The COVID-19 pandemic has exacerbated an existing mental health crisis, which had already caused a surge in overdose and suicide deaths. Without further action, we can expect that these crises will worsen, and more lives will be lost. While APA and OPPA support HB 3406, two components of the legislation, in particular, are critical to expanding access to care.

First, HB 3046 requires insurers and Medicaid coordinated care organizations (CCOs) to submit mental health parity compliance analyses to the Department of Consumer and Business Services (DCBS) and the Oregon Health Authority (OHA), respectively. The purpose of these analyses is to determine whether insurers and CCOs are complying with the federal Mental Health Parity and Addiction Equity Act of 2008 (federal parity law). Specifically, these analyses focus on insurers and CCOs compliance with the requirements of the federal parity law concerning medical management practices, such as prior authorization, provider network design, step therapy, and many others.

In recent years, numerous investigations by state and federal regulators have found violations concerning this aspect of the federal parity law. For example, nearly every investigation has found that insurers perform prior authorization for mental health care in a way that is more stringent than prior authorization for other medical care. And, multiple investigations have found that formulary design for mental health and substance use disorder medications is more restrictive than formulary design for other medications.

This has led to more than a dozen states passing legislation with reporting requirements that are essentially identical to what is in HB 3046. Additionally, in December, Congress enacted new federal legislation that requires all private insurers in the country to perform these same analyses. The compliance analysis requirements in HB 3046 are now federal law, but this component of the legislation is still necessary to actually compel insurers to submit the analyses to DCBS. Furthermore, the new federal compliance requirements do not apply to Medicaid managed care, making the compliance analysis requirements in the legislation for CCOs especially important.

The second key component of HB 3046 that APA and OPPIA wish to highlight is its requirement that insurers rely upon guidelines and treatment criteria issued by nonprofit specialty organizations. The bill requires that insurers follow generally accepted standards of care when making medical necessity determinations and level of care placement decisions for behavioral health care. This would include, among others, the criteria of the American Society of Addiction Medicine and the American Psychiatric Association's Clinical Practice Guidelines for the Treatment of Patients with Schizophrenia.

The need for this component of the legislation was revealed in the landmark 2019 ruling in the legal case, *Wit v. United Behavioral Health*. In *Wit*, the court found that United had systematically worked around the requirements of the federal parity law by developing and applying medical necessity criteria and level of care placement criteria that were not at all aligned with generally accepted standards of mental health and substance use disorder care. Instead, United created and used criteria that limited coverage to only treatment of very acute episodes of illness for the purpose of suppressing costs, not for the purpose of covering the care that patients actually needed. By requiring the utilization of generally accepted standards of care, including accepted clinical guidelines, HB 3046 will prevent such efforts to manipulate criteria that deny access to appropriate care.

HB 3046 replicates provisions related to generally accepted standards of care and treatment guidelines the California Legislature passed as part of SB 855 in 2020, which was a legislative effort to implement *Wit*. As *Wit* showed, even the historic federal parity law has not been sufficient, by itself, to end discriminatory treatment by insurers that results in substandard coverage to individuals seeking mental health and substance use disorder treatment. If passed, HB 3046 will hold insurers accountable for covering the care that patients need in a way that aligns with the criteria and guidelines of experts in the field.

Oregon patients and families deserve the best behavioral health treatment that science and medicine have to offer. Insurance plans available to Oregonians should cover that treatment, just like they do for other medical care. We urge you to pass HB 3046.