Testimony, HB 3046-2
Dan Thoma, LPC, Senior Manager of Behavioral Health at Moda Health
2/17/2021

Chair Sanchez, members of the Committee:

My name is Dan Thoma. I am a licensed professional counselor and Senior Manager of Behavioral Health for Moda Health.

HB 3046 is an important step toward the shared goal of making the promise of Parity a reality. Moda supports many of the provisions in this bill. In particular, the principles spelled out in the Wit v. UBH decision and included in this bill are a great step forward. Similarly, we support enhanced requirements for network adequacy and requirements to base utilization review on recognized standards and evidence-based sources.

We are committed to working with advocates and other stakeholders to help further shape this bill to achieve its goals. The -2 version of this bill doesn't get us there yet. In my written testimony I will submit a greater level of detail, but I would like to highlight verbally a couple of areas that I think need work:

First: Two provisions in this bill enact concepts that do not belong in a Parity bill. These requirements should either apply equally to *all* covered services or should not be written into statute. This includes:

> The definition of medically necessary. We are currently required to have a single definition of medically necessary and apply it equally to medical/surgical and behavioral health benefits. Defining medically necessary in this bill would undermine that principle.
>
> Second, the provisions regarding recission, cancellation or modification of a policy similarly do not belong here. If these provisions belong in statute at all, they should apply equally to medical and behavioral benefits and they need to be considered in that context. They have no place in a Parity bill.

Finally, the definition of "Behavioral Health Condition" in Section 6 is overly broad and conflicts with the definitions in Section 2. The definition in Section 6 would require insurance to cover "conditions" such as an argument with one's neighbor or a conflict at work. I recommend using the definitions currently established in Rule, which were developed through a thoughtful, multi-stakeholder process and accurately capture the range of conditions to which Parity applies.

Rather than go through my entire laundry list here, I will submit it in writing. There is much in this bill that Moda does support. I look forward to working collaboratively with other stakeholders to arrive at a final bill that Moda can support and that advances the cause of genuine Parity.

Thank you.

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Full list of recommendations:

1. Define "Behavioral Health Condition" consistently throughout the bill; use the current definition provided in OAR 836-053-1404 (1)(a).
2. Delete or modify the definition of "Treatment" in section 6. This definition is overly broad and could require insurers to cover things like books or movies that a provider "recommends."
3. Delete subsection (6) of section 6 "To ensure the proper use of the criteria": This section is overly intrusive into internal processes of insurers and is not vital to—or even necessarily helpful toward—achieving the goals of the bill.
4. Delete subsections (9)-(11) of section 6 (recission/cancellation/modification) and (6)(1)(h) of section 6 (definition of medically necessary). These do not belong in a Parity bill.
5. Increase consumer representation on the advisory committee established in Section 3 to match the insurers' and providers' representation.
6. Modify two provisions related to the Wit v. UBH decision (Sections 5 and 6): Overall, the principles in *Wit* are sound. But two provisions could have damaging effects on our system of care by limiting insurers' ability to consider the *wise* use of resources.
    a. Replace "safe and just as effective" with "safe and effective." Medical necessity for medical/surgical benefits includes consideration of cost-effectiveness and behavioral health criteria need to do the same.
    b. Change "Treatment at a higher level of care when there is ambiguity as to the appropriate level of care" to "Treatment at a higher level of care when there is **significant** ambiguity as to the appropriate level of care." Ambiguity in behavioral health treatment is extremely common; if we were to err on the side of a higher level of care whenever there is *any* ambiguity, it would exacerbate the current shortage of inpatient and residential beds and make it much more difficult for people who *clearly* need a higher level of care to access such care.
7. Reporting requirements should align with the federal legislation "STRENGTHENING PARITY IN MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS" passed by Congress on 12/21/2020. Delete reporting requirements that go beyond the scope of the federal legislation.
8. Delete section 6 subsection (16)(a). Medical necessity does not determine the dollar amount paid for different services.
9. (Drafting note: Section 4 appears intended to modify Chapter 414 but as written appears to be placed in "the insurance code," and refers the requirements in 743A.168.)