NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

House Committee on Health

H.C.R. 68, Requesting the Convening of a Working Group to Determine State Compliance with the Federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 and Enhance Existing State Parity Laws

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

March 27, 2012

1 **Department's Position:** The Department of Health (DOH) supports the intent of this measure as long
2 as its implementation does not impact or replace the priorities set forth in the Executive Supplemental
3 Budget for Fiscal Year 2012-2013.
4 **Fiscal Implications:** Although no funds are appropriated, costs will be incurred for staffing and
5 operating costs associated with the convening of the proposed mental health and substance abuse parity
6 working group.
7 **Purpose and Justification:** This measure requests that the Department of Health convene a working
8 group to determine State compliance with the federal Paul Wellstone and Pete Domenici Mental Health
9 Parity and Addiction Equity Act of 2008 and enhance existing State parity laws.
10 As no funding is appropriated, the Department is concerned about whether the tasks assigned to
11 the working group can be accomplished by participating agencies' existing staff. Of particular concern
12 is the high level of technical expertise needed to conduct behavioral health research and analysis that
13 would inform the decision-making process on issues. In addition to the consideration of staffing and

1 operating costs to support accomplishment of tasks assigned to the working group, there are concerns
2 about the challenges that will be encountered as deliberations ensue: the U.S. Supreme Court decision
3 on states' challenges to the Affordable Care Act is scheduled for the Summer of 2012, however, analysis
4 of the Court's decision may divert the focus of working group discussions; and the outcomes of federal
5 budget negotiations during the Fall of 2012, particularly as they pertain to Medicare/Medicaid policies
6 and funding, will probably not be known until working group deliberations are well underway.
7 The State has initiated its response to federal health care reform provisions (e.g., the information
8 and insurance exchanges are in formative stages). To ensure that planning efforts are organized and
9 consistent with the desired outcome of an integrated, coordinated healthcare system, coordination with
10 health transformation and systems planning would probably produce more desirable and informed
11 results, as opposed to a working group.
12 If the Committee takes further action on this measure, we respectfully recommend:
13 ▪ The inclusion of organizations that represent 'qualified providers' (i.e., physicians,
14 psychologists, clinical social workers, marriage and family therapists, mental health
15 counselors and advanced practice registered nurses) cited in Section 431M-1, HRS; and
16 ▪ As an interim measure until the national policies are established and to accommodate future
17 changes to insurers' coverage of substance abuse treatment, we also recommend as we
18 testified in S.B. 2105 and H.B. 2406, that the 2012 Legislature consider reinstituting the
19 substance abuse parity provision in Chapter 431M, Hawaii Revised Statutes, as enacted in
20 Part V (Sections 15-18) of Act 44 Session Laws of Hawaii 2004, which lapsed on June 30,
21 2011.
22 Thank you for the opportunity to testify on this measure.
23
24

HCR68 Relating to Health Director of Health to convene a behavioral health parity working group to comply with federal parity laws and enhance existing state parity laws.

- HOUSE COMMITTEE ON HEALTH: Representative Ryan Yamane, Chair; Representative Dee Morikawa, Vice Chair
- Tuesday, March 27, 2012; 9:00 a.m.
- Conference Room 329

HAWAII SUBSTANCE ABUSE COALITION Supports HCR 68

Aloha Chair Yamane, Vice Chair Morikawa and Distinguished Committee Members. I am Alan Johnson, the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of more than 20 non-profit treatment and prevention agencies.

SUMMARY

The Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 puts coverage of mental health and substance abuse benefits on an equal footing with general medical benefits.

There are 3 parts

1) **The State is responsible for enforcement provisions.** Not all insurances are in compliance with parity.

2) **The State can decide what is applicable to parity.** For instance, Medicaid is subject to parity, but Quest is uncertain if applicable. Are state funded programs subject to parity? What about government funded insurance for state employees? What about out-of-state insurers?

3) **The State is responsible for defining applicable benefit disorders terms,** which if not defined could limit coverage. Many states choose to follow the International Classification of Disorders so that definitions can evolve as that documented volume does.

At this time parity is not universal among insurers in Hawaii. Without State legislation, parity is neither enforceable nor definable.

We support a workgroup of insurers, state agencies, and various providers to prepare a bill for legislation that addresses both quality of care and cost-effectiveness.

SUPPORTING INFORMATION

State law must be revised to at least meet the intent of federal law.:

1. The Federal government urges States to enact legislation to meet the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008. About 1/3 of the states have done so.

2. Previous parity legislation did sunset and would not have been adequate. There are vague references of parity, which does not meet the requirements of the Federal law.

3. Not all insurance providers and/or plans are following parity rules, the state needs to determine the applicability of the rules and obligations to insurers, insurance plans and/or services.

4. If legislation is not passed, parity interpretations may have to be resolved in the courts, which would be much more costly and possibly confusing.

5. Enforcement of parity is the state's responsibility, the state needs to develop policies in order to effectively enforce compliance with the federal law. Currently, there is no enforcement, and as a result many providers could be non-compliant with the federal law.

6. It is the state's responsibility to determine who or what entities are subject to parity laws; for example: small businesses, plan types of commercial insurance, out of state insurers, state run or funded plans, etc. There are provisions in the federal law that outlines special rules or exemptions, though the state has some flexibility.

7. The state can determine which services are subject to parity rules; for example, a standardized definition of diagnostic services would determine what is applicable to parity – most states name the International Classification of Diseases (ICD) as the approved manual to define services for parity since the ICD is used for Medicaid.

8. Key to the inclusion of benefits under the Affordable Care Act (ACA) is enforcement of the parity law. The State would provide further guidance on scope of service, disclosure of medical criteria, and non-quantitative treatment limitations.

9. Providers, insurers, and state agencies most likely do not agree to which extent parity is applied for Hawai'i. However, most parties are amenable to work out the differences in a work group.

Further, the Task Force would address more clarity with respect to:

- Service limits, cost-sharing requirements, and annual/lifetime spending limits.

- Minimum benefit packages pertaining to whether there are no annual limit on outpatient visits and/or specify minimal financial coverages by insurers for outpatient visits.
- Whether coverage levels include allowable institutional and professional charges for inpatient psychiatric care, outpatient psychotherapy, intensive outpatient crisis management, partial hospitalization, and residential care and treatment.
- Address requirements with respect to whether inpatient, day treatment, and outpatient services must be provided.
- Address whether diagnosis and treatment would be provided, or at least supervised, by qualified mental health providers and what is defined as "qualified substance abuse provider." For example, definitions for "providers" could include licensed physicians, accredited public hospitals or psychiatric hospitals, certified counselors and community agencies licensed at the comprehensive service level by the Department of Health.
- Address whether there are specified exemptions for Medicare and Medicaid, federal employee health insurance plans, and employer self-insured plans, which are not regulated by state health insurance laws as well as private employers who are self-insured are exempt from state health insurance laws under the federal Employee Retirement Income Security Act of 1974 (ERISA).
- Address whether parity is limited to only those plans that offer behavioral health benefits or else to mandate the coverage for mental health illnesses and substance use disorders for all plans. Some states are adding to Federal law to remove any limit to groups under a certain size claiming that discrimination is prohibited regardless of the size of the employer group.
- Address whether out of state plans are subject to state laws.

CONCLUSION

There are many complex changes happening in the health care arena in our time. The Paul Wellstone-Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 requires health insurance companies to be in parity between medical services and behavioral health services with respect to medical cost-sharing rules, deductibles and out-of-pocket limits. Working together for the sake of our shared community, the effects of parity legislation will bring about a positive change to individuals, health care plans, and managed behavioral health care organizations (MHBOs) and other key stakeholders.

As substance use and mental disorder treatment centers, we very much appreciate the opportunity to be part of this work group.

We appreciate the opportunity to provide testimony and are available for questions.

morikawa2 - Grant

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 25, 2012 2:57 PM
To: HLTtestimony
Cc: robertscottwall@yahoo.com
Subject: Testimony for HCR68 on 3/27/2012 9:00:00 AM

Testimony for HLT 3/27/2012 9:00:00 AM HCR68

Conference room: 329
Testifier position: Support
Testifier will be present: No
Submitted by: Scott Wall
Organization: United Self Help
E-mail: robertscottwall@yahoo.com
Submitted on: 3/25/2012

Comments: