

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814**

October 4, 2022

REG-2021-00008

**INVITATION TO PRENOTICE PUBLIC DISCUSSION ON
MENTAL HEALTH AND SUBSTANCE USE DISORDER PARITY
IN HEALTH INSURANCE**

The California Department of Insurance (“Department”) will conduct a prenotice public discussion regarding contemplated revisions to California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Article 15.2 (commencing with section 2562.1). The purpose of the contemplated revisions is to adopt regulations implementing [Senate Bill 855](#) (Wiener, Stats. 2020, ch. 151), which repealed and replaced section 10144.5 and added section 10144.52 to the Insurance Code.

You are invited to participate in the scheduled prenotice public discussion. The purpose of this discussion is to provide interested and affected persons an opportunity to present statements or comments regarding the contemplated regulations.

In an effort to maximize the safety and health of the public and our employees, the Department will use a virtual web conferencing format for this workshop.

Date, Time and Location

Date: November 8, 2022

Time: 10:00 a.m. The virtual workshop shall continue until all in attendance wishing to provide comments have commented, or 1:00 p.m., whichever is earlier.

Location: Link to Register for the Web-based Virtual Format:
https://us06web.zoom.us/webinar/register/WN_lQjeyIm3TA6JThCpTfWEsg

Attendance. To increase public participation and improve the quality of regulations, interested parties are invited to attend the virtual meeting and offer comment, if they so choose.

Please note that under the California Public Records Act (Government Code section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) become part of the public record and may be released to the public upon request.

The moderated call-in line to be used for this prenotice public discussion is accessible to persons with hearing impairment. Persons with sight or hearing impairments are requested to notify the logistical contact person for these discussions (listed below) in order to review available accommodations, if necessary.

Please direct all other inquiries regarding this discussion to the substantive contact person named below.

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Regulation Text. A draft of the text of the contemplated regulatory changes is attached for purposes of promoting discussion. Participants should be prepared to present specific comments on the attached draft regulation text during the public discussion. Participants are also invited to submit written statements and are encouraged to provide supporting documents and materials.

Public Input on Alternatives. In connection with this prenotice public discussion, the Department hereby seeks public input regarding alternatives to the contemplated regulations. Please provide written or oral comments outlining any alternatives that would secure the same benefits as the contemplated regulations. The anticipated benefits of the contemplated regulations include the following:

- Clarifying the scope of the statutory coverage mandate for mental health and substance use disorder (MHSUD) benefits, including basic health care services, intermediate services, behavioral health crisis services, and if covered, outpatient prescription drugs, to facilitate health insurer compliance
- Clarifying the current, generally acceptable standards of MHSUD care that are statutorily applicable to utilization management of MHSUD benefits, including “level of care” coverage determinations placing patients in the continuum of MHSUD care, to facilitate health insurer compliance
- Ensuring that the most recent, generally accepted standards of MHSUD care are used in utilization review of MHSUD benefits by minimizing lag time, variation, or insurer error in implementing and incorporating evidence-based nonprofit professional association clinical criteria in utilization review
- Clarifying the obligation of health insurers to arrange and pay for out-of-network MHSUD care when clinically appropriate care is unavailable from a network provider or facility within applicable geographic or timely access standards
- Clarifying requirements for insurer-sponsored formal education programs on utilization review criteria, as well as the provision of education program materials and utilization review criteria
- Clarifying the treatment of urgent care, as well as content and language assistance requirements applicable to notices of adverse utilization review coverage determinations, under Insurance Code section 10123.135 and Senate Bill 855
- Ensuring that coverage for behavioral health crisis services pursuant to [Assembly Bill 988](#) (Bauer-Kahan, Stats. 2022, ch. 747), including mobile crisis teams and crisis receiving and stabilization services, is integrated with coverage requirements under Senate Bill 855
- Clarifying how Insurance Code section 10144.4, through which the federal Mental Health Parity and Addiction Equity Act (MHPAEA) is incorporated in the Insurance Code, regulates health insurer utilization review practices, and interacts with Senate Bill 855 and Insurance Code section 10144.51 on behavioral health treatment
- Easing and enhancing consumer access to medically necessary and clinically appropriate MHSUD care by incentivizing health insurers to proactively comply with

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benefits coverage, provider and facility network, utilization review, transparency, and parity and nondiscrimination requirements

For each suggested alternative, please provide analysis and supporting information in your comments detailing the economic impact on entities that would be subject to or affected by the contemplated regulations. Please provide this input regarding alternatives to the contact for substantive inquiries, using the contact information below, no later than the day of the workshop.

This is Not a Formal Public Hearing on Proposed Regulations. Please be advised that participation in this prenotice public discussion will be in addition to, and not in substitution for, any participation in any formal rulemaking process that may follow. This invitation to the prenotice public discussion does not constitute a Notice of Proposed Action. Consequently, comments (oral or written) received in connection with these prenotice public discussions will not be included in any record of rulemaking that may follow. Similarly, the Department is not required to respond to comments received in connection with the prenotice public discussion. For this reason, if you wish to have comments included in any rulemaking file that may follow, or if you wish for the Department to respond to your comments as part of the process by which it adopts this regulation, you must present your comments during the public comment period according to the procedures outlined in any Notice of Proposed Action.

Again, comments submitted in connection with these prenotice public discussions will not be considered in any subsequent rulemaking proceeding unless they are resubmitted after the Notice of Proposed Action is issued. However, the Commissioner will consider public comments received in this prenotice public discussion when contemplating regulatory changes that may be proposed in a Notice of Proposed Action.

Contact Persons. All substantive questions and concerns regarding the contemplated regulations and/or the public discussion should be directed to Jessica Ryan. Please submit any written comments via electronic mail to Jessica.Ryan@insurance.ca.gov no later than the day of the workshop, November 8, 2022.

Logistical Inquiries	Substantive Inquiries
Kathryn Taras, Staff Services Manager I California Department of Insurance 300 Capitol Mall, 16th floor Sacramento, CA 95814 Phone: (916) 492-3675 CDIRegulations@insurance.ca.gov	Jessica Ryan, Attorney IV California Department of Insurance 1901 Harrison Street, 6th floor Oakland, CA 94612 Phone: (415) 538-4110 Jessica.Ryan@insurance.ca.gov