



July 26, 2023

To:  
 Assembly Speaker's Office  
 Senate Pro Tem's Office  
 Assembly Health Committee  
 Senate Health Committee  
 Governor Newsom's Office

**Re: Threat to Consumer Mental Health and Substance Use Disorder Coverage Laws Under SB 855 (Chapter 151, 2020)**

Dear Members of the Legislature:

Our organizations, which are committed to ensuring that Californians are able to access medically necessary mental health and substance use disorder (MH/SUD) treatment, write to you to express concerns about an attempt to weaken Senator Wiener's landmark bill, SB 855 (Chapter 151, 2020), which enacted nation-leading MH/SUD coverage protections. We would oppose amendments to SB 855 to allow use of criteria developed by for-profit entities, which is why we were concerned to learn the MCG, one of the primary licensors of for-profit proprietary criteria, has been seeking amendments to do just that.

**Under SB 855, Californians in fully-insured, state-regulated health plans have the most comprehensive consumer protections governing coverage of MH/SUD care in the country.**

This critical law requires that health plans cover all medically necessary MH/SUD treatment and requires health plans to make medical necessity determinations in accordance with generally accepted standards of care (GASC) for MH/SUD. Prior to SB 855, there was no requirement under California law that health plans make these determinations consistent with GASC.

SB 855 also requires health plans to exclusively use nonprofit clinical specialty association criteria for medical necessity determinations to ensure (1) compliance with GASC and (2) that decisions are not tainted by financial conflicts of interests. Again, **prior to SB 855, plans could essentially use whatever criteria they wished, including non-transparent proprietary criteria that put plans' financial interests ahead of patients'**. Such criteria stand in stark contrast to criteria established by nonprofit clinical specialty associations, which are developed through a transparent, consensus-based process. Renowned clinical specialty associations such as the American Psychiatric Association, the American Psychological Association, the American Society of Addiction Medicine (ASAM), the American Academy of Child and Adolescent Psychiatry (AACAP), and the American Association of Community Psychiatry (AACP) go through rigorous processes to ensure that the guidelines and criteria they create reflect GASC and are broadly accepted by MH/SUD clinicians, ensuring that patients' medical needs come first.

**SB 855's nonprofit medical necessity criteria requirements are critical because such criteria are:**

- **Fully transparent and accessible.** Consumers, providers, and other stakeholders can readily access the criteria being used to determine whether specific MH/SUD services are, in fact, appropriate to meet individual patient needs.
- **Developed through a consensus process that protects against conflicts of interest.** The authors and reviewers of nonprofit criteria are publicly identified. Credentials, expertise, and potential conflicts of interests can be evaluated by the public.
- **Externally validated.** Nonprofit clinical criteria are subject to rigorous peer review, validation studies in real-world clinical settings, and are reviewed in professional and scholarly journals.

In fact, as early as 1997, research published in the *American Journal of Psychiatry*, the official, peer-reviewed journal of the American Psychiatric Association, sounded warning bells, concluding that: "Our findings underscore the necessity of determining the validity of all criteria used to assess the appropriateness of medical care. Wide acceptance of an instrument is clearly not sufficient to justify its use . . . The need for validation studies is particularly great when proprietary criteria are not available for public scrutiny."<sup>1</sup>

We note that in 2021, the nation's largest insurer, United Healthcare (UHC) claimed to have *voluntarily* switched to nonprofit clinical association criteria by ASAM, AACP, and AACAP throughout the United States for all its level of care determinations. Under its brand name

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<sup>1</sup> Goldman RL, Weir CR, Turner CW, Smith CB. Validity of utilization management criteria for psychiatry. *Am J Psychiatry*. 1997 Mar;154(3):349-54. doi: 10.1176/ajp.154.3.349. PMID: 9054782.

“Optum,” UHC explained why it switched to nonprofit clinical criteria for mental health and substance use disorders:<sup>2</sup>

- The criteria were “[e]xternally validated”
- The criteria used a “Common Language [That] Drives Improved Care”
- “The six dimensions [of the guidelines] provide *a more holistic view of acuity and chronicity of behavioral health condition, thereby promoting more appropriate care for patients and a better overall experience.*” (emphasis added)

UHC further noted that the nonprofit clinical specialty association criteria were better than proprietary criteria such as those created by for-profit publishers like MCG (formerly “Millman”) and InterQual, because these nonprofit clinical criteria “adopted a systems of care approach” that was “tailored to the specific age of the member” and better incorporated “the use of wrap-around services.”<sup>3</sup> We agree.

**Use of the nonprofit clinical specialty association criteria sets a clear, unambiguous standard that protects patients.** For example, if a level of care assessment using “The ASAM Criteria” indicates that an individual needing substance use disorder treatment is most appropriately treated in a Clinically Managed Residential Withdrawal Management (ASAM Level 3.2-WM) facility, under California law, the insurer must cover this level of treatment. Or if a young person with early psychosis symptoms needs Coordinated Specialty Care, as is clearly recommended by the American Psychiatric Association’s “Practice Guideline for the Treatment of Patients With Schizophrenia,” the health plan must cover these life-saving services.

**The centrality of SB 855’s non-profit clinical criteria requirements is why we were alarmed to learn that MCG is pushing for amendments to SB 855’s clinical criteria provisions.** MCG seeks to amend SB 855 so that its proprietary criteria, which it sells to providers on a subscription basis, will also be considered acceptable in California for making medical necessity determinations. Though skeptical, our organizations agreed to meet with MCG. However, in order to allow us to fully review and evaluate its MH/SUD criteria after this initial meeting, MCG insisted that our organizations execute Non-Disclosure Agreements. We refused, because such a constraint and lack of transparency only play into the numerous problems inherent in secret, for-profit clinical criteria that broadly impact public health.

**That other states are following California’s lead demonstrates the importance of having one set of allowed clinical criteria – the criteria that are developed by the leading nonprofit clinical specialty associations.** After SB 855’s enactment, Illinois and Oregon enacted nearly

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<sup>2</sup> The mental health criteria UHC voluntarily switched to were the Level of Care Utilization System (LOCUS), which is developed by AACF, for adults; the Child and Adolescent Level of Care/Service Intensity Utilization System (CALOCUS-CASII), which is developed jointly by AACF and AACAP, for children and adolescents ages 6-18; and the Early Childhood Service Intensity Instrument (ECSII), which is developed by AACAP, for children ages 0-5. UHC also voluntarily switched to using The ASAM Criteria, but the notice to providers (see note 2) was specifically related to the mental health nonprofit criteria.

<sup>3</sup> Optum. “Optum Clinical Criteria for Behavioral Health Conditions Change to LOCUS, CASII, ECSII: Frequently Asked Questions.” (2021). <https://public.providerexpress.com/content/dam/optum-provexpr/us/pdfs/clinResourcesMain/guidelines/optumLOCG/locg/LCE-FAQs.pdf>.

identical language requiring the use of nonprofit clinical association criteria for MH/SUD medical necessity determinations. And, in reviewing health plans' mental health level of care criteria, the *New York State Office of Mental Health rejected all 69 plans' guidelines as flawed and inconsistent with GASC*. Critically, New York State automatically deemed mental health criteria from AACAP and AACAP as automatically compliant. Numerous other states have also mandated nonprofit criteria such as The ASAM Criteria.<sup>4</sup>

Lastly, it is important to note that **SB 855 purposely addresses gaps in situations that are not expressly addressed by existing nonprofit clinical association criteria**. The use of for-profit clinical criteria is permitted if they (1) are outside the scope of the relevant nonprofit professional criteria or (2) relate to advancements in technology or types of care not covered by the nonprofit criteria. However, efforts to open the door to for-profit criteria *within the scope of nonprofit criteria* invites profound confusion and will undermine the creation of a common language necessary to improve access to quality care.

Therefore, **we request that you oppose any effort to change SB 855's provisions relating to medical necessity criteria**. Amending SB 855 will hinder the state's response to the ongoing mental health and addiction crisis and invite new arbitrary denials that California has come so far in trying to prevent. It's not only patients that have a lot to lose, but taxpayers who must pay for the cost when insurers inappropriately deny needed treatment – exactly the point that the California Department of Justice took in a recent federal amicus brief.<sup>5</sup>

Thank you for your efforts to improve access to life-saving care. We hope that you'll oppose efforts to weaken California's nation-leading laws.

Sincerely,

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Adrienne Shilton  
**California Alliance of Child and Family Services**

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**California Association of Alcohol and Drug Program Executives**

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<sup>4</sup> Legal Action Center and Partnership to End Addiction. "Spotlight on Medical Necessity Criteria for Substance Use Disorders." November 2020. Note, this report predated enactment of SB 855 or the laws in Illinois or Oregon.

<sup>5</sup> See <https://oag.ca.gov/news/press-releases/attorney-general-bonta-files-brief-support-access-mental-healthcare-services>.

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