Board of Behavioral Sciences

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Memo

To: Board Members **Date:** April 13, 2022

From: Rosanne Helms, Legislative Manager **Telephone:** (916) 574-7939

Subject: **Legislative Update**

BOARD-SPONSORED LEGISLATION

The Board is pursuing of the following legislative proposals this year.

1. **AB 1758 (Aguiar-Curry) Board of Behavioral Sciences: Marriage and Family Therapists: Clinical Social Workers: Professional Clinical Counselors: Supervision of Applicants for Licensure via Videoconferencing**

   This bill proposal would allow required weekly supervision via two-way, real-time videoconferencing in all settings, if the supervisor makes an assessment that this is appropriate. The Board approved this proposal it its November 5, 2021 meeting. It approved amendments to the bill at its February 11, 2022 meeting, and these were amended into the bill on March 29, 2022. This bill is an urgency measure.

   Status: The bill has passed the Assembly Business and Professions Committee and is currently in the Assembly Appropriations Committee.

2. **AB 1759 (Aguiar-Curry) Board of Behavioral Sciences: Licensees and Registrants: Marriage and Family Therapy, Educational Psychology, Clinical Social Work, and Professional Clinical Counseling**

   This bill proposes two changes to the Board's continuing education requirements:

   - It proposes requiring applicants for licensure and current licensees to complete 3 hours of training or coursework in the provision of mental health services via telehealth, including law and ethics related to telehealth, as a one-time requirement.

   - It requires all Board registrants to complete a 3 hour continuing education course in California law and ethics each renewal cycle.

In addition, the proposal also makes clarifications that certain pre-licensees may provide services with clients via telehealth.

The Board approved a portion of this proposal at its September 10, 2021 meeting, and a portion of the proposal at its November 5, 2021 meeting.

Status: The bill has passed the Assembly Business and Professions Committee, and is currently in the Assembly Appropriations Committee.

3. <u>SB 1495 (Senate Business, Professions and Economic Development Committee) Professions and Vocations</u>

This bill proposal, approved by the Board at its November 5, 2021 meeting, makes three separate sets of minor, technical, or non-substantive amendments to add clarity and consistency to current law.

Staff has been informed that the following portion of the proposal will not be included in the Health Committee's Omnibus bill:

Amend Health and Safety Code Section 1374.72 and Insurance Code Section 10144.5 – Definition of a "Health Care Provider" in SB 855 (Chapter 151, Statutes of 2020) (Attachment A)

<u>Identification of the Problem:</u> SB 855 (Wiener, Health Coverage: Mental Health or Substance Use Disorders) was a bill the Board supported that the Governor signed into law in 2020.

The bill expands California's 1999 Mental Health Parity Act. It requires health plans and insurers that provide hospital, medical or surgical coverage to cover all medically necessary treatment of mental health and substance use disorders under the same terms and conditions applied to other medical conditions.

This bill contains a definition of a "health care provider" in the two sections noted above. Separate from its position, the Board had ultimately decided to request that all of its associates be added to the definition of "health care provider", but that trainees either be removed, or it be clarified that they are under supervision of a licensed person.

Due to the unusual circumstances of the 2020 legislative session, the author was ultimately not able to make these amendments before session ended. The author's staff person suggested, however, that the Board pursue them as part of the Health Committee's omnibus bill.

<u>Proposed Solution:</u> The Board requested an amendment to the definition of a "health care provider" as follows to address its concerns:

- *Delete professional clinical counselor trainees from the definition (they cannot count pre-degree hours, and therefore are not necessarily under the supervision of a licensed professional.)*

- *Continue to include marriage and family therapist trainees in the definition but clarify that they are performing activities and services as part of their supervised course of study as set out in §4980.42 of the Business and Professions Code. (In order to count pre-degree hours, MFT trainees must be supervised by a licensed person who meets the Board's supervisor qualifications.)*

The language that had been proposed by the Board for this item is shown in **Attachment A.**

BOARD-SUPPORTED LEGISLATION

1. AB 988 (Bauer-Kahan) Mental Health: 988 Crisis Hotline

This bill takes steps to implement a statewide 988 mental health crisis hotline.

At its July 2021 meeting, the Board took a "support" position on this bill.

Status: This bill is a two-year bill, and the author intends to continue to move it this year.

BOARD-MONITORED LEGISLATION

1. AB 29 (Cooper) State Bodies: Meetings

This bill proposes a change to the Bagley-Keene Open Meeting Act to require that state bodies provide meeting writings or materials to the public on the same day they are provided to the state body's members, or at least 72 hours before the meeting, whichever is earlier.

At its May 2021 meeting, the Board took an "oppose unless amended" position on this bill. The Board requested an amendment that would permit revision of board materials related to current legislation to reflect the most recent information available. In addition, the Board requested an amendment specifying that closed session materials would remain confidential.

Status: This was a two-year bill. It is now dead.

2. AB 646 (Low) Department of Consumer Affairs: Boards: Expunged Convictions

This bill would require boards within DCA to update their required website postings for a person whose license was revoked because they were convicted of a crime, within 90 days upon receiving a certified copy of an expungement order for that offense pursuant to Penal Code section 1203.4. If the person reapplies for

licensure or has been relicensed, the board must post notification of the expungement order and the date on the website. If the person is not currently licensed and does not reapply for a license, the board must remove the initial website posting that the person's license was revoked, and information previously posted regarding arrests, charges, and convictions.

At its May 2021 meeting, the Board took a "support if amended" position on this bill. The Board requested an amendment to BPC section 493.5(a)(2) in the bill.

Status: This bill is a two-year bill. It is now in the Senate, and the author has indicated they intend to move it this year.

Date Compiled: April 11, 2022

Attachment A
Omnibus Bill 2022
Rejected Proposed Text

AMEND HEALTH AND SAFETY CODE §1374.72.

(a) (1) Every health care service plan contract issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage shall provide coverage for medically necessary treatment of mental health and substance use disorders, under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(2) For purposes of this section, "mental health and substance use disorders" means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the International Classification of Diseases or that is listed in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders or the World Health Organization's International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.

(3) (A) For purposes of this section, "medically necessary treatment of a mental health or substance use disorder" means a service or product addressing the specific needs of that patient, for the purpose of preventing, diagnosing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of that illness, injury, condition, or its symptoms, in a manner that is all of the following:

(i) In accordance with the generally accepted standards of mental health and substance use disorder care.

(ii) Clinically appropriate in terms of type, frequency, extent, site, and duration.

(iii) Not primarily for the economic benefit of the health care service plan and subscribers or for the convenience of the patient, treating physician, or other health care provider.

(B) This paragraph does not limit in any way the independent medical review rights of an enrollee or subscriber under this chapter.

(4) For purposes of this section, "health care provider" means any of the following:

(A) A person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) An associate marriage and family therapist ~~or marriage and family therapist trainee~~ functioning pursuant to Section 4980.43.3 of the Business and Professions Code.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 10144.51 of the Insurance Code and Section 1374.73.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2 of the Business and Professions Code.

(E) An associate professional clinical counselor ~~or professional clinical counselor trainee~~ functioning pursuant to Section 4999.46.3 of the Business and Professions Code.

(F) A registered psychologist, as described in Section 2909.5 of the Business and Professions Code.

(G) A registered psychological assistant, as described in Section 2913 of the Business and Professions Code.

(H) A psychology trainee or person supervised as set forth in Section 2910 or 2911 of, or subdivision (d) of Section 2914 of, the Business and Professions Code.

(I) A marriage and family therapist trainee performing activities and services as part of their supervised course of study as set out in Section 4980.42 of the Business and Professions Code.

(5) For purposes of this section, “generally accepted standards of mental health and substance use disorder care” has the same meaning as defined in paragraph (1) of subdivision (f) of Section 1374.721.

(6) A health care service plan shall not limit benefits or coverage for mental health and substance use disorders to short-term or acute treatment.

(7) All medical necessity determinations by the health care service plan concerning service intensity, level of care placement, continued stay, and transfer or discharge of enrollees diagnosed with mental health and substance use disorders shall be conducted in accordance with the requirements of Section 1374.721. This paragraph does not deprive an enrollee of the other protections of this chapter, including, but not limited to, grievances, appeals, independent medical review, discharge, transfer, and continuity of care.

(8) A health care service plan that authorizes a specific type of treatment by a provider pursuant to this section shall not rescind or modify the authorization after the provider renders the health care service in good faith and pursuant to this authorization for any reason, including, but not limited to, the plan’s subsequent rescission, cancellation, or modification of the enrollee’s or subscriber’s contract, or the plan’s subsequent determination that it did not make an accurate determination of the enrollee’s or subscriber’s eligibility. This section shall not be construed to expand or alter the benefits available to the enrollee or subscriber under a plan.

(b) The benefits that shall be covered pursuant to this section shall include, but not be limited to, the following:

(1) Basic health care services, as defined in subdivision (b) of Section 1345.

(2) Intermediate services, including the full range of levels of care, including, but not limited to, residential treatment, partial hospitalization, and intensive outpatient treatment.

(3) Prescription drugs, if the plan contract includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the plan contract, shall include, but not be limited to, all of the following patient financial responsibilities:

(1) Maximum annual and lifetime benefits, if not prohibited by applicable law.

(2) Copayments and coinsurance.

(3) Individual and family deductibles.

(4) Out-of-pocket maximums.

(d) If services for the medically necessary treatment of a mental health or substance use disorder are not available in network within the geographic and timely access standards set by law or regulation, the health care service plan shall arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary followup services that, to the maximum extent possible, meet those geographic and timely access standards. As used in this subdivision, to “arrange coverage to ensure the delivery of medically necessary out-of-network services” includes, but is not limited to, providing services to secure medically necessary out-of-network options that are available to the enrollee within geographic and timely access standards. The enrollee shall pay no more than the same cost sharing that the enrollee would pay for the same covered services received from an in-network provider.

(e) This section shall not apply to contracts entered into pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, between the State Department of Health Care Services and a health care service plan for enrolled Medi-Cal beneficiaries.

(f) (1) For the purpose of compliance with this section, a health care service plan may provide coverage for all or part of the mental health and substance use disorder services required by this section through a separate specialized health care service plan or mental health plan, and shall not be required to obtain an additional or specialized license for this purpose.

(2) A health care service plan shall provide the mental health and substance use disorder coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this

section, health care service plan contracts that provide benefits to enrollees through preferred provider contracting arrangements are not precluded from requiring enrollees who reside or work in geographic areas served by specialized health care service plans or mental health plans to secure all or part of their mental health services within those geographic areas served by specialized health care service plans or mental health plans, provided that all appropriate mental health or substance use disorder services are actually available within those geographic service areas within timeliness standards.

(3) Notwithstanding any other law, in the provision of benefits required by this section, a health care service plan may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing, provided that these practices are consistent with Section 1374.76 of this code, and Section 2052 of the Business and Professions Code.

(g) This section shall not be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter.

(h) A health care service plan shall not limit benefits or coverage for medically necessary services on the basis that those services should be or could be covered by a public entitlement program, including, but not limited to, special education or an individualized education program, Medicaid, Medicare, Supplemental Security Income, or Social Security Disability Insurance, and shall not include or enforce a contract term that excludes otherwise covered benefits on the basis that those services should be or could be covered by a public entitlement program.

(i) A health care service plan shall not adopt, impose, or enforce terms in its plan contracts or provider agreements, in writing or in operation, that undermine, alter, or conflict with the requirements of this section.

AMEND INSURANCE CODE §10144.5.

(a) (1) Every disability insurance policy issued, amended, or renewed on or after January 1, 2021, that provides hospital, medical, or surgical coverage shall provide coverage for medically necessary treatment of mental health and substance use disorders, under the same terms and conditions applied to other medical conditions as specified in subdivision (c).

(2) For purposes of this section, "mental health and substance use disorders" means a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental and behavioral disorders chapter of the most recent edition of the World Health Organization's International Statistical Classification of Diseases and Related Health Problems, or that is listed in the most recent version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Changes in terminology, organization, or classification of mental health and substance use disorders in future versions of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders or the World Health

Organization's International Statistical Classification of Diseases and Related Health Problems shall not affect the conditions covered by this section as long as a condition is commonly understood to be a mental health or substance use disorder by health care providers practicing in relevant clinical specialties.

(3) (A) For purposes of this section, "medically necessary treatment of a mental health or substance use disorder" means a service or product addressing the specific needs of that patient, for the purpose of preventing, diagnosing, or treating an illness, injury, condition, or its symptoms, including minimizing the progression of an illness, injury, condition, or its symptoms, in a manner that is all of the following:

(i) In accordance with the generally accepted standards of mental health and substance use disorder care.

(ii) Clinically appropriate in terms of type, frequency, extent, site, and duration.

(iii) Not primarily for the economic benefit of the disability insurer and insureds or for the convenience of the patient, treating physician, or other health care provider.

(B) This paragraph does not limit in any way the independent medical review rights of an insured or policyholder under this chapter.

(4) "Health care provider" means any of the following:

(A) A person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) An associate marriage and family therapist ~~or marriage and family therapist trainee~~ functioning pursuant to Section 4980.43.3 of the Business and Professions Code.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2 of the Business and Professions Code.

(E) An associate professional clinical counselor ~~or professional clinical counselor trainee~~ functioning pursuant to Section 4999.46.3 of the Business and Professions Code.

(F) A registered psychologist, as described in Section 2909.5 of the Business and Professions Code.

(G) A registered psychological assistant, as described in Section 2913 of the Business and Professions Code.

(H) A psychology trainee or person supervised as set forth in Section 2910 or 2911 of, or subdivision (d) of Section 2914 of, the Business and Professions Code.

(l) A marriage and family therapist trainee performing activities and services as part of their supervised course of study as set out in Section 4980.42 of the Business and Professions Code.

(5) For purposes of this section, “generally accepted standards of mental health and substance use disorder care” has the same meaning as defined in paragraph (1) of subdivision (f) of Section 10144.52.

(6) A disability insurer shall not limit benefits or coverage for mental health and substance use disorders to short-term or acute treatment.

(7) All medical necessity determinations made by the disability insurer concerning service intensity, level of care placement, continued stay, and transfer or discharge of insureds diagnosed with mental health and substance use disorders shall be conducted in accordance with the requirements of Section 10144.52.

(8) A disability insurer that authorizes a specific type of treatment by a provider pursuant to this section shall not rescind or modify the authorization after the provider renders the health care service in good faith and pursuant to this authorization for any reason, including, but not limited to, the insurer’s subsequent rescission, cancellation, or modification of the insured’s or policyholder’s contract, or the insurer’s subsequent determination that it did not make an accurate determination of the insured’s or policyholder’s eligibility. This section shall not be construed to expand or alter the benefits available to the insured or policyholder under an insurance policy.

(b) The benefits that shall be covered pursuant to this section shall include, but not be limited to, the following:

(1) Basic health care services, as defined in subdivision (b) of Section 1345 of the Health and Safety Code.

(2) Intermediate services, including the full range of levels of care, including, but not limited to, residential treatment, partial hospitalization, and intensive outpatient treatment.

(3) Prescription drugs, if the policy includes coverage for prescription drugs.

(c) The terms and conditions applied to the benefits required by this section, that shall be applied equally to all benefits under the disability insurance policy shall include, but not be limited to, all of the following patient financial responsibilities:

(1) Maximum and annual lifetime benefits, if not prohibited by applicable law.

(2) Copayments and coinsurance.

(3) Individual and family deductibles.

(4) Out-of-pocket maximums.

(d) If services for the medically necessary treatment of a mental health or substance use disorder are not available in network within the geographic and timely access standards set by law or regulation, the disability insurer shall arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary followup services that, to the maximum extent possible, meet those geographic and timely access standards. As used in this subdivision, to “arrange coverage to ensure the delivery of medically necessary out-of-network services” includes, but is not limited to, providing services to secure medically necessary out-of-network options that are available to the insured within geographic and timely access standards. The insured shall pay no more than the same cost sharing that the insured would pay for the same covered services received from an in-network provider.

(e) This section shall not apply to accident-only, specified disease, hospital indemnity, Medicare supplement, dental-only, or vision-only insurance policies.

(f) (1) For the purpose of compliance with this section, a disability insurer may provide coverage for all or part of the mental health and substance use disorder services required by this section through a separate specialized health insurance policy or mental health policy. This paragraph shall not apply to policies that are subject to Section 10112.27.

(2) A disability insurer shall provide the mental health and substance use disorder coverage required by this section in its entire service area and in emergency situations as may be required by applicable laws and regulations. For purposes of this section, disability insurance policies that provide benefits to insureds through preferred provider contracting arrangements are not precluded from requiring insureds who reside or work in geographic areas served by specialized health insurance policies or mental health insurance policies to secure all or part of their mental health services within those geographic areas served by specialized health insurance policies or mental health insurance policies, provided that all appropriate mental health or substance use disorder services are actually available within those geographic service areas within timeliness standards.

(3) Notwithstanding any other law, in the provision of benefits required by this section, a disability insurer may utilize case management, network providers, utilization review techniques, prior authorization, copayments, or other cost sharing, provided that these practices are consistent with Section 10144.4 of this code, and Section 2052 of the Business and Professions Code.

(g) This section shall not be construed to deny or restrict in any way the department’s authority to ensure a disability insurer’s compliance with this code.

(h) A disability insurer shall not limit benefits or coverage for medically necessary services on the basis that those services should be or could be covered by a public entitlement program, including, but not limited to, special education or an individualized education program, Medicaid, Medicare, Supplemental Security Income, or Social Security Disability Insurance, and shall not include or enforce a contract term that

excludes otherwise covered benefits on the basis that those services should be or could be covered by a public entitlement program.

(i) A disability insurer shall not adopt, impose, or enforce terms in its policies or provider agreements, in writing or in operation, that undermine, alter, or conflict with the requirements of this section.

(j) If the commissioner determines that a disability insurer has violated this section, the commissioner may, after appropriate notice and opportunity for hearing in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), by order, assess a civil penalty not to exceed five thousand dollars ($5,000) for each violation, or, if a violation was willful, a civil penalty not to exceed ten thousand dollars ($10,000) for each violation.