

CALIFORNIA MENTAL HEALTH PARITY ACT: A WAY TO EXPAND MENTAL HEALTH SERVICES FOR CHILDREN AND YOUTH

Mental health parity laws¹ apply to children as well as adults. They require that insurance plans provide equal coverage for physical and mental health conditions and were created in response to the unequal coverage and discrimination that historically had been the case.

In 1999 California passed the Mental Health Parity Act (CMHPA). It applies to health plans that are regulated by the state – individual and small group plans as well as “fully insured” large group plans. It does not include “self-funded” plans that many large employers and unions have; nor does it include federal health care programs such as Medicare, Veterans Administration programs, or Medi-Cal. The CMHPA covers those adults who have a “severe mental illness,” which is defined as having one of nine diagnoses.² For children and youth who are under the age of 18 years, however, CMHPA requires that they have a severe emotional disturbance (SED).

The legislature adopted the definition of SED that is in Welfare and Institutions Code Section 5600.3(a)(2). The child must be under the age of 18 and have one or more mental disorders as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the child’s age according to expected developmental norms. In addition the child must meet one or more of the following criteria:

- As a result of the mental disorder, the child has substantial impairment in at least two of the following areas: self-care, school functioning, family relationships, or ability to function in the community, and either of the following occur:
 - The child is at risk of removal from home or has already been removed from the home.
 - The mental disorder and impairments have been present for more than six months or are likely to continue for more than one year without treatment.

¹ This Fact Sheet specifically focuses on the California law and not the federal law.

² The diagnoses include schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, pervasive developmental disorder or autism, anorexia nervosa, and bulimia nervosa.

- The child displays one of the following: psychotic features, risk of suicide or risk of violence due to a mental disorder.
- The child meets special education eligibility requirements under Chapter 26.5 (commencing with Section 7570) of Division 7 of title 1 of the government Code.³

The CMHPA applies as both a coverage mandate and a parity requirement. The required benefits include outpatient services, inpatient hospital services, partial hospital services, and prescription drugs, if the plan includes prescription drugs for physical conditions. In addition the plan must cover all “medically necessary” treatment for the child with SED under the same terms applied to physical illnesses. Two appellate courts – 9th Circuit Court of Appeals⁴ and the Second Appellate District of the California Court of Appeals⁵ – have rejected the idea that parity means a strict equivalency between mental health treatment and physical health treatment. Instead they recognized that mental health treatments are unique and cannot be restricted to those that are identical to physical health treatment, e.g., outpatient treatment for cancer is not the same as outpatient treatment for depression.

What does this mean for Anthony, who is 13 years old and has been diagnosed with bipolar disorder? He is not succeeding in school, and has difficulty getting along with his peers. He complains of being bullied. He has been hospitalized 3 times this year – once for a suicide attempt. Because his parents cannot control his behavior, he has been referred to child welfare, and he is at risk of being removed from the home. In addition, he has attempted suicide.

To prevent his removal from the home his psychiatrist has recommended intensive in-home support services, which is an outpatient service. He is on his mother’s insurance policy which is regulated by the state. The insurer refuses to cover this service stating that they don’t provide this exact service for physical conditions, and, therefore, CMHPA does not require that they provide it for Anthony. The *Rea* decision provides a basis for challenging the insurer’s decision not to pay for the recommended intensive in-home services.

First, Anthony fits the definition of SED under CMHPA, and, therefore, its provisions apply to him. He is under 18 and has a DSM diagnosis of bipolar. He has a substantial impairment in school functioning, in his ability to function in the community and in his relationships with his family. His behavior has placed him at risk of being removed from the home. In addition he has attempted suicide.

The next step is to determine if Mother’s insurance plan is governed by the CMHPA. This information is available in the Evidence of Coverage (EOC). In this case the plan is regulated by

³ This provision was repealed in 2012.

⁴ *Harlick v Blue Shield of California*, 686 F. 3d 699 (2012).

⁵ *Rea v Blue Shield of California*, No BC468900 (Cal. Ct. App, June 10, 2014).

California Department of Insurance, and it provides outpatient services for physical conditions. The intensive in-home services that Anthony’s psychiatrist has recommended are recognized as an evidence-based intervention that will remediate behaviors and increase his functioning skills in school, in his community and with his family. Even though there is no equivalent treatment to intensive in-home services for physical conditions, the *Rea* court made clear that “parity instead requires treatment of mental illnesses sufficient to reach the same quality of care afforded physical illnesses.”⁶ In this case Anthony’s mother should appeal the insurer’s decision.

For additional information on this topic, contact one of the agencies listed below.

This information is provided to you through the combined effort of the following organizations:

[Disability Rights California](#)
(916) 504-5800/(800) 776-5746

[Legal Aid Society of San Diego](#)
(877) 534-2524

[Mental Health Advocacy Project](#)
(408) 293-4790

[Mental Health Advocacy Services](#)
(213) 389-2077

We want to hear from you. After reading this fact sheet, please take this short survey and give us your feedback: <http://www.mhas-la.org/FactSheetSurvey.htm>.

The California Mental Health Services Authority (CalMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families, and communities. Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California’s diverse communities.



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⁶ *Rea*, p 32.