

**Department of Managed Health Care
Proposed Trailer Bill Legislation**

FACT SHEET

1. Issue Title: Federal Mental Health Parity

This section conforms state law to federal law by specifying that health plans (individual, small group, and large group) must provide all covered mental health and substance use disorder benefits in compliance with the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) and all rules, regulations, or guidance issued pursuant to Section 2726 of the federal Public Health Service Act. This will give the Department of Managed Health Care (DMHC) clear authority to enforce the provisions of the MHPAEA. Given this new state role in enforcement, a 6-month period is proposed from the operative date of the statute (anticipated as July 1, 2014) and the effective date of these provisions (January 1, 2014).

However, so the DMHC can begin to inform plans about its enforcement, this proposal would exempt the DMHC from being subject to the Administrative Procedure Act for any guidance issued in regard to health care service plan (health plan) compliance with Health and Safety Code Section 1374.75 beginning the operative date of the statute (anticipated as July 1, 2014) until January 1, 2016.

2. Background:

In 2008 Congress enacted the MHPAEA, requiring only large group health plans that offer mental health and substance use disorders (mental health) benefits to do so in a manner comparable to medical and surgical (medical) benefits. After the enactment of the Affordable Care Act (ACA) in 2010, federal regulations and a state statute added to the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act) implementing Essential Health Benefits (EHB) made the MHPAEA also applicable to individual and small group health insurance products.

On November 13, 2013, federal regulators issued Final Rules implementing the MHPAEA which laid out how health plans must conduct parity analyses to comply with the MHPAEA. The Final Rules apply for all group products on or after July 1, 2014 as employers renew or purchase coverage (this is on a calendar year basis, so effectively January 1, 2015). For individual products, the Final Rules will apply to the new policy years beginning January 1, 2015.

3. Justification for the Change:

The Knox-Keene Act statute implementing federal Essential Health Benefit (EHB) requirements, Health and Safety Code Section 1367.005(a)(2)(d), specifically requires all health plan contracts in the individual and small group market to comply with the

MHPAEA. However, the DMHC has no similar explicit authority to enforce the MHPAEA with respect to large group market. Under the Final Rules, states are expected to enforce all provisions of the MHPAEA and will only intervene in enforcement if the state does not act.

As all health plan contracts in all commercial markets must be in compliance with the Final Rule no later than January 1, 2015, the DMHC must take steps to implement the regulations before January 1. Accordingly, the Administrative Procedure Act's regular rulemaking process does not leave enough time to issue guidance to health plans on the expectations for compliance with respect to MHPAEA. A temporary exemption from the regular rulemaking process would allow the director of DMHC to issue timely guidance to health plans regarding initial implementation of the MHPAEA and allow these plans to be compliant with the deadlines specified in the proposed Health and Safety Code Section 1374.75.

4. Summary of Arguments in Support:

- This proposal will ensure that the DMHC has sufficient enforcement authority to regulate health plan compliance with MHPAEA.
- Permitting the DMHC a temporary exemption from the APA is necessary in order to ensure timely and consistent implementation of the MHPAEA.

5. BCP or Estimate Issue # and Title:

This trailer bill language is associated with DMHC BCP, May Revise #1 (Federal Mental Health Parity). This BCP requests a one-time augmentation of \$369,000 for FY 2014-15 for clinical consulting services to conduct initial front-end compliance reviews to ensure oversight of the implementation of the MHPAEA. This initial prospective, or front-end compliance review is only intended to account for the DMHC's anticipated initial compliance workload in FY 2014-15.

For a retrospective, or back-end compliance review, the DMHC intends to conduct focused medical surveys of all 45 full-service and specialty health plans after the first year of compliance with the Final Rules, in addition to routine on-site medical surveys that are conducted every three years. As such, surveys will not begin until after January 1, 2016 and the DMHC will evaluate any fiscal impacts of such work as part of the 2015-16 budget process.