

3-27-1997

## Mental Health Services. Regulation.

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Management Services  
Notary Public  
Political Reform  
Uniform Commercial Code



**BILL JONES**  
*Secretary of State*  
*State of California*

**ELECTIONS DIVISION**  
(916) 657-2166  
1500 - 11<sup>th</sup> STREET  
SACRAMENTO, CA 95814  
Voter Registration Hotline  
1-800-345-VOTE  
For Hearing and Speech Impaired  
Only  
1-800-833-8683  
e-mail: comments@ss.ca.gov

September 5, 1997

**#737**

RECEIVED

SEP 12 1997

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND  
PROPONENT (97127)

FROM:   
WALDEEP SINGH  
Elections Analyst

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named proposed INITIATIVE STATUTE filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: MENTAL HEALTH SERVICES. REGULATION. INITIATIVE STATUTE.

SUMMARY DATE: March 27, 1997

PROPONENT: Dr. John Caccavale

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**RECEIVED**

**MAR 31 1997**

March 27, 1997

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENT (97042) LIBRARY  
NOTICE TO ALL REGISTERED VOTERS

Pursuant to Section 336 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

**MENTAL HEALTH SERVICES. REGULATION.  
 INITIATIVE STATUTE.**

Circulating and Filing Schedule

1. Minimum number of signatures required ..... 433,269  
 Cal. Const., Art II, Sec. 8(b).
2. Official Summary Date ..... Thursday, 03/27/97  
 Elec. C., Sec. 336.
3. Petitions Sections:
  - a. First day Proponent can circulate Sections for signatures ..... Thursday, 03/27/97  
 Elec. C., Sec. 336.
  - b. Last day Proponent can circulate and file with the county. All sections are to be filed at the same time within each county. .... Monday, 08/25/97\*  
 Elec. C., Secs. 336, 9030(a).
  - c. Last day for county to determine total number of signatures affixed to petitions and to transmit total to the Secretary of State ..... Friday, 09/05/97  
 Elec. C., Sec. 9030(b).

(If the Proponent files the petition with the county on a date prior to 08/25/97, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 9030(b).

\* Date adjusted for official deadline which falls on a Sunday. Elec. C., Sec. 15.

d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties . . . . . Sunday, 09/14/97\*\*  
Elec. C., Sec. 9030(c).

e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Monday, 10/27/97  
Elec. C., Sec. 9030(d), (e)

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 09/14/97, the last day is no later than the thirtieth day after the county's receipt of notification.)  
Elec. C., Sec. 9030(d), (e).

f. If the signature count is more than 476,596 or less than 411,606 then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 411,606 and 476,596 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures . . . . . Thursday, 11/06/97\*\*  
Elec. C., Secs. 9030(f), (g); 9031(a).

g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State . . . . . Tuesday, 12/23/97  
Elec. C., Sec. 9031(b), (c).

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 11/06/97, the last day is no later than the thirtieth working day after the county's receipt of notification.)  
Elec. C., Sec. 9031(b), (c).

h. Secretary of State certified whether the petition has been signed by the number of qualified voters required to declare the petition sufficient . . . . . Saturday, 12/27/97\*\*  
Elec. C., Secs. 9031(d), 9033.

\*\* Date varies based on receipt of county certification.

4. The Proponent of the above-named measure is:

Dr. John Caccavale  
The California Committee for the Mental Health Parity Initiative  
15720 Ventura Blvd., Ste 225  
Encino, CA 91436-2911  
(818) 562-1955

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code sections 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen.37 (1980).
- (b) Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

Sincerely,



CATHY MITCHELL  
ELECTIONS SPECIALIST

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555

Facsimile: (916) 323-2137  
(916) 324-5490

March 27, 1997

FILED  
In the office of the Secretary of State  
of the State of California

MAR 27 1997

BILL JONES, Secretary of State

By *C. Mitchell*  
Deputy Secretary of State

Bill Jones  
Secretary of State  
1500 - 11th Street  
Sacramento, CA 95814

Re: Initiative Title and Summary  
Subject: MENTAL HEALTH SERVICES. REGULATION. INITIATIVE STATUTE.  
File No: SA 97 RF 0002

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed to the proponent of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of mailing.

Sincerely.

DANIEL E. LUNGREN  
Attorney General

Handwritten signature of Rosemary R. Calderon in cursive.

ROSEMARY R. CALDERON  
Initiative Coordinator

RRC:glm  
Enclosures

Date: March 27, 1997  
File No: SA97RF0002

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

MENTAL HEALTH SERVICES. REGULATION. INITIATIVE STATUTE. Requires health care businesses to provide mental health benefits as part of overall covered benefits and to make such services available. Prohibits health care businesses from: restricting access to mental health services; denying mental health services deemed medically necessary; retaliating against health care professionals who support care for mental health patients; using monetary incentives to restrict mental health service; and, refusing to reimburse psychologist's or psychiatrist's fees. Regulates premium increases. Authorizes psychologists to write certain prescriptions. Prohibits hospitals from barring medical staff membership to psychologists. Provides appeal process for patients. Provides for civil enforcement.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown but potentially significant costs of tens of millions to hundreds of millions of dollars annually for the costs of Medi-Cal Programs, purchasing health care benefits, offsetting the potential loss of federal funds, and for administrative costs which may be partially offset by fine revenues.



SENT CERTIFIED # P220 862 144

January 15, 1997

The Honorable Dan Lungren  
Attorney General, State of California  
1300 I Street, 17<sup>th</sup> floor  
Sacramento, CA 95814

**RECEIVED**  
JAN 29 1997

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Dear Mr. Lungren,

I am submitting herewith a proposed initiative for preparation of title and summary by the Attorney General. On behalf of the California Committee for the Mental Health Parity Initiative (I.D. #961306), and as the proponent of this measure, it is my intention to qualify the initiative for the 1998 General Election Ballot. I have enclosed a cashier's check in the amount of \$200.00 and a copy of the proposed initiative.

I have indicated my address where I am registered to vote. Also, please send copies of all correspondence and inquiries to our treasurer whose name and address appear with mine on the attached enclosure.

Thank you for your attention to this matter.

Sincerely,



Dr. John Caccavale,  
Proponent

## THE MENTAL HEALTH PATIENT PARITY ACT

Chapter ZZ is added to the Health and safety Code to read:

### Article 1. Purpose and Intent.

Section xxx.01 This measure shall be known as the Mental Health Parity Act. The People of California find and declare that:

- (a) A health care organization or business is unlike any other commercial enterprise. The services that they provide are crucial to maintaining life. Patients convey their trust and life to health care organizations. When a conflict between profit and life occurs, life must prevail. It should be reasonable therefore to regulate some ways in which a health care organization or business operates.
- (b) No health care business should be able or permitted to subject patients seeking mental health services to a double standard. Mental health services should be provided using the same standards as those used for medical services.
- (c) No health care business should be able or permitted to charge fees and copayments higher than those fees imposed for other medical services.
- (d) No health care business should be able or permitted to deny or restrict services to mental health patients that have been determined to be medically necessary by their primary care physician, other physicians, or other health care professional who participates in the treatment of that patient.
- (e) No health care business should be able or permitted to impose any restrictions on mental health services that are not equally imposed on other medical services.
- (f) No health care business should be able to impose any sanctions against any health care provider for referring a patient for mental health services.
- (g) No health care business should be able or permitted to use any system of incentives that result in health care

into and become part of any marketing material offered to the public as an enticement to purchase the services offered by the health care organization or business. All written records and notes from individual appeals must be maintained for a period of seven years.

- (e) Any health care organization whose denial rate from appeals, both medical and for mental health services, meets or exceeds 1000 in number or 4% of total appeals, whichever is less, shall be required to take affirmative actions to bring the appeal rate into conformation with this section. Failure to do so shall result in the Department of Corporations, or any successor governmental unit that is responsible for overseeing health care organizations, to impose a fine of \$5000.00 for each denial greater than that allowed by this provision.
- (f) The Department of Corporations, or its successor, if any, shall implement procedures to collect appeal data as defined in Section xxx.03 part (e) and to enforce all of its provisions.
- (g) Any decision which results in a denial of service may be appealed to a court of competent jurisdiction. There shall be a rebuttable presumption in favor of the appellant that the service was wrongfully denied. Should the appellant prevail in this action, the health care organization or business shall be liable for any remedies the court might decide. Upon prevailing, the appellant shall receive a mandatory award of reasonable attorney fees.

#### **Article 4. MEDICALLY NECESSARY CARE**

Section xxx.04 No health care organization or business shall deny or restrict, except upon a professional evaluation and recommendation by a psychologist or psychiatrist, any service to mental health patients that has been ordered or requested and deemed medically necessary by a primary care physician, other physician, or other health care professional who participates in the care of that patient.

#### **Article 5. NO RETALIATION AGAINST HEALTH CARE PROVIDERS**

Section xxx.05 No health care organization or business shall intimidate, harass, suspend, terminate, deny contracts, remove from any panel, reduce referrals or otherwise retaliate against any employee,

physician, contractee or other health care professional for making any statement or providing data or information that supports quality care for mental health patients.

- (a) There shall be no retaliation against any physician or other health care provider for supporting an appeal from denial or restriction of services as defined in Article 2, Section xxx.02 parts (a) through (f).
- (b) There shall be no retaliation against any physician or other health care provider for referring patients for mental health services.

#### **Article 6. NO INCENTIVES FOR DEFERRING REFERRALS**

Section xxx.06 No health care organization or business shall implement any system of monetary incentives whose effect it is to defer, delay, deny, or restrict a referral for mental health services.

- (a) Capitation rates shall not be in violation of this ACT.

#### **Article 7. ANY WILLING PROVIDER**

Section xxx.07 No health care organization or business shall refuse payment to any licensed psychologist or psychiatrist as long as the provider submits proof of current licensure, adequate malpractice insurance, a signed written statement agreeing to abide by any reasonable standards required by the health care organization or business and a signed written statement agreeing to the fee reimbursement schedule for that specialty and services in effect at the time of service.

- (a) This article shall not bar the formation and utilization of panels of specialists.

#### **Article 8. PRESCRIPTION AUTHORITY FOR PSYCHOLOGISTS**

Section xxx.08 The scope of practice for psychologists as defined in Section 2903 of the Business and Professions Code Psychology Licensing Law shall be amended to include the dispensing of psychotropic medications for psychologists who practice in the domains of clinical and counseling psychology and who meet the additional requirements of obtaining prescription proficiency. The words "shall not include prescribing drugs" shall be removed from Section 2904 from the Business

and Professions Code of the Psychology Licensing Law.

**Article 9. REQUIREMENTS FOR PSYCHOLOGISTS TO PRESCRIBE PSYCHOTROPIC MEDICATIONS**

**Section xxxx.09** Psychologists who desire to prescribe psychotropic medications, those commonly used to treat mental and behavioral problems, shall be required to successfully complete the following:

- I. A program of coursework covering the principles, pharmacokinetics and practice of psychotropic medications. Coursework may be completed at accredited California approved universities, colleges or professional schools of psychology or medicine. Coursework requirements may also be met through continuing education in a prescribing psychotropic medication program. Two hundred and fifty hours of continuing education units shall constitute the minimum hours devoted to coursework. However, any psychologist who is listed as a Fellow in the Prescribing Psychologists' Register shall be deemed as meeting the coursework requirements of this article. Continuing Education units shall only be granted by a provider currently certified as one by the Board of Psychology or its agent.
- II. A program of supervised practical experience comprising a minimum of one year in duration prescribing psychotropic medications for a minimum of 100 distinct patients. Supervision and the accumulation of patient contacts shall begin only after satisfactory completion of the required coursework. Credit shall not be granted for any work through supervision prior to completing the coursework requirements of this article.
- III. Upon successful completion of all coursework and supervision, a psychologist must pass a competency examination acceptable to the Board of Psychology in a format consisting of 200 multiple choice type questions with a minimum score of 70%. The examination shall fairly represent the subject matter and shall be administered by the Board of Psychology and is to be given at least two times per year.
  - (a) During the supervisory phase of training, a psychologist may prescribe psychotropic medications only under the immediate supervision of a health care professional currently licensed to prescribe medications. Prescriptions must be signed by the psychologist and countersigned by the

supervisor. This dual system of signing shall be utilized until such time as the psychologist is certified to independently prescribe psychotropic medications by meeting all of the requirements of Article 9.

- (b) Supervisors shall be required to report and certify to the Board of Psychology that an applicant applying to sit for the examination has met the treatment requirements set forth in subsection II of this article. The report shall be on a form developed for that purpose by the Board of Psychology.

#### **Article 10. HOSPITAL PRIVILEGES**

**Section xxx.10** No hospital or facility that provides inpatient care to mental health patients and provides for medical staff membership for psychiatrists or other physicians shall adopt any rules, special procedures or policies that have the effect of barring, excluding or hindering a psychologist from obtaining full medical staff membership as required by current California law and as enunciated in the California Supreme Court case of CAPP v. RANK.

- (a) Any psychologist who is denied medical staff membership without good cause shall be entitled to relief in state court by way of a Writ of Mandate. There shall be a rebuttable presumption that the hospital or inpatient facility is in violation of the applicable law. Should the court find against the defendant named entity, medical staff membership shall immediately be ordered. The court shall award reasonable attorney fees to the prevailing psychologist.

#### **Article 11. NO INCREASES IN PREMIUMS**

**Section xxx.11.** No health care organization shall increase premiums for mental health care services solely based on the passage of this act. Increases in premiums, if any, shall be based on demonstrated need to the Department of Corporations, or its successor, if any. Any health care organization whose real profit is in excess of 15% shall not be allowed to raise premiums. The Department of Corporations or the governmental agency who has the authority to allow increases in premiums, shall not grant any increase in premiums to any health care organization who has not met the requirements of this article.

## ARTICLE 12. BOARD OF PSYCHOLOGY JURISDICTION

Section xxx.12. The Board of Psychology shall retain its designation as an autonomous body within the Department of Consumer Affairs or its successor, if any.

## Article 13. DEFINITIONS

Section xxx.13. The following definitions shall apply to this Act:

- (a) "Health care organization or business" means any entity of any form or its agent that offers and provides health services under an insurance or insurance like plan. This includes any Medical Service Organization, Health Maintenance Organization, Preferred Provider Organization, Independent Physician or Practice Association, Health care insurer, or any entity that issues or administers group health services.
- (b) "Health care provider" means any individual who is licensed by the State of California to provide health services to the public.
- (c) "Mental health services" means mental health services of any kind, included but not limited to diagnostic testing, psychotherapy, biofeedback therapy, counseling, pain management programs, psychotropic medications, hospitalizations, partial hospitalization programs, and rehabilitation programs.
- (d) "Psychotropic medications" means any medications that are - currently utilized or may be utilized in the treatment of mental illnesses or behavioral problems. This includes but are not limited to antidepressant and other mood altering medications, antipsychotic agents, hypnotics, antianxiety agents, stimulants, anticholinergic drugs, and anticonvulsant medications.
- (e) "Any willing provider" means any psychologist or psychiatrist who is licensed by the state of California. Any willing provider does not include students, or interns.
- (f) "Real profit" means the excess of dollars derived from total income minus operating costs. Delayed payment funds

of any type, including but not limited to capital construction, risk funds, savings accounts, monetary instruments and investments, are to be included in calculating total income.

#### **Article 14. INTERPRETATION**

Section xxx.14. When any question of interpretation arises it is the intent of the people that this Act shall be interpreted in a manner that is consistent with its purpose and intent and, to the greatest extent possible, advances the right of patients to receive the mental health services to which they are entitled and enhances the quality of health care services. If any provision of this Act conflicts with any other provision or statute or legal precedent, this Act shall prevail.

#### **Article 15. IMPLEMENTATION and ENFORCEMENT**

Section xxx.15. The provisions of this Act shall be administered and enforced by the appropriate state agencies, which shall issue regulations, hold hearings, and take any other enforcement actions that are necessary to carry out the purposes and intent of this Act. Health care consumers shall have standing to intervene in any proceedings arising from this Act. Any person may also go directly to court to enforce any provision of this Act individually, or on behalf of the public interest. In any successful action by health care consumers to enforce this Act on behalf of the public interest, a substantial benefit will be conferred upon the general public. Any conduct in violation of this Act is wrongful and shall be considered a violation of public policy. These remedies are in addition and cumulative to any other remedies provided by statute or common law.

- (a) Any health care organization or business found by a court in either a private or governmental enforcement action to have engaged in a pattern and practice of deliberate or willful violations of this Act shall be prohibited for a period of five years from doing business in the State of California.

#### **Article 16. SEVERABILITY**

Section xxx.16. If any provision, sentence, phrase, word or groups of words in this Act, or their application to any person or circumstance, is held to be invalid, that invalidity shall not affect other provisions, sentences, phrases, words, groups of words, or applications



of this Act. To this end, the provisions, sentences, phrases, words and groups of words in this Act are severable.

**Article 17. AMENDMENT**

**Section xxx.17.** No provision of this Act may be amended by the Legislature except to further the purposes of that provision by a statute passed in each house by roll call vote entered in the journal, two-third of the membership concurring, or by a statute that becomes effective only when approved by the electorate. No amendment by the Legislature shall be deemed to further the purposes of this Act unless it furthers the purpose of the specific provision of this Act that is being amended. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subsection.