

1 AN ACT relating to mental health parity and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 304.17A-661 is amended to read as follows:

4 (1) Notwithstanding any other provision of law:

5 (a) 1. A health benefit plan~~[- issued or renewed on or after January 1, 2022,]~~
6 that provides coverage for treatment of a mental health condition shall
7 provide coverage of any treatment of a mental health condition under
8 terms or conditions that are no more restrictive than the terms or
9 conditions provided for treatment of a physical health condition.

10 2. Expenses for mental health and physical health conditions shall be
11 combined for purposes of meeting deductible and out-of-pocket limits
12 required under a health benefit plan.

13 3. A health benefit plan that does not otherwise provide for management of
14 care under the plan or that does not provide for the same degree of
15 management of care for all health or mental health conditions may
16 provide coverage for treatment of mental health conditions through a
17 managed care organization;

18 (b) With respect to mental health condition benefits in any classification of
19 benefits, a health benefit plan required to comply with paragraph (a) of this
20 subsection shall not impose:

21 1. A nonquantitative treatment limitation that does not apply to medical
22 and surgical benefits in the same classification; and

23 2. Medical necessity criteria or a nonquantitative treatment limitation
24 unless, under the terms of the plan, as written and in operation, any
25 processes, strategies, evidentiary standards, or other factors used in
26 applying the criteria or limitation to mental health condition benefits in
27 the classification are comparable to, and are applied no more stringently

1 than, the processes, strategies, evidentiary standards, or other factors
2 used in applying the criteria or limitation to medical and surgical
3 benefits in the same classification; and

4 (c) Paragraph (b) of this subsection shall be construed to require, at a minimum,
5 compliance with the requirements for nonquantitative treatment limitations set
6 forth in the Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C.
7 sec. 300gg-26, as amended, and any related federal regulations, as amended,
8 including but not limited to 45 C.F.R. secs. 146.136, 147.160, and
9 156.115(a)(3).

10 (2) (a) An insurer that issues or renews a health benefit plan that is subject to the
11 provisions of this section shall submit an annual report~~[to the commissioner]~~
12 on or before April 1 of each year~~[following January 1, 2022,]~~ that contains
13 the following:

- 14 1. A description of the process used to develop or select the medical
15 necessity criteria for both mental health condition benefits and medical
16 and surgical benefits;
- 17 2. Identification of all nonquantitative treatment limitations applicable to
18 benefits and services covered under the plan that are applied to both
19 mental health condition benefits and medical and surgical benefits
20 within each classification of benefits;
- 21 3. The results of an analysis that demonstrates compliance with subsection
22 (1)(b) and (c) of this section for the medical necessity criteria described
23 in subparagraph 1. of this paragraph and for each nonquantitative
24 treatment limitation identified in subparagraph 2. of this paragraph, as
25 written and in operation. At a minimum, the results of the analysis shall:
 - 26 a. Identify the factors used to determine that a nonquantitative
27 treatment limitation will apply to a benefit, including factors that

- 1 were considered but rejected;
- 2 b. Identify and define the specific evidentiary standards used to
- 3 define the factors and any other evidence relied upon in designing
- 4 each nonquantitative treatment limitation;
- 5 c. Provide the comparative analyses, including the results of the
- 6 analyses, performed to determine that the processes and strategies:
- 7 i. Used to design each nonquantitative treatment limitation, as
- 8 written, and the as-written processes and strategies used to
- 9 apply the nonquantitative treatment limitation to mental
- 10 health condition benefits are comparable to, and are applied
- 11 no more stringently than, the processes and strategies used to
- 12 design each nonquantitative treatment limitation, as written,
- 13 and the as-written processes and strategies used to apply the
- 14 nonquantitative treatment limitation to medical and surgical
- 15 benefits; and
- 16 ii. Used to apply each nonquantitative treatment limitation, in
- 17 operation, for mental health condition benefits are
- 18 comparable to, and are applied no more stringently than, the
- 19 processes and strategies used to apply each nonquantitative
- 20 treatment limitation, in operation, for medical and surgical
- 21 benefits; and
- 22 d. Disclose the specific findings and conclusions reached by the
- 23 insurer that the results of the analyses performed under this
- 24 subparagraph indicate that the insurer is in compliance with
- 25 subsection (1)(b) and (c) of this section; and
- 26 4. Any additional information that may be prescribed by the commissioner
- 27 for use in determining compliance with the requirements of this section.

1 (b) ~~Each~~^{The} annual report shall be:

2 1. Submitted **by the insurer**, in a manner and format prescribed by the
3 commissioner through administrative regulation, **to the commissioner**
4 **and the Legislative Research Commission for referral on or before**
5 **June 1 of each year to the Interim Joint Committees on Health**
6 **Services and Banking and Insurance and any other appropriate**
7 **committees; and**

8 2. **Published for public distribution by the commissioner on the**
9 **department's website.**

10 (3) (a) A willful violation of this section shall constitute an act of discrimination and
11 shall be an unfair trade practice under this chapter.

12 (b) The remedies provided under Subtitle 12 of this chapter shall apply to conduct
13 in violation of this section.

14 (4) (a) **Subject to paragraph (c) of this subsection, the Attorney General may**
15 **enforce this section by bringing an action in the name of the**
16 **Commonwealth or on behalf of persons residing in the Commonwealth**
17 **against any person the Attorney General believes has violated, is violating,**
18 **or is likely to violate this section.**

19 (b) **The Attorney General:**

20 1. **May demand, and require the production of, any information,**
21 **documentary material, or evidence from any person the Attorney**
22 **General believes may have violated, may be violating, or may be likely**
23 **to violate this section; and**

24 2. **Shall have all of the powers and duties provided to the Attorney**
25 **General under KRS Chapter 15 to investigate and prosecute any**
26 **violation or likely violation of this section.**

27 (c) 1. **Prior to bringing an action under paragraph (a) of this subsection, the**

1 Attorney General shall provide each person thirty (30) days written
2 notice of the specific provisions of this section that the Attorney
3 General believes the person has violated, is violating, or is likely to
4 violate.

5 2. Except as provided in subparagraph 3. of this paragraph, the Attorney
6 General shall not bring an action under paragraph (a) of this
7 subsection against a person if, within thirty (30) days of the date of the
8 notice provided under subparagraph 1. of this paragraph, the person:

9 a. Cures the noticed violation or violations or likely violation or
10 violations; and

11 b. Provides the Attorney General with an express written statement
12 that:

13 i. Any noticed violation or violations have been cured and
14 any noticed likely violation or violations will not occur; and

15 ii. No further violation or violations, including any likely
16 violation or violations, of this section by the person will
17 occur.

18 3. The Attorney General may bring an action under paragraph (a) of this
19 subsection against a person that:

20 a. Violates, or is likely to violate, this section following the cure
21 period provided to the person under this paragraph; or

22 b. Breaches an express written statement submitted by the person to
23 the Attorney General under subparagraph 2.b. of this paragraph.

24 (d) In any action brought under paragraph (a) of this subsection, the Attorney
25 General may:

26 1. Obtain:

27 a. A declaratory judgment that one (1) or more alleged acts or

1 practices by a person or persons violate this section;

2 b. An injunction against any person that has violated, is violating,
3 or is likely to violate this section; and

4 c. Any other appropriate orders of the court to compel compliance
5 with this section; and

6 2. Recover:

7 a. Actual damages, which shall be paid to the injured person or
8 persons;

9 b. Any of the civil penalties set forth in KRS 367.990 for a violation
10 of KRS Chapter 367 for each violation and likely violation of this
11 section that occurs after the cure period provided under
12 paragraph (c) of this subsection;

13 c. Reasonable expenses incurred in investigating and preparing the
14 case;

15 d. Court costs;

16 e. Attorney's fees; and

17 f. Any other relief ordered by the court.

18 (5) (a) Subject to paragraph (c) of this subsection, any person, including a health
19 facility or health professional, directly injured by a violation or likely
20 violation of this section may bring a private cause of action against the
21 person or persons alleged to have committed the violation or likely violation.

22 (b) An action brought under paragraph (a) of this subsection may be filed in
23 the:

24 1. Circuit Court of the county in which the injured person resides or
25 conducts business; or

26 2. Franklin Circuit Court.

27 (c) Prior to bringing an action under paragraph (a) of this subsection, an

1 injured person shall make reasonable efforts to provide to each person
2 alleged to be in violation or likely violation of this section notice:

3 1. Of the person's alleged violations and likely violations of this section;

4 and

5 2. That failure to cure any alleged violation or likely violation of this
6 section within fourteen (14) days of the date of the notice may result in
7 a civil action being filed against the person in a court of competent
8 jurisdiction.

9 (d) In any action brought under paragraph (a) of this subsection, the plaintiff
10 may:

11 1. Obtain:

12 a. A declaratory judgment that one (1) or more alleged acts or
13 practices by a person or persons violate this section;

14 b. An injunction against any person that has violated, is violating,
15 or is likely to violate this section; and

16 c. Any other appropriate orders of the court to compel compliance
17 with this section; and

18 2. Recover necessary costs, expenses, and reasonable attorney's fees.

19 (6) Each occurrence of any the following shall constitute a separate violation of, and
20 direct injury under, this section that is subject to the remedies and penalties
21 available under this section:

22 (a) A person fails to comply with any requirement of this section;

23 (b) The denial of a claim under a health benefit plan as a result of a violation
24 under paragraph (a) of this subsection;

25 (c) An insured seeks but is unable to obtain mental health condition benefits
26 under a health benefit plan as a result of a violation under paragraph (a) of
27 this subsection; and

1 (d) A health facility or health professional attempts but is unable to provide
2 mental health condition benefits under a health benefit plan as a result of a
3 violation of paragraph (a) of this subsection.

4 (7) (a) The remedies and penalties set forth in this section shall be cumulative.

5 (b) Nothing in this section shall be construed to limit or restrict the powers,
6 duties, remedies, or penalties available to the commissioner, the Attorney
7 General, the Commonwealth, or any other person under any other statutory
8 or common law.

9 (c) No action taken pursuant to this section, or order of a court to enforce an
10 action taken pursuant to this section, shall in any way relieve or absolve any
11 affected person from any other liability, penalty, or forfeiture under law.

12 (8) The Attorney General may promulgate administrative regulations in accordance
13 with KRS Chapter 13A that are necessary to effectuate, or as an aid to the
14 effectuation of, the proper enforcement of this section.

15 ➔Section 2. KRS 205.522 is amended to read as follows:

16 (1) With respect to the administration and provision of Medicaid benefits pursuant to
17 this chapter, the Department for Medicaid Services, any managed care organization
18 contracted to provide Medicaid benefits pursuant to this chapter, and the state's
19 medical assistance program shall be subject to, and comply with, the following, as
20 applicable:

21 (a) KRS 304.17A-129;

22 (b) KRS 304.17A-145;

23 (c) KRS 304.17A-163;

24 (d) KRS 304.17A-1631;

25 (e) KRS 304.17A-167;

26 (f) KRS 304.17A-235;

27 (g) KRS 304.17A-257;

- 1 (h) KRS 304.17A-259;
2 (i) KRS 304.17A-263;
3 (j) KRS 304.17A-264;
4 (k) KRS 304.17A-515;
5 (l) KRS 304.17A-580;
6 (m) KRS 304.17A-600, 304.17A-603, and 304.17A-607;~~and~~
7 (n) KRS 304.17A-740 to 304.17A-743; and
8 (o) Section 1 of this Act.

9 (2) A managed care organization contracted to provide Medicaid benefits pursuant to
10 this chapter shall comply with the reporting requirements of KRS 304.17A-732.

11 ➔Section 3. If the Department for Medicaid Services or the Cabinet for Health
12 and Family Services determines that a state plan amendment, waiver, or any other form
13 of authorization or approval from any federal agency is necessary prior to implementation
14 of Section 2 of this Act for any reason, including the loss of federal funds, the department
15 or cabinet shall, within 90 days after the effective date of this section, request any
16 necessary state plan amendment, waiver, authorization, or approval, and may only delay
17 full implementation of those provisions for which a state plan amendment, waiver,
18 authorization, or approval was deemed necessary until the state plan amendment, waiver,
19 authorization, or approval is granted or approved.

20 ➔Section 4. The Department for Medicaid Services or the Cabinet for Health and
21 Family Services shall, in accordance with KRS 205.525, provide a copy of any state plan
22 amendment, waiver application, or other request for authorization or approval submitted
23 pursuant to Section 3 of this Act to the Legislative Research Commission for referral to
24 the Interim Joint Committees on Health Services and Appropriations and Revenue and
25 shall provide an update on the status of any application or request submitted pursuant to
26 Section 3 of this Act at the request of the Legislative Research Commission or any
27 committee thereof.

1 ➔Section 5. Whereas parity in the provision of mental health condition benefits is
2 imperative to the health and well-being of the citizens of the Commonwealth, an
3 emergency is declared to exist, and this Act takes effect upon its passage and approval by
4 the Governor or upon its otherwise becoming a law.