

SENATE BILL 684

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CF 4lr2870

By: **Senator Augustine**

Introduced and read first time: January 29, 2024

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance – Mental Health and Substance Use Disorder Benefits –**
3 **Sunset Repeal and Modification of Reporting Requirements**

4 FOR the purpose of altering certain reporting requirements on health insurance carriers
5 relating to compliance with the federal Mental Health Parity and Addiction Equity
6 Act; altering requirements for certain analyses of nonquantitative treatment
7 limitations required of health insurance carriers; authorizing the Maryland
8 Insurance Commissioner to exercise discretion to review subsets of nonquantitative
9 treatment limitations under certain circumstances; establishing certain remedies
10 the Commissioner may use to enforce compliance with the Mental Health Parity and
11 Addiction Equity Act and related reporting requirements; establishing that a health
12 insurance carrier has the burden of persuasion in demonstrating that its health plan
13 complies with the federal Mental Health Parity and Addiction Equity Act; repealing
14 the termination date for the reporting requirements; and generally relating to health
15 insurance carriers and mental health and substance use disorder benefits.

16 BY repealing and reenacting, with amendments,
17 Article – Insurance
18 Section 15–144
19 Annotated Code of Maryland
20 (2017 Replacement Volume and 2023 Supplement)

21 BY repealing and reenacting, with amendments,
22 Chapter 211 of the Acts of the General Assembly of 2020
23 Section 4

24 BY repealing and reenacting, with amendments,
25 Chapter 212 of the Acts of the General Assembly of 2020
26 Section 4

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Insurance

15–144.

(a) (1) In this section the following words have the meanings indicated.

(2) “Carrier” means:

(i) an insurer that holds a certificate of authority in the State and provides health insurance in the State;

(ii) a health maintenance organization that is licensed to operate in the State;

(iii) a nonprofit health service plan that is licensed to operate in the State; or

(iv) any other person or organization that provides health benefit plans subject to State insurance regulation.

(3) “Health benefit plan” means:

(i) for a large group or blanket plan, a health benefit plan as defined in § 15–1401 of this title;

(ii) for a small group plan, a health benefit plan as defined in § 15–1201 of this title;

(iii) for an individual plan:

1. a health benefit plan as defined in § 15–1301(l) of this title;

or

2. an individual health benefit plan as defined in § 15–1301(o) of this title;

(iv) short-term limited duration insurance as defined in § 15–1301(s) of this title; or

(v) a student health plan as defined in § 15–1318(a) of this title.

(4) “Medical/surgical benefits” has the meaning stated in 45 C.F.R. § 146.136(a) and 29 C.F.R. § 2590.712(a).

(5) “Mental health benefits” has the meaning stated in 45 C.F.R. § 146.136(a) and 29 C.F.R. § 2590.712(a).

(6) “Nonquantitative treatment limitation” means treatment limitations as defined in 45 C.F.R. § 146.136(a) and 29 C.F.R. § 2590.712(a).

(7) (I) “Parity Act” means the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 [and 45 C.F.R. § 146.136 and 29 C.F.R. § 2590.712], AS AMENDED.

(II) “PARITY ACT” INCLUDES 45 C.F.R. § 146.136, 29 C.F.R. § 2590.712, AND ANY OTHER RELATED FEDERAL REGULATIONS FOUND IN THE CODE OF FEDERAL REGULATIONS TO IMPLEMENT OR ENFORCE THE PAUL WELLSTONE AND PETE DOMENICI MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2008.

(8) “Parity Act classification” means:

- (i) inpatient in-network benefits;
- (ii) inpatient out-of-network benefits;
- (iii) outpatient in-network benefits;
- (iv) outpatient out-of-network benefits;
- (v) prescription drug benefits; and
- (vi) emergency care benefits.

(9) “Substance use disorder benefits” has the meaning stated in 45 C.F.R. § 146.136(a) and 29 C.F.R. § 2590.712(a).

(b) This section applies to a carrier that delivers or issues for delivery a health benefit plan in the State.

(c) (1) On or before [March 1, 2022, and March 1, 2024] **MARCH 1 EACH YEAR, BEGINNING IN 2025**, each carrier subject to this section shall:

(i) identify the five health benefit plans with the highest enrollment for each product offered by the carrier in the individual, small, and large group markets; and

(ii) submit a report to the Commissioner to demonstrate the carrier’s compliance with the Parity Act.

(2) The report submitted under paragraph (1) of this subsection shall include [the following information] **ALL NONQUANTITATIVE TREATMENT LIMITATION COMPARATIVE ANALYSIS INFORMATION REQUIRED UNDER THE PARITY ACT, SUBSECTION (D) OF THIS SECTION, AND ANY STATE REGULATIONS** for the health benefit plans identified under [item] **PARAGRAPH (1)(i) of this subsection, INCLUDING:**

(i) a description of the process used to develop or select the medical necessity criteria for mental health benefits and substance use disorder benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits;

(ii) for each Parity Act classification, identification of nonquantitative treatment limitations that are applied to mental health benefits and substance use disorder benefits and medical and surgical benefits;

(iii) identification of the description of the nonquantitative treatment limitations identified under item (ii) of this paragraph in documents and instruments under which the plan is established or operated; and

(iv) the results of the comparative analysis as described under subsections (d) and (e) of this section.

(d) (1) A carrier subject to this section shall conduct a comparative analysis for the nonquantitative treatment limitations identified under subsection (c)(2)(ii) of this section as nonquantitative treatment limitations are:

(i) written; and

(ii) in operation.

(2) The comparative analysis of the nonquantitative treatment limitations identified under subsection (c)(2)(ii) of this section shall:

(I) demonstrate that the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to mental health benefits and substance use disorder benefits in each Parity Act classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits within the same Parity Act classification; AND

(II) INCLUDE ALL INFORMATION REQUIRED UNDER THE PARITY ACT.

(e) In providing the analysis required under subsection (d) of this section, a carrier shall:

(1) identify the factors used to determine that a nonquantitative treatment limitation will apply to a benefit, including:

(i) the sources for the factors, **INCLUDING SOURCES IN EFFECT BEFORE THE ENACTMENT OF THE PARITY ACT;**

(ii) the factors that were considered but rejected; [and]

(III) THE FACTORS THAT WERE IN EFFECT BEFORE THE ENACTMENT OF THE PARITY ACT AND ARE USED IN THE DESIGN OR APPLICATION OF THE NONQUANTITATIVE TREATMENT LIMITATION; AND

[(iii)] (IV) if a factor was given more weight than another, the reason for the difference in weighting;

(2) identify and define the specific evidentiary standards used to define the factors and any other evidence relied on in designing each nonquantitative treatment limitation, **INCLUDING EVIDENTIARY STANDARDS IN EFFECT BEFORE THE ENACTMENT OF THE PARITY ACT;**

(3) IDENTIFY AND DEFINE THE PROCESSES AND STRATEGIES THAT ARE USED TO DESIGN OR APPLY THE NONQUANTITATIVE TREATMENT LIMITATION, INCLUDING THE PROCESSES AND STRATEGIES IN EFFECT BEFORE THE ENACTMENT OF THE PARITY ACT;

[(3)] (4) include the results of the audits, reviews, and analyses performed on the nonquantitative treatment limitations identified under subsection (c)(2)(ii) of this section to conduct the analysis required under subsection (d)(2) of this section for the plans as written;

[(4)] (5) include the results of the audits, reviews, and analyses performed on the nonquantitative treatment limitations identified under subsection (c)(2)(ii) of this section to conduct the analysis required under subsection (d)(2) of this section for the plans as in operation;

[(5)] (6) identify the measures used to ensure comparable design and application of nonquantitative treatment limitations that are implemented by the carrier and any entity delegated by the carrier to manage mental health benefits, substance use disorder benefits, or medical/surgical benefits on behalf of the carrier;

[(6)] (7) disclose the specific findings and conclusions reached by the carrier that indicate that the health benefit plan is in compliance with this section and the Parity Act [and its implementing regulations, including 45 C.F.R. 146.136 and 29 C.F.R.

2590.712 and any other related federal regulations found in the Code of Federal Regulations]; and

~~[(7)]~~ (8) identify the process used to comply with the Parity Act disclosure requirements for mental health benefits, substance use disorder benefits, and medical/surgical benefits, including:

(i) the criteria for a medical necessity determination;

(ii) reasons for a denial of benefits; and

(iii) in connection with a member's request for group plan information and for purposes of filing an internal coverage or grievance matter and appeals, plan documents that contain information about processes, strategies, evidentiary standards, and any other factors used to apply a nonquantitative treatment limitation.

(f) On or before ~~[March 1, 2022, and March 1, 2024]~~ **MARCH 1 EACH YEAR, BEGINNING IN 2025**, each carrier subject to this section shall submit a report for the health benefit plans identified under subsection (c)(1)(i) of this section to the Commissioner on the following data for the immediately preceding calendar year for mental health benefits, substance use disorder benefits, and medical/surgical benefits by Parity Act classification:

(1) the frequency, reported by number and rate, with which the health benefit plan received, approved, and denied prior authorization requests for mental health benefits, substance use disorder benefits, and medical and surgical benefits in each Parity Act classification during the immediately preceding calendar year; ~~[and]~~

(2) the number of claims submitted for mental health benefits, substance use disorder benefits, and medical and surgical benefits in each Parity Act classification during the immediately preceding calendar year and the number and rates of, and reasons for, denial of claims; **AND**

(3) DATA IDENTIFIED BY THE COMMISSIONER OR FEDERAL REGULATIONS TO EVALUATE NONQUANTITATIVE TREATMENT LIMITATION COMPLIANCE WITH THE IN-OPERATION STANDARD OF THE PARITY ACT.

(g) The reports required under subsections (c) and (f) of this section shall:

(1) be submitted on a standard form developed by the Commissioner **THAT CONFORMS TO THE FEDERAL REGULATIONS ON NONQUANTITATIVE TREATMENT LIMITATIONS COMPARATIVE ANALYSIS REPORTING;**

(2) be submitted by the carrier that issues or delivers the health benefit plan;

1 (3) be prepared in coordination with any entity the carrier contracts with
2 to provide mental health benefits and substance use disorder benefits;

3 (4) contain a statement, signed by a corporate officer, attesting to the
4 accuracy of the information contained in the report;

5 (5) be available to plan members and the public on the carrier's website in
6 a summary form that removes confidential or proprietary information and is developed by
7 the Commissioner in accordance with subsection [(m)(2)] **(N)(2)** of this section; and

8 (6) exclude any identifying information of any plan member.

9 (h) (1) A carrier submitting a report under subsections (c) and (f) of this section
10 may submit a written request to the Commissioner that disclosure of specific information
11 included in the report be denied under the Public Information Act and, if submitting a
12 request, shall:

13 (i) identify the particular information the disclosure of which the
14 carrier requests be denied; and

15 (ii) cite the statutory authority under the Public Information Act
16 that authorizes denial of access to the information.

17 (2) The Commissioner may review a request submitted under paragraph
18 (1) of this subsection on receipt of a request for access to the information under the Public
19 Information Act.

20 (3) The Commissioner may notify the carrier that submitted the request
21 under paragraph (1) of this subsection before granting access to information that was the
22 subject of the request.

23 (4) A carrier shall disclose to a member on request any plan information
24 contained in a report that is required to be disclosed to that member under federal or State
25 law.

26 (i) **(1)** The Commissioner shall:

27 **[(1)] (I)** review each report submitted in accordance with subsections (c)
28 and (f) of this section to assess each carrier's compliance with the Parity Act;

29 **[(2)] (II)** notify a carrier in writing of any noncompliance with the Parity
30 Act before issuing an administrative order; and

31 **[(3)] (III)** within 90 days after the notice of noncompliance is issued, allow
32 the carrier to:

1 [(i)] 1. submit a compliance plan to the Administration to comply
2 with the Parity Act; and

3 [(ii)] 2. reprocess any claims that were improperly denied, in
4 whole or in part, because of the noncompliance.

5 (2) THE COMMISSIONER MAY EXERCISE DISCRETION TO REVIEW A
6 SUBSET OF NONQUANTITATIVE TREATMENT LIMITATIONS FOR THE PURPOSES OF
7 THIS SECTION IF THE COMMISSIONER:

8 (I) AFTER THE REPORTING DEADLINES ESTABLISHED UNDER
9 SUBSECTIONS (C) AND (F) OF THIS SECTION, IDENTIFIES THE NONQUANTITATIVE
10 TREATMENT LIMITATIONS THAT WILL BE REVIEWED BY THE COMMISSIONER;

11 (II) DESCRIBES AND POSTS ON THE ADMINISTRATION'S
12 WEBSITE THE CRITERIA USED TO IDENTIFY THE NONQUANTITATIVE TREATMENT
13 LIMITATIONS THAT WILL BE REVIEWED EACH YEAR;

14 (III) REVIEWS NONQUANTITATIVE TREATMENT LIMITATIONS
15 THAT HAVE THE GREATEST EFFECT ON ACCESS TO MENTAL HEALTH AND
16 SUBSTANCE USE DISORDER CARE;

17 (IV) REVIEWS THE SAME SUBSET OF NONQUANTITATIVE
18 TREATMENT LIMITATIONS FOR EACH CARRIER REPORT;

19 (V) REVIEWS NOT LESS THAN 10 NONQUANTITATIVE
20 TREATMENT LIMITATIONS FOR EACH CARRIER REPORT; AND

21 (VI) ISSUES A DETERMINATION IN ANY MATTER THAT
22 IMPLICATES PARITY ACT COMPLIANCE REGARDLESS OF WHETHER A
23 NONQUANTITATIVE TREATMENT LIMITATION AT ISSUE IN THE MATTER HAS BEEN
24 REVIEWED UNDER THIS SECTION.

25 (j) If the Commissioner finds that the carrier failed to submit a complete report
26 required under subsection (c) or (f) of this section, the Commissioner may impose any
27 penalty or take any action as authorized:

28 (1) for an insurer, nonprofit health service plan, or any other person subject
29 to this section, under this article; or

30 (2) for a health maintenance organization, under this article or the Health
31 – General Article.

(k) If, as a result of the review required under subsection [(i)(1)] **(I)(1)(I)** of this section, the Commissioner finds that the carrier failed to comply with [the provisions of] the Parity Act, [and] did not submit a compliance plan to adequately correct the noncompliance, **OR FAILED TO SUBMIT INFORMATION THAT IS REQUIRED TO EVALUATE COMPLIANCE WITH THE PARITY ACT**, the Commissioner may:

(1) issue an administrative order that requires:

(i) the carrier or an entity delegated by the carrier to cease the noncompliant conduct or practice; [or]

(II) THE CARRIER OR AN ENTITY DELEGATED BY THE CARRIER TO CEASE THE IMPLEMENTATION OF THE NONQUANTITATIVE TREATMENT LIMITATION; OR

[(ii)] **(III)** the carrier to provide a payment that has been denied improperly because of the noncompliance, **INCLUDING A FAILURE TO PROVIDE INFORMATION THAT DEMONSTRATES COMPLIANCE; [or]**

(2) IMPOSE A PENALTY OF NOT LESS THAN \$1,000 FOR EACH DAY IN WHICH THE CARRIER FAILS TO SUBMIT INFORMATION REQUIRED BY THE COMMISSIONER TO EVALUATE COMPLIANCE; OR

[(2)] **(3)** impose any **OTHER** penalty or take any action as authorized:

(i) for an insurer, nonprofit health service plan, or any other person subject to this section, under this article; or

(ii) for a health maintenance organization, under this article or the Health – General Article.

(L) (1) A CARRIER SHALL HAVE THE BURDEN OF PERSUASION IN DEMONSTRATING THAT ITS HEALTH PLAN COMPLIES WITH THE PARITY ACT:

(I) IN ANY REVIEW CONDUCTED BY THE COMMISSIONER UNDER THIS SECTION; OR

(II) IN ANY MATTER FILED WITH THE COMMISSIONER THAT INVOLVES THE APPLICATION OF THE PARITY ACT.

(2) A FAILURE OF A CARRIER TO SUBMIT COMPLETE PARITY ACT COMPLIANCE INFORMATION REQUIRED UNDER THIS SECTION OR IN CONNECTION WITH A MATTER FILED WITH THE COMMISSIONER SHALL CONSTITUTE NONCOMPLIANCE WITH THE PARITY ACT.

1 **[(l)] (M)** In determining an appropriate penalty under subsection (j) or (k) of this
2 section, the Commissioner shall consider the late filing of a report required under
3 subsection (c) or (f) of this section and any parity violation to be a serious violation with a
4 significantly deleterious effect on the public.

5 **[(m)] (N)** On or before December 31, 2021, the Commissioner shall create:

6 (1) a standard form for entities to submit the reports in accordance with
7 subsection (g)(1) of this section; and

8 (2) a summary form for entities to post to their websites in accordance with
9 subsection (g)(5) of this section.

10 **[(n)] (O)** On or before December 31, **[2021] 2024**, the Commissioner shall, in
11 consultation with interested stakeholders, adopt regulations to implement this section,
12 including to ensure uniform definitions and methodology for the reporting requirements
13 established under this section.

14 **Chapter 211 of the Acts of 2020**

15 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2020. [It shall remain in effect for a period of 6 years and, at the end of
17 September 30, 2026, this Act, with no further action required by the General Assembly,
18 shall be abrogated and of no further force and effect.]

19 **Chapter 212 of the Acts of 2020**

20 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2020. [It shall remain in effect for a period of 6 years and, at the end of
22 September 30, 2026, this Act, with no further action required by the General Assembly,
23 shall be abrogated and of no further force and effect.]

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
25 1, 2024.