

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 and the Legislative Research Commission for referral to the Interim Joint
13 Committee on Health Services, on or before ~~June~~^{April} 1 of each year~~f~~
14 following January 1, 2022], that contains the following:

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

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

1 for use in determining compliance with the requirements of this section.

2 (b) The annual report shall be submitted in a manner and format prescribed by the
3 commissioner through administrative regulation.

4 (3) A willful violation of this section shall constitute an act of discrimination and shall
5 be an unfair trade practice under this chapter. The remedies provided under Subtitle
6 12 of this chapter shall apply to conduct in violation of this section.

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