State of Arkansas *As Engrossed: xx/xx/xx*

92nd General Assembly A Bill

Regular Session, 2019 SENATE BILL XXX

By: Senators \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_

By: Representatives \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_

**For An Act To Be Entitled**

AN ACT TO PROVIDE PARITY REPORTING AND IMPLEMENTAITON REQUIREMENTS; AND FOR OTHER PURPOSES

**Subtitle**

TO PROVIDE PARITY REPORTING AND IMPLEMENTATION REQURIEMENTS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

Section 1. Arkansas Code Title 23, Chapter 99, Subchapter 5 is amended to add additional sections to read as follows:

23-99-513. Parity reporting requirements.

(a) All healthcare insurers that issue or deliver health benefit plans that provide benefits for the treatment of mental illnesses or substance use disorders shall submit an annual report to the Commissioner on or before March 1 that contains the following information:

(1) A description of the process used to develop or select the medical necessity criteria for mental illness and substance use disorder benefits and the process used to develop or select the medical necessity criteria for medical and surgical benefits;

(2) Identification of all non-quantitative treatment limitations (NQTLs) that are applied to both mental illness and substance use disorder benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental illness and substance use disorder benefits but do not apply to medical and surgical benefits within any classification of benefits;

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in paragraph (1) and for each NQTL identified in paragraph (2), as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental illness and substance use disorder benefits within each classification of benefits 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 NQTL to medical and surgical benefits within the corresponding classification of benefits; at a minimum, the results of the analysis shall:

(A) Identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected;

(B) Identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL;

(C) Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to mental illness and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to medical and surgical benefits;

(D) Provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental illness and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits; and

(E) Disclose the specific findings and conclusions reached by the insurer that the results of the analyses above indicate that the insurer is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing and related regulations, which includes 45 CFR 146.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3).

23-99-514. Commissioner implementation requirements.

(a) The Commissioner shall implement and enforce applicable provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, and any amendments to, and any federal guidance or regulations relevant to, that act, including 45 CFR 146.136, 45 CFR 147.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3), includes:

(1) Proactively ensuring compliance by insurers that issue or deliver health benefit plans that provide benefits for the treatment of mental illnesses and substance use disorders;

(2) Evaluating all consumer or provider complaints regarding mental illness and substance use disorder coverage for possible parity violations;

(3) Performing parity compliance market conduct examinations of insurers that issue or deliver health benefit plans that provide benefits for the treatment of mental illnesses and substance use disorders, particularly market conduct examinations that focus on nonquantitative treatment limitations such as prior authorization, concurrent review, retrospective review, step-therapy, network admission standards, reimbursement rates, and geographic restrictions, among other nonquantitative treatment limitations;

(4) Requesting that insurers submit comparative analyses during the form review process demonstrating how they design and apply nonquantitative treatment limitations, both as written and in operation, for mental illness and substance use disorder benefits as compared to how they design and apply nonquantitative treatment limitations, as written and in operation, for medical and surgical benefits; and

(5) The Commissioner may adopt rules, under section 510 of this subchapter, as may be necessary to effectuate any provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of insurance.

(b) Not later than March 1, 2020, the Commissioner shall issue a report and educational presentation to the General Assembly, which shall:

(1) Cover the methodology the Commissioner is using to check for compliance with the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), and any federal regulations or guidance relating to the compliance and oversight of MHPAEA;

(2) Cover the methodology the Commissioner is using to check for compliance with this subchapter;

(3) Identify market conduct examinations conducted or completed during the preceding 12-month period regarding compliance with parity in mental illness and substance use disorder benefits under state and federal laws and summarize the results of such market conduct examinations;

(4) Detail any educational or corrective actions the Commissioner has taken to ensure insurer compliance with MHPAEA and this subchapter; and

(5) The report must be written in non-technical, readily understandable language and shall be made available to the public by, among such other means as the Commissioner finds appropriate, posting the report on the Internet website of the Insurance Department.

23-99-515. Coverage requirements for medications to treat substance use disorders.

(a) All healthcare insurers that issue or deliver health benefit plans that provide prescription medication benefits for the treatment of substance use disorders shall not impose any prior authorization requirements on any prescription medication approved by the federal Food and Drug Administration (FDA) for the treatment of substance use disorders.

(b) All healthcare insurers that issue or deliver health benefit plans that provide prescription medication benefits for the treatment of substance use disorders shall not impose any step therapy requirements before the insurer will authorize coverage for a prescription medication approved by the FDA for the treatment of substance use disorders.

(c) All healthcare insurers that issue or deliver health benefit plans that provide prescription medication benefits for the treatment of substance use disorders shall place all prescription medications approved by the FDA for the treatment of substance use disorders on the lowest tier of the drug formulary developed and maintained by the insurer.

(d) All healthcare insurers that issue or deliver health benefit plans that provide prescription medication benefits for the treatment of substance use disorders shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance use disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.

Section 2. Effective date

This act takes effect October 1, 2019.